

IN THE HIGH COURT OF BOMBAY AT GOA
FIRST APPEAL NO.95 OF 2013
WITH
STAMP NUMBER (APPLN.) NO. 738 OF 2019
FIRST APPEAL NO.95 OF 2013

Bajaj Allianz General Insurance
Company Ltd., A Company registered
under The Companies Act having
Branch Office at 3C-D, Sesa Ghor,
20 Patto Plaza,
EDC Complex, Panaji Goa. Appellant

V e r s u s

1. Smt. Geeta G. Satardekar,
Widow of Govind Satardekar,
43 years of age, housewife
2. Miss Sunita G. Satardekar,
Daughter of late Govind Satardekar,
22 years of age, student.
3. Master Gauresh G. Satardekar,
Son of late Govind Satardekar,
20 years of age, student,
All residents of H. No.203,
Umatwada, Pirna Goa.
4. Mr. Shivappa Kanthappa Chaluwadi,
Major of age, service,
Native of Hangaragi,
Tq-B Bagewadi Bijapur-Karnataka
(Driver of Truck)
5. Mr. Sudhir Narayan Deshprabhu,
Major of age, business,
Resident of House No.727,
Pernem Goa 403512,
(owner of truck) Respondents

Mr. Amey Kakodkar, Advocate for the Appellant.

Mr. S. D. Lotlikar, Senior Advocate with Mr. Neelesh Amonkar,
Advocate for the Respondent nos.1, 2 and 3.

WITH

STAMP NUMBER (APPLN.) NO. 738 OF 2019

1. Smt. Geeta G. Satardekar,
Widow of Govind Satardekar,
49 years o age, housewife
R/o H. No, 203, Umatwada,
Pirna, Goa.
2. Miss Sunita G. Satardekar alias
Sunita B. Shirodkar,
Daughter of late Govind Satardekar,
28 years of age, student,
R/o H. No, 203, Umatwada,
Pirna, Goa.
3. Mr. Gauresh G. Satardekar,
Son of Govind Satardekar,
26 years of age, student,
R/o. H. No.203,
Umatwada, Pirna Goa. ... Cross Appellants

IN

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(owner of truck)

... Respondents

Mr. S. D. Lotlikar, Senior Advocate with Mr. Neelesh Amonkar,
Advocate for the Cross Appellants.

Mr. Amey Kakodkar, Advocate for the Appellant.

Coram :- C. V. BHADANG, J.
Reserved for Judgment on :- 22nd August, 2019
Judgment pronounced on :- 26th August, 2019.

JUDGMENT

1. On 07.07.2010, Govind Bhikaji Satardekar, (since deceased) was proceeding on his motorcycle bearing no.GA-03-M-1247 from Kasarwadda towards Colvale on the National Highway No.17, when he met with an accident near Binani

Factory at about 7.50 p.m., in which he was hit by a truck bearing no. GA-03-T-6690 coming from behind. The truck was owned by the fifth respondent Mr. Sudhir Narayan Deshpabhu and at the relevant time was being driven by the fourth respondent Mr. Shivappa Chaluwadi. The said truck was covered by a policy of insurance issued by the appellant. Govind Satardekar died as a result of the injuries sustained in the accident. An offence was registered against the fourth respondent in respect of the accident with PS Mapusa under Crime no.179/2010. The deceased was 51 years of age at the time of the accident and was working as an Instructor at the Government ITI at Honda and was drawing a monthly salary of ₹33,156/-.

2. The respondent nos.1, 2 and 3 being the widow, daughter and son of the deceased, filed Claim Petition No.82/2010 against the appellant and the respondent nos.4 and 5 seeking a compensation of ₹29,37,294/- before the Motor Accident Claims Tribunal at Mapusa (The Tribunal, for short).

3. The respondent no.5 claimed that the truck was leased to one Mr. Pascoal Fernandes from February 2010 under an oral agreement and the fourth respondent was the driver

engaged by Mr. Pascoal and thus there was no master and the servant relationship between him and the fourth respondent.

4. The appellant contested the claim on the ground that the offending vehicle was used without effective permit and fitness certificate, in breach of the policy conditions.

5. The Tribunal on the basis of the rival pleadings, framed in all three issues.

6. The respondent no.1 examined herself as Aw.1 along with Smt. Sheetal Desai (Aw.2) and Shri Vijendra Mayekar (Aw.3), and produced the police papers on record. The appellant examined Shri Ivo Rodrigues (Rw.1) and Shri Pravin Prabhu (Rw.2).

7. The Tribunal answered the issue nos.1 and 3 in the affirmative and granted compensation of ₹24,00,158/- along with interest at the rate of 9% per annum from the date of the petition till realisation. The Tribunal directed the appellant to deposit the amount with liberty to recover the same from the owner. Feeling aggrieved, the appellant-insurance company is before this Court.

8. Cross Objection Stamp Number(Appln.) No.738/2019 is filed by the respondent nos.1 to 3 for enhancement of compensation based on the decision of the Supreme Court in the case of **National Insurance Company vs. Pranay Sethi & Ors. (2017) 16 SCC 680.**

9. I have heard Mr. Kakodkar, the learned Counsel for the appellant and Mr. S. D. Lotlikar, the learned Senior Counsel for the respondent nos.1 to 3 who are the cross objectors. None appeared for the respondent nos.4 and 5. Perused record.

10. Mr. Kakodkar, the learned Counsel for the appellant, has raised a solitary contention. It is submitted that the accident occurred due to rash and negligent driving of the deceased himself as the deceased suddenly took a turn to the right for proceeding towards Pirna without giving any indicator by hand which is mandatory. The learned Counsel pointed out that the accident occurred at a 'T' junction where the road from Kasarwadda to Colvale meets the road going towards Pirna on the eastern side. The learned Counsel has referred to the sketch annexed to the spot panchanama, (exhibit 18), in order to show the relative location of the two vehicles, after the accident. The learned Counsel submitted that a rider of a motor vehicle, while taking a right turn has to keep to the

extreme left of the road after turning. He pointed out that the motorcycle on which the deceased was riding was found on the middle of the road leading to Pirna and this would indicate negligence on the part of the deceased. It is submitted that Vijendra Mayenkar, (Aw.3), is a got up witness and his evidence is not acceptable. He alternatively submitted that the deceased contributed to the accident and the contributory negligence of the deceased needs to be ascertained and the liability to that extent needs to be apportioned. It is submitted that the appellant was arrayed as a respondent in the petition and was not a noticee under Section 149 (2) of the Motor Vehicle Act (Act, for short) and, as such, the appellant can take all such defences which are available including that of absence of negligence of the driver, notwithstanding the fact that leave has not been obtained under Section 170 of the said Act.

11. Insofar as the Cross Objection is concerned, it is submitted that the same is clearly barred by limitation, inasmuch as, it is not filed within one month from the receipt of the notice hearing of the appeal and the respondent nos.1 to 3 have also not filed any application for condonation of delay. He, therefore, submits that the Cross Objection cannot be entertained.

12. On the contrary, it is submitted by Shri S. D. Lotlikar, the learned Senior Counsel for the respondent nos.1 to 3 that the evidence on record clearly suggests that the accident occurred due to the negligent driving of the truck. It is submitted that the evidence in a petition of the present nature has to be appreciated on the touchstone of preponderance of all probability unlike in a criminal case. He submits that the evidence of Aw.3 is acceptable and the Tribunal has rightly placed reliance on the same.

13. The learned Senior Counsel has submitted that the insurance company has no right to file an appeal where the insurance company is only questioning the liability on the basis of the absence of the negligence of the driver of the offending vehicle. For this purpose, reliance is placed on the decision of the Supreme Court in the case of **National Insurance Co. Ltd. Chandigarh vs. Nicolletta Rohtagi & Ors. (2002) 7 SCC 456** and the decision of this Court in the case of **The New India Assurance Co. Ltd. vs. Mr. Veerapa Naidu & Ors. (FA No.104/2001 decided on 11.10.2004).**

14. Insofar as the Cross Objection is concerned, the learned Senior Counsel has placed reliance on the decision of this Court in the case of **Madhuri T. Rivonkar and 2 Ors. vs.**

The Oriental Insurance Co. Ltd & 3 Ors. (MCA No.434/2014 in Stamp Number (Appln.) No.579/2014)

decided on 10.12.2014, in order to submit that unless and until a notice for actual date of final hearing in the appeal is issued and received by the respondent, the period of limitation for filing cross objection does not commence. The contention is that mere issuance of a notice for final hearing which notice does not fix actual date of final hearing is not sufficient so as to commence the period of limitation. He submits that even otherwise there is no limitation provided under law for filing the original petition under Section 166 of the Act and the Tribunal under the provisions of the said Act is under a statutory duty to determine just compensation and, therefore, the Cross Objection deserves to be entertained. Insofar as the claim for enhancement is concerned, reliance is placed on the decision in the case of **Pranay Sethi** (supra), in order to submit that the Tribunal ought to have considered an addition of 15% to the salary of the deceased towards future prospects as the deceased was falling in the age group of 50 to 60 years and had a permanent job. He also submits that the compensation granted under the customary heads such as loss of consortium, loss of estate and funeral expenses needs to be appropriately enhanced in accordance with the decision in the case of **Pranay Sethi** (supra).

15. I have carefully considered the rival circumstances and the submissions made.

16. I do not propose to dwell on the issue of maintainability of the appeal in this case, inasmuch as I find that on merits, the challenge posed by the appellant-insurance company to the impugned award cannot be sustained. It is a matter of record that the accident occurred at a 'T' junction where the road leading from Kasarwadda to Colvale meets the road leading to Pirna on the eastern side. The deceased as well as the offending truck were initially proceeding from Kasarwadda towards Colvale and the deceased took right turn leading to the Pirna road. The truck coming from behind gave a dash to the vehicle on which the deceased was riding resulting in his death. The learned Counsel for the appellant has placed reliance on the contents of the panchanama and in particular the nature of the damage sustained by the truck as well as the motorcycle on which the deceased was riding, in order to submit that the accident cannot be said to have occurred in the manner in which the respondent nos.1 to 3 are claiming. It is not possible to accept the contention for more reasons than one. In the first place, the standard of proof to establish negligence in a petition of the present nature is not as high as is required in a criminal case. The negligence in a petition

under Section 166 of the Act can be established on preponderance of probability. It is a matter of record that both the vehicles were proceeding in the same direction and the accident occurred at the point where the road leading to Pirna meets the road from Kasarwadda to Colvale. The Tribunal has considered Rule 3(b) of the Road Regulations which provide that when turning to the right, a driver has to draw as near as may be, to the centre of the road, along which he is travelling and arrive as near as may be at the left hand side of the road, which the driver is entering. In the present case, the deceased had in fact drawn himself to the centre of the road and before he could enter the road leading to Pirna, in all probability, was hit by the truck coming from behind. We also have the evidence of an eye witness, Aw.3. I have carefully gone through his evidence and notwithstanding some minor contradiction regarding time, his evidence appears to be acceptable. Merely because there is no evidence that the deceased had given an indication by hand, when there is a specific evidence that there was an indicator given would not be sufficient to hold that the deceased was negligent. Considering the over all circumstances, I do not find that the accident occurred due to the contributory negligence of the deceased and the finding recorded by the Tribunal that the

accident was a result of the negligent driving of the respondent no.4, needs to be affirmed.

17. The finding as to be breach of policy condition is in favour of the appellant and it is not necessary to dwell on the same.

18. This takes me to the Cross Objection of the respondent nos.1 to 3. According to the learned Senior Counsel for the Cross Objectors, although the respondents had put in appearance in the appeal, there was no notice received by the appellant fixing a date of hearing of the appeal. On the contrary, it is contended on behalf of the appellant that once these respondents having entered their appearance in the appeal, ought to have filed the Cross Objection within one month of the receipt of the notice. On behalf of the appellant, reliance is placed on para 44 of the judgment in the case of **Mahadev Govind Gharge & Ors. vs. Special Land Acquisition Officer Upper Krishna Project Jamkhandi, Karnataka (2011) 6 SCC 321**, in order to submit that a notice as contemplated under Order 41 Rule 22 of the Civil Procedure Code (CPC) can be a notice for actual date of hearing or otherwise and, merely because a specific date was not fixed, would not be of any consequence. Here again, it is

not necessary to go into the question whether the notice contemplated under Order 41 Rule 22 of CPC has to be notice fixing actual date of hearing or it can be a notice by which the respondent is called upon to put in appearance, in view of the admission of the appeal for final hearing. This is because order 41 Rule 22 of CPC in a given case permits the Court to allow the Cross Objection being filed even after the period of one month as is contemplated in the said Rule. I find that the Cross Objection can be entertained in this case having regard to the fact that in an appropriate case, the Court can entertain such Cross Objection even beyond the period of one month. Here are the reasons why I say so. Under Section 166 of the Act, the Tribunal is under a statutory duty to determine just compensation. Secondly, it is now well settled that in an appropriate case, the Tribunal can even award compensation higher than what is claimed, if otherwise a case is made out for grant of such higher compensation. Thirdly, the claim for enhancement in this case by the respondent nos.1 to 3 is based on the constitution Bench judgment of the Supreme Court in the case of **Pranay Sethi** (supra). Thus, the Tribunal is bound to take note of the said decision and the parameters on which such compensation is to be determined and in an appeal arising out of the award of the Tribunal, this Court has to take note of the same and determine just compensation.

Thus, more liberal considerations would arise while entertaining a Cross Objection for enhancement by the claimants in a petition under Section 166 of the Act than where the counter claim is arising out of a Civil Suit.

19. For the aforesaid reasons, I find that notwithstanding the fact that the Cross Objection is filed in the year 2019, the same needs to be entertained as even otherwise the Court is obliged to determine just compensation under Section 166 of the Act.

20. As per the birth certificate (exhibit 21), the date of birth of the deceased is 05.12.1959 and he was 51 years of age on the date of the accident and the appropriate multiplier as has been reckoned by the Tribunal is 11 on the basis of the decision of the Supreme Court in the case of **Sarla Verma & Ors. Vs. Delhi Transport Corporation & anr. 2009 (2) TAC 677 (SC)**. The Tribunal in para 30 of the impugned award, has noticed that the salary of the deceased for the month of June 2010 was ₹28,481/- and for the month of July i.e. from 01.07.2010 to 06.07.2010, the deceased was paid an amount of ₹5671/-. The Tribunal has reckoned the notional salary for the said month at ₹29,303/-. I propose to take the salary of the deceased as ₹29,000/- per month. The Supreme

Court in the case of **Pranay Sethi** (supra) has held that where the deceased has a permanent job, there should be addition of 15% to the actual salary where the deceased was in the age group of 50 to 60 as in the present case. Thus, adding 15% towards future prospects, the monthly salary would come to ₹33,350/-. The actual salary for determining the compensation has to be salary less income tax. A deduction of 10% can be made towards tax. Thus, after deducting ₹3,335/-, the net salary would be ₹30,015/- per month i.e. ₹ 3,60,180/- per annum. As there were three dependants on the deceased, the deduction towards personal and living expenses would be one-third i.e. ₹1,20,060/-, thus, taking the net dependency to ₹2,40,120/- per annum. Applying the multiplier of 11, the compensation payable would be ₹26,41,320/-. The Supreme Court in the case of **Pranay Sethi** (supra), has held that the compensation on the conventional heads namely, loss of estate, loss of consortium and funeral expenses, should be ₹15,000/-, ₹40,000/- and ₹15,000/- respectively. Thus, after addition of the compensation under the conventional heads, the total compensation payable would be ₹27,11,320/- which will be payable along with interest at the rate of 9% per annum as awarded by the Tribunal.

21. In the result, the appeal is hereby dismissed. The Cross Objection is partly allowed. The compensation payable to the respondent nos.1 to 3 is enhanced to ₹27,11,320/- which shall be payable along with interest at the rate of 9% per annum from 15.12.2010 till actual realisation. This shall be inclusive of the compensation under Section 140 of the Act. The rest of the award stands as it is.

22. In the circumstances, there shall be no order as to costs.

23. Award be drawn accordingly.

C. V. BHADANG, J.

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