

IN THE HIGH COURT OF BOMBAY AT GOA**FIRST APPEAL NO. 27 OF 2017**

Bajaj Allianz General Insurance Co.
Ltd.

112 & 113, First Floor,
Guno Sai Plaza, Near Adarsh School,
Pajifond, Margao – Goa, through its
Authorized signatory,

Mr. Pravin Prabhakar Prabhu Appellant

Versus

- 1 Mrs. Matilda Fernandes,
Aged 45 years, Housewife,
Wife of Late Luis Fernandes,
R/o. H.No. 773, Bhatti, Curtorim,
Salcete-Goa.
- 2 Miss Blossom Thresa Fernandes,
Aged 18 years, Student,
- 3 Master Clifford Fernandes,
Aged 16 years, Student,
- 4 Miss. Divena Falvia Fernandes,
(Respondent Nos.2 & 3 are
represented -
By their Mother as Natural Guardian,
Mrs. Matilda Fernandes)
All residents of H. No.773, Bhatti,
Curtorim, Salcete- Goa.
- 5 Mr. Joquim Fernandes,
Aged 75, Unemployed, Son of late
Luis Fernandes and his wife,
- 6 Mrs. Liberata Fernandes,
Aged 68 years. Housewife,

And both resident of H. No.773,
Bhatti, Curtorim, Salcete- Goa.

- 7 Mrs. Nelta D'Costa,
Major in age, Housewife,
Wife of Godvin D'Costa,
Resident of H.No. 109, Novangully, Respondents.
Varca, Salcete – Goa.

Mr. A. Kakodkar, Advocate for the Appellant.

Mr. Valmiki Menezes, Advocate for Respondent Nos.1, 2 & 3.

Coram:- M. S. SONAK, J.

Date:- 10th July, 2020

ORAL JUDGMENT

Heard the learned counsel for the parties.

2. This appeal is directed against the judgment and award dated 6th July, 2015 made by the Motor Accident Claims Tribunal (MACT), South Goa, Margao, in Claim Petition No.45/2014 (hereinafter referred to as the impugned award).

3. Mr. Kakodkar, learned counsel for the Appellant-Insurance Company submits that there is absolutely no evidence on record in the present case to establish any rashness or negligence on the part of the driver of the insured vehicle i.e. Tata Ace Rickshaw which is alleged to have been involved in the accident. He submits that AW5 Allwyn Tellis,

who has been examined as an eye witness, was not at all present at the site of the accident. He submits that from the deposition of AW5, it is apparent that if such deposition is to be believed then perhaps even the vehicle of this witness would have been involved in the very accident which gives rise to the claim. Mr. Kakodkar, without prejudice submits that even if the deposition of AW5 is to be accepted and construed alongwith the sketch accompanying the panchanama, then, it is quite clear that this is a case of contributory negligence. Mr. Kakodkar submits that from the sketch it is more than evident that the deceased has failed to take due care and caution, particularly since, the deceased who was riding his scooty was entering upon the highway from a side road. He submits that it was the duty of the deceased who have to stop while entering the centre and venture to pass only after the traffic was cleared on the highway. He submits that the vehicles on the highway have priority in such a situation. He submits that the MACT has not at all appreciated all these aspects and therefore, the impugned award warrants interference. He submits that the MACT failed to appreciate that the Appellant could not have examined the driver of the insured vehicle, who expired and was even deleted by the claimants as a party in the proceedings.

4. Without prejudice to the aforesaid contentions, Mr. Kakodkar submits that the quantum of compensation determined by the MACT is also not consistent with the principles laid down by the

Hon'ble Supreme Court in the case of *National Insurance Company Ltd. Vs Pranay Sethi and others*,¹ and *United India Insurance Co. Ltd. Vs Satinder Kaur alias Satwinder Kaur and others*². In particular, he pointed out that the evidence on record bears out that the deceased was over 50 years of age at the time of his demise and therefore not more than 10% increase could have been awarded towards the future prospects. He submits that the MACT clearly erred in making a separate award towards the loss of love and affection, when it had already granted an amount of Rs.1,00,000/- towards the loss of consortium in favour of the widow.

5. Mr. Kakodkar submits that in the present case, the deduction towards the personal expenses ought to have been to the extent of 1/4th of the monthly income and not 1/6th as determined by the MACT.

6. For all these reasons, Mr. Kakodkar submits that the quantum as determined in the impugned award is required to be proportionately reduced.

7. Mr. Menezes, learned counsel for the Respondents has defended the impugned award on the basis of the reasonings reflected therein. He has pointed out that there are absolutely no pleadings to

¹ 2017(16) SCC 680

² (2020) SCC OnLine SC 410.

suggest any negligence on the part of the deceased. He submits that no suggestions were put to AW5 and the testimony of AW5 is clearly credit worthy. He submits that the testimony of AW5, panchanama and the autopsy report amply establish the negligence on the part of the driver of the insured vehicle.

8. Mr. Menezes submits that the MACT has quite correctly added 30% towards the future prospects since, the deceased was hardly 50 years of age and the qualified tailor. Mr. Menezes submits that the decisions of the Courts are not required to be construed like Statutes and if the decisions are read in their entirety, it is apparent that there is no serious error in determination made by the MACT. For all these reasons he submits that this appeal be dismissed since, the Appellant has not made out any case to warrant interference.

9. The rival contentions now fall for my determination.

10. On the aspect of negligence, the pleadings on the part of the Appellant are quite sketchy. Even on the aspect of contributory negligence the pleadings are quite vague. AW5 is an eye witness to the accident and apart from simply suggesting that he was not present at the site or that he was deposing to favour the claimants, there is absolutely nothing brought about in the cross examination on the basis of which it could be said that AW5 was indeed not present at the time of the

accident.

11. The deposition of AW5 finds support from the documentary evidence like panchanama and the sketch which is a part of panchanama. The deposition as well as the sketch establish that the deceased, after the impact with the insured vehicle was dragged for a distance of almost 6.65 metres and this, is definitely indicative of negligence. The evidence on record also suggest that the deceased, who was riding his scooty was already on the highway and the driver of the insured vehicle in fact was overtaking the vehicle of AW5, when the accident took place. The deposition of AW5, panchanama/sketch as also the memorandum of autopsy to a certain extent constitutes sufficient evidence to sustain the findings of negligence recorded by the MACT. The MACT, has also not really faulted the Appellant for not examining the driver of the insured vehicle, who as indicated by the record, expired before he could be called upon to depose in the matter. The MACT has merely observed that the Appellant failed to lead any evidence whatsoever to establish any negligence on the part of the deceased or to establish any contributory negligence on the part of the deceased. Accordingly, it is not possible to accept Mr. Kakodkar's first contention that it is the deceased who was negligent or that the deceased contributed to the negligence to some extent.

12. On the aspect of quantum of compensation, no dispute was

raised regards the monthly income of the deceased which has been determined on notional basis at Rs.6000/- per month. There is evidence on record that the deceased operated a general store and further was also a qualified tailor undertaking tailoring work through this store. In these circumstances, there is absolutely no error in taking the monthly income of the deceased at Rs.6000/- per month.

13. There is evidence on record that the deceased at the time of his demise was 50 years, 10 months and two weeks old. This means that the deceased was between 50 to 60 years of age, if one has to go by the phrase employed by the Hon'ble Supreme Court in paragraphs 58 and 59.4 of *Pranay Sethi* (supra). In these paragraphs, it is held that in case of self employed or person on fixed salary, addition should be 10% where the deceased is between the age of 50 to 60 years. Accordingly, the MACT erred in making 30% addition to the monthly income on the grant of future prospects. Applying the principles in *Pranay Sethi* (supra), the increase could have been only 10%. This means that the monthly income of the deceased should have been taken as Rs.6600/- per month or Rs.79,200/- per annum.

14. The MACT has made deduction upto the extent of 1/6th towards the personal expenses of the deceased. This deduction is quite consistent with the law laid down by the Hon'ble Supreme Court in the case of *Santosh Devi Vs National Insurance Company Ltd. and*

*others*³. Applying such deduction, the monthly income of the deceased had to be taken as Rs.5500/- and consequently, the annual income at Rs.66,000/-.

15. The MACT has correctly applied the multiplier of 13 and this position was not even disputed by the learned counsel for the Appellant. Thus, applying this multiplier, the compensation thus far comes to Rs.8,58,000/-.

16. Mr. Kakodkar has relied upon *Satinder Kaur* (supra) to submit that the loss of consortium is a legitimate head for award of compensation and that would include the loss of love and affection. He submits that therefore the MACT was not justified in making any separate award towards the loss of love and affection in *Satinder Kaur* (supra). The Hon'ble Supreme Court has indeed ruled that award of compensation for loss of consortium where it be spousal or parental is a legitimate conventional head but there is no justification to award compensation towards love and affection as a separate head. Loss of love and affection is comprehended in loss of consortium. Applying this principle Mr. Kakodkar's contention that the MACT erred in awarding additional compensation of Rs.1,00,000/- towards the loss of love and affection to claimant no.1 (widow), when, an amount of Rs.1,00,000/- was already awarded towards the loss of consortium will have to be accepted. In so far as the children and parents are concerned, though,

3 (2012)(3) T.A.C.1 (Supreme Court)

the MACT has referred to the compensation towards the loss of love and affection, the same, is in fact the compensation towards the loss of parental consortium and accordingly, there is no case made out to disturb the same.

17. After the deduction of compensation of Rs.1,00,000/- from out of entry No.7 in chart at paragraph 23 of the impugned award, the compensation amount comes to Rs.14,83,000/- as against Rs.17,39,000/- determined by the MACT in the impugned award. It is necessary to note that even the claimants had sought for compensation of Rs.15,00,000/- in their claim petition and it is the MACT which had, following the law laid down in *Nagappa Vs Gurudayal Singh*⁴ determined the compensation in excess of Rs.15,00,000/-. This, the MACT was undoubtedly entitled to do. However, as noted earlier the compensation works out to Rs.14,83,000/-. The record indicates that the claimants had produced the medical bills in respect of treatment administered to the deceased while attempts were made to save his life at the hospital. These medical bills do not appear to have been considered by the MACT. Upon consideration of the same, the final compensation amount could be rounded to Rs.15,00,000/- in the facts and circumstances of the present case.

18. In the peculiar facts and circumstances of the present case, no ground was raised regards the interest awarded by the MACT and

⁴ (2003) 2 SCC 274

accordingly, the same is maintained.

19. In the result, this appeal deserves to be partly allowed and the compensation amount be reduced to Rs.15,00,000/- from Rs.17,39,000/- awarded by the MACT in the impugned award. The appeal is disposed of by modifying the impugned award accordingly.

20. The learned counsel for the parties point out that the compensation amount has been deposited in this Court from out of which the claimants have already withdrawn the compensation to the extent of 50%. The registry is required to compute the precise compensation now payable to the claimants in terms of this judgment and order and pay the same to the claimants as expeditiously as possible. In effect, leave is granted to the claimants to withdraw further compensation, in terms of this judgment and order. Similarly, leave is granted to the Appellant to withdraw balance amount from the registry. It is made clear that both the Appellant as well as the claimants will be entitled to proportionate interest as may have accrued on the deposited amount. Registry to do the needful at the earliest.

21. The appeal is accordingly partly allowed. There shall be no order as to costs.

M. S. SONAK, J.

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