

IN THE HIGH COURT OF BOMBAY AT GOA**FIRST APPEAL NO. 4 OF 2015**

Bajaj Allianz General Insurance Co. Ltd.,
3C-D, Sesa Ghor, Patto Plaza, Panaji-Goa,
through its Authorized signatory,
Mr. Pravin Prabhakar Prabhu. Appellant.

Versus

- 1 Smt. Kameshwari Rajendra Sabnis,
Widow of Late Rajendra Sabnis,
Age-35 years old,
Resident of H. No.1171,
Hanuman Apartment,
Shiroda, Ponda-Goa.
- 2 Mast Rayesh Rajendra Sabnis,
Son of Late Rajendra Sabnis,
Minor-Age 11 years of age,
- 3 Mast. Sarvesh R. Sabnis,
Son of Late Rajendra Sabnis,
Minor-Age 11 years of age,
Both residents of H. No. 1171,
Hanuman Apartment, Shiroda,
Ponda-Goa.
The Respondent Nos. 2 & 3
represented herein by their mother
and natural guardian, the respondent
no.1.
- 4 Shri Gajanan Gopal Dhavalikar,
Son of Gopal Dhavalikar,
Major of age, married, driver cum
owner,
Resident of H. No. 1114, Bhatwada,
Bazar, Shiroda, Ponda-Goa.

(Driver and owner of Maruti Car-
bearing registration No.GA-01-E- Respondents.
3138)

Mr. Amey Kakodkar, Advocate for the Appellant.

Mr. Gaurish N. Agni, Advocate for Respondent Nos.1 to 3.

Coram:- M. S. SONAK, J.

Date:- 23rd July, 2020

ORAL JUDGMENT

Heard Mr. A. Kakodkar, learned counsel for the Appellant
and Mr. G. Agni, learned counsel for Respondent Nos.1 to 3.

2. This appeal is directed against the judgment and award dated 18th October, 2013 made by the Motor Accident Claims Tribunal (MACT) North Goa, Panaji Goa, by which the Respondent Nos.1, 2 and 3 (hereinafter referred to as the claimants) have been awarded compensation of Rs.13,80,000/- on account of demise of Rajendra Sabnis, the husband of Respondent No.1 and the father of Respondent Nos.2 and 3 in an accident which took place on 10th February, 2011.

3. The record bears out that the deceased Rajendra Sabnis was riding the motorcycle bearing registration No.KA-22-K-5269, when, it was impacted against the Maruti car bearing registration No.GA-01-E-3138, which was driven by one Gajanan Gopal Dhavalikar. The Maruti

car shall hereinafter referred to as the insured vehicle.

4. Mr. Kakodkar, learned counsel for the Appellant has pointed out that there is no evidence to establish any rashness or negligence on the part of the driver of the insured vehicle. He points out that the claimants had themselves pleaded that the deceased was riding in the direction from Panchawadi to Borim and if that be so, then, the sketch produced alongwith the panchanama makes it clear that it is the deceased who was riding on the wrong side of the road. Mr. Kakodkar submits that there can be no variation between the pleadings and proof and therefore, the MACT was not justified in accepting the evidence of the Investigating Officer (AW2), who had deposed that the deceased was riding in the direction from Borim to Panchawadi. Mr. Kakodkar submits that even otherwise there is really no proper to sustain the findings of any rashness or negligence on the part of the driver of the insured vehicle.

5. Without prejudice, Mr. Kakodkar submits that the compensation awarded is even otherwise quite excessive. He points out that at the outset there is an error in calculation and the figure of Rs.13,52,000/- should in fact read as Rs.10,40,000/- even going by the reasonings of the MACT. He further submits that there is no proper evidence as regards the monthly income of the deceased. He submits that the evidence on record suggest that the deceased was not having

permanent job and in any case there were no promotional prospects. He submits that all these aspects have not at all been considered resulting in award of excessive compensation.

6. For all the aforesaid reasons, Mr. Kakodkar submits that the impugned judgment and award warrants interference.

7. Mr. Agni, learned counsel for the claimants defends the impugned judgment and award on the basis of reasonings reflected therein to point out that the just compensation in the present case will be much higher as what has in fact been awarded by the impugned judgment and award.

8. Both the learned counsel relied upon *Sarla Verma & Ors Vs Delhi Transport Corp.& Anr*¹ and *National Insurance Company Ltd. Vs Pranay Sethi and others*,² in support of their respective contentions primarily on the issue of quantum of compensation.

9. Mr. Agni also relied upon the decision of this Court in *New India Assurance Company Ltd. Vs Seema Sudam Auti and others*³ to submit that it is the duty of even the Appellate Court to award just compensation, irrespective of whether or not the claimants may have

1 (2009) 6 SCC 121

2 2017(16) SCC 680

3 2017(6)Mh.LJ 828

instituted a cross appeal or filed any cross objection.

10. The rival contentions now fall for my determination.

11. From the material on record there is and there can be absolutely no dispute as regards the factum of the accident taking place on 10th February, 2011 at Vazem, Shiroda. In the claim statement there is no doubt of mention about the deceased proceeding from Panchawadi to Borim and the insured vehicle also proceeding in the same direction. However, it is to be noted that the claim statement was filed some time on 28th November, 2011, by which time, it is possible that no proper attention was paid to this aspect. The record indicates that the deceased had died at the spot. A criminal prosecution was also lodged against the driver of the insured vehicle for rashness and negligence. The Investigating Officer has deposed, on the basis of panchanama which was held at the spot.

12. Crucially in this matter, the driver of the insured vehicle has not examined himself. Even the Appellant did not insist upon the examination of the driver of the insured vehicle. In this state of evidence, the principle regards variance between the pleadings and proof cannot be strictly applied.

13. In any case, even if the claimants are to be tied down to

their pleadings, according to me there is sufficient evidence on record to conclude that the insured vehicle was being driven in a rash and negligent manner even otherwise, leading to accident in which the deceased died at the spot. The record including in particular the sketch bears out that after impact the insured vehicle stopped at a distance of 21.10 metres from the spot of impact. This is clearly indicative of the speed with which the insured vehicle was being driven. The sketch also indicates that the motorcycle was thrown off at a distance of 8.80 metres from the spot of accident, which is once again a factor which speaks about the rashness and negligence. The sketch also indicates that the accident to which the deceased was thrown off, which, resulted in instant death at the spot. Therefore, taking into consideration all these aspects, there is really no case made out to upset the finding of rashness and negligence as recorded by the MACT in this case.

14. In so far as the quantum of compensation is concerned, the material on record bears out that the deceased was about 47 to 48 years of age at the time of his unfortunate demise. AW3 the Treasurer of the Kamaxi Devasthan has deposed that the deceased was working as a clerk at the Devasthan and earning Rs.10,000/- per month. This witness also produced on record a salary certificate which was issued to the deceased almost three years prior to his demise for production before the Bank of India, Shiroda. This witness has confirmed the contents of the salary certificate.

15. According to me, there is absolutely no reason not to accept the testimony of AW1 (widow) and in particular AW3-Treasurer of the Devasthan both on the aspect of employment and the salary of the deceased. No doubt, AW3 has stated that the post held by the deceased was not a permanent post but he also added that such employees are generally not terminated. There is also a reference to the post of which the deceased was working not being on a promotional post. According to me, if the evidence of AW3 is considered in its entirety, it cannot be said that the deceased had no future prospects at all or that the claimants should be deprived any compensation on the basis of future prospects of the deceased.

16. Applying the principles set out in *Pranay Sethi* (supra) and taking into consideration the age of the deceased, 25% addition towards the future prospects is warranted in the facts and circumstances of the present case. This means that the monthly income of the deceased can be safely taken as Rs.12,500/-.

17. The MACT has quite correctly made a deduction to the extent of 1/3rd, in the facts and circumstances of the present case. This means that the dependency per month would be to the extent of Rs.8,333/- which can be safely rounded upto Rs.8500/-.

18. There is no dispute that the multiplier in the present case

would be 13 both in terms of ruling of the Hon'ble Apex Court in *Sarla Verma* (supra) as well as *Pranay Sethi* (supra). This means that the compensation will have to be worked out at Rs.8500/-X 12 X 13 = Rs.13,26,000/-.

19. To the above amount, addition will have to be made in other headings. The MACT has awarded compensation of Rs.5000/- towards funeral expenses, which according to me will have to be enhanced to Rs.15,000/-. Similarly, the MACT has awarded the compensation of only Rs.10,000/- towards the loss of consortium, which according to me will have to be enhanced at least Rs.40,000/- taking into consideration the the observations in *Pranay Sethi* (supra). Towards the love and affection only a consolidated amount of Rs.10,000/- has been awarded and according to me, taking into consideration the age of the minor children and the fact that they were deprived the company of their father at crucial stage in their lives, this amount will have to be enhanced to Rs.2,00,000/-. This means that to the amount of Rs.13,26,000/-, a further amount of Rs.2,55,000/- or thereabouts will have to be added. At the same time, it is necessary to note that the MACT has already awarded the claimants interest at the rate of 9% per annum. Even the claimants had claimed the compensation of Rs.15,00,000/-. At least some minimal allowance had to be made to the circumstance that the deceased was only a clerk appointed by the Devasthan committee. Taking into consideration all these factors, in my

opinion the compensation of Rs.15,00,000/-, as claimed by the claimants in first instance will be just compensation which, the claimants, will be legitimately entitled to in the facts and circumstances of the present case. Taking into consideration the law laid down in *Seema Auti* (supra), there can be no difficulty in enhancing the compensation awarded by the MACT although there is no cross appeal or cross objection filed by the claimants.

20. For all the aforesaid reasons, the appeal is disposed of by awarding the compensation of Rs.15,00,000/- to the claimants. This amount will carry interest at the rate of 9% per annum from the date of the application till the payment of the said amount to the claimants. By now, the Respondent Nos.2 and 3 will have attained majority and therefore, no order is made for investment. The apportionment in the impugned judgment and award is hereby maintained.

21. The learned counsel for the parties state that the awarded amount had in fact been deposited by the Appellant in this Court and out of this, the claimants have withdrawn 50% of the same. Now that the compensation amount has been enhanced, the claimants shall be entitled to withdraw the balance 50% of the amount as well together with interest, if any, as may have accrued thereon. The registry to permit the claimants to withdraw this amount together with interest, upon the claimants filing a formal praecipe.

22. Mr. Kakodkar quite graciously states that the Appellant will deposit the enhanced amount within a period of two months from today in this Court. This statement is accepted. Upon such deposit being made with intimation to the learned counsel appearing for the claimants, the claimants, will again be at liberty to withdraw this amount as well by filing a formal praecipe to that effect.

23. This appeal is disposed of in the aforesaid terms. There shall be no order as to costs.

M. S. SONAK, J.

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