

IN THE HIGH COURT OF BOMBAY AT GOA**FIRST APPEAL NO.53 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, Panaji Goa ... Appellant

Versus

1. Smt. Ganga alias Gangubai
Dhondu Sawant,
widow of Dhondu Sawant
aged 64 years, housewife,
2. Mr. Fotu Dhondu Sawant,
son of late Dhondu Sawant
aged 39 years, housewife,
3. Mrs. Anjusha Fotu Sawant
wife of Fotu D. Sawant
aged 35 years, housewife
4. Mr. Sunil Dhondu Sawant
Son of Dhondu Sawant
aged 32 years, service,
5. Mrs. Shital Sunil Sawant
wife of Mr. Sunil Sawant
aged 32 years, housewife,
All above residents of house No.295,
Gavai, Thivim, Bardez Goa.
6. Mr. Mahadev Ladu Ugvekar
son of Ladu Ugvekar

major of age,
H.No. Not known,
madlowado, Sal,
R/o Bicholim Goa.

7. M/s Sesa Goa Limited
through its Managing Director
having registered office at Sesa Ghor
EDC Complex, Patto,
Panaji, North Goa. ... Respondents

Mr. A. Kakodkar and Ms. A. Godinho, Advocates for the Appellant.
Mr. J. J. Mulgaonkar, Advocate for Respondent Nos.1 to 5.
Mr. R. G. Ramani, Senior Advocate with Mr. P. Kakodkar, Advocate for
Respondent Nos.6 and 7.

Coram:- M. S. SONAK, J

Date:- 16th July, 2020

ORAL JUDGMENT

Heard Mr. A. Kakodkar, learned counsel for the Appellant,
Mr. Mulgaonkar, learned counsel for Respondent Nos.1 to 5 and Mr. R.
G. Ramani, learned Senior Advocate who appears alongwith Mr. P.
Kakodkar for Respondent Nos.6 and 7.

2. This appeal is directed against the judgment and award
dated 4th June, 2012 made by the Motor Accident Claims Tribunal
(MACT) at Mapusa in Claim Petition No.20/2011.

3. The Respondent Nos.1 to 5, who shall hereinafter referred to as the claimants instituted a claim petition seeking compensation on account of the demise of Dhondu Sawant, the husband/father of the claimants in a motor accident on 20th August, 2008 whilst he was returning home on his two wheeler from the shop. It is the case of the claimants that the Respondent No.6 herein, who was driving the jeep bearing registration No. GA-01-T-9111 dashed against the deceased on account of which the deceased suffered injuries and ultimately died on the spot.

4. The MACT, by the impugned judgment and award has held that only the widow is entitled to and the driver, owner and the Insurance Company are jointly and severally liable to pay and are directed to pay the compensation of Rs.3,80,000/- with interest at the rate of 9% per annum from 18th April, 2011 till the date of actual payment.

5. Mr. Kakodkar, learned counsel for the Appellant/Insurance Company submits that the award of compensation is excessive considering the fact that the deceased was 69 years of age at the time of his unfortunate demise. Mr. Kakodkar submits that there is absolutely no credible evidence on record to sustain any finding that the deceased, at this age was undertaking the activities as a civil contractor and earning Rs.12,000/- per month for the same. He submits that in the absence of

any independent evidence in the form of bills, income tax return etc., the MACT was not justified in accepting the claimants' case particularly regards the occupation and income of the deceased. On these grounds, Mr. Kakodkar submits that the impugned award warrants interference.

6. Mr. Mulgaonkar, learned counsel for the claimants defends the impugned award on the basis of the reasonings reflected therein. He submits that in fact the award is on the lesser side and additional compensation ought to have been awarded in the facts and circumstances of the present case.

7. Mr. R. G. Ramani, learned Senior Advocate also submits that there is no case made out for interference with the impugned judgment and award.

8. The rival contentions now fall for my determination.

9. The claimants as well as the independent witness Mr. Mohan Gadekar (AW3) have deposed that the deceased was working as a civil contractor. They have deposed that the deceased was quite efficient contractor and was quite popular in the village. They have deposed that the villagers entrusted to the deceased the works like house construction, reconstruction of fence etc. AW3 has categorically deposed that he used to supply construction materials to the deceased

for at least 10 to 15 years and consequently, had an idea about the income of the deceased.

10. The MACT, has, quite conservatively determined the monthly income of the deceased as Rs.12,000/- per month. The perusal of the deposition of AW3 could indicate that no serious dent has been made to his deposition in cross examination. AW3 has in fact deposed that the deceased had about 5 to 6 workers working under him. Accordingly, there is no good case made out to interfere with the findings recorded by the MACT regards the monthly income of the deceased.

11. Thereafter, the MACT has quite correctly applied the multiplier of five taking into consideration the law laid down by the Hon'ble Apex Court in the case of *Sarla Verma and others Vs Delhi Transport Corporation and another*¹. The MACT has held that only the widow was the dependent upon the deceased and further, has made deduction to the extent of 50% from out of the monthly income of the deceased. Even the amount paid towards the loss of estate, loss of consortium or funeral expenses is really on the lower side.

12. Therefore, taking into consideration all the aforesaid aspects, there is really no case made out to warrant interference with the impugned judgment and award.

¹ 2009 ACJ 1298

13. This appeal is therefore liable to be dismissed and is hereby dismissed. There shall be no order as to costs in the facts and circumstances of the present case.

14 Mr. Kakodkar, learned counsel for the Appellant submits that the awarded amount has already been deposited in the registry of this Court. If that is so, the registry is directed to pay this amount to Respondent No.1 in its entirety, alongwith accrued interest, if any, on the said amount. Mr. Mulgaonkar states that a formal praecipe will be filed at the earliest upon which the registry to permit the withdrawal as expeditiously as possible.

M. S. SONAK, J.

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