

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.2 OF 2014

1. Shri Vinod Tulshidas Naik
Owner of Truck No. GA-09-U-3373
R/o. H. No. 674, Kharialmol, Curchorem,
Goa.

2. The United India Assurance Co. Ltd.
Curchorem, Goa.

...APPELLANTS

Versus

1. Smt. Mary C. Diniz,
40 years of age, Housewife,
R/o. Tilamol, Gotnam Madde,
Quepem, Goa

2. Samson Presley Diniz,
14 years of age, Student
S/o Mary Diniz,
R/o Tilamol, Gotnam Madde
Quepem, Goa.

3. Shri Ramchandra Soma Kadam,
Driver, Truck No. GA-09-U-3373 Opp.
Sanguem Court, Sanguem, Goa.

4. Mrs. Sebastiana Fernandes,
Residing at H. NO. 248, Gotnamoddi,
Tilamol, Quepem,

5. Master Max Frankey Diniz, Minor

6. Master Christofer Velroy Diniz,
Minor.

...RESPONDENTS

Mr. A.R. S. Netravalkar, Advocates *for the Appellants*.

CORAM: M. S. SONAK, J.

DATED: 17th September 2021

ORAL JUDGMENT:

1. Heard Mr. Netravalkar for the Appellants.
2. The respondents, though served, are neither present nor represented.
3. This appeal is instituted by the owner of the vehicle involved in the accident and the Insurance Company. The challenge is to the Judgment and Award dated 01.10.2013, by which the Motor Accidents Claims Tribunal (Tribunal) has made the following Award:

4. “ **AWARD**

Petition is allowed with costs.

It is held that the claimants are entitled to and respondents nos.1 & 3 are held jointly and severally liable and hereby directed to pay total compensation of

₹15,05,000/- with interest at the rate of 9% per annum from 21.7.2009 i.e. the date of application till actual payment. The amount of compensation paid, if any, u/s 140 of M.V. Act shall be adjusted against the amount payable under this award.

An amount of ₹7,52,500/- with interest accrued thereon from 21.7.2009 shall be payable to claimant no.1 and balance amount of ₹7,52,500/- with interest accrued thereon shall be shared by claimants no.2 and respondents 4, 5 and 6. Share of claimant No.2 Shall be $1/6^{th}$, that of respondent No. 4 will be $1/4^{th}$ and respondents No.5 and 6 jointly will be $1/12^{th}$ in equal proportion.

The amount awarded to the claimants 2 and respondents No.5 and 6 shall be invested in fixed deposits in any nationalized bank for best available rates of interest which shall be renewed from time to time till they attain age of majority.”

5. Mr. Netravalkar learned counsel for the appellants submits that in this case there was no evidence about any rashness and negligence on the part of the driver of the tipper truck allegedly involved in the accident. He states that though the panchanama might refer to the truck being found on the wrong side, there is other material on record to suggest that the driver of the truck swerved the truck to the wrong side only to prevent the accident. He submits that there was rashness and negligence on the part of the deceased who was driving a scooter bearing

No.GA-09-C-1546 on the fateful day i.e. 05.04.2009. He submits that from the circumstances on record it is clear that the deceased was intoxicated because even the claimants, in their claim statement had admitted that he had proceeded on a picnic on the said day.

6. Mr. Netravalkar refers to the written statement filed by the Insurance company where in paragraph 7 there are pleadings about the deceased having gone for a picnic and being in a drunken state. Mr. Netravalkar submits that if the entire evidence is evaluated it is apparent that there was no rashness and negligence on the part of the driver of the truck rather, there was rashness and negligence on the part of the deceased who was driving the scooter.

7. Mr. Netravalkar submits without prejudice that there is no evidence whatsoever about the income of the deceased. He submits that though the claimants had stated that the income was ₹15,000/- per month, the same was quite correctly rejected by the Tribunal for want of any evidence. He submits that the Tribunal however erred and acted perversely in holding that the deceased was earning ₹10,000/- per month and based thereon making an exorbitant award in an amount of ₹15,05,000/-.

8. Mr. Netravalkar submits that in this case at the highest the notional income could be considered as ₹3,000/- per month and not ₹10,000/- per month. He submits that even the compensation awarded towards loss of consortium, care, and guidance to the children, funeral expenses, and loss of estate is exorbitant and contrary to the law laid down by the Constitution Bench of the Supreme Court in *National Insurance Company Ltd. v. Pranay Sethi – 2017 ACJ 2700*. Mr. Netravalkar submits that this appeal is therefore liable to be allowed and the impugned Judgment and Award quashed or at least suitably modified.

9. On consideration of the submissions of Mr. Netravalkar and upon evaluating the evidence on record, though I find that no case is made out to interfere with the finding on rashness and negligence of the driver of the truck, some case is made out for modifying the compensation awarded by the Tribunal. This is because the compensation awarded is not consistent with the law laid down by the Hon'ble Supreme Court in *Pranay Sethi (supra)*.

10. On the aspect of rashness and negligence, the first circumstance which stares in the face is that the truck was found on the wrong side. This aspect is reflected not only in the oral

evidence on the record but most importantly in the panchanama and other documentary evidence produced on record. There was not even any serious challenge to this aspect.

11. Rather, the defense that was raised was that the driver to prevent the accident swerved the truck and therefore, appears to have been on the wrong side. Such a defense could have been considered provided the driver had actually stepped into the witness box and deposed on this aspect. The driver has not even bothered to step into the box. The owner and the insurance company also did not bother to summon the driver to depose on this aspect or in any case, produce some other evidence that would have made good this submission. This submission, with respect, seems to have been made in the air only to deny compensation to the victim.

12. The Tribunal has assessed the evidence on record and returned the finding that there was rashness and negligence on the part of the driver of the truck. This finding is amply borne from the evidence on record and therefore, there is no case whatsoever made out to interfere with this finding.

13. The contention that the deceased and his pillion rider must have been drunk, has been taken by the insurance

company in the written statement filed before the Tribunal. This contention is to be found in paragraph 7 of the written statement which reads as follows:

“7. With respect to para 22 the amount is too exorbitant. The Applicants have not justified the same with any proof. The Applicants are not entitle the same since the accident has occurred due to the mistake of the scooterist. It was gathered that being Sunday, both of them had gone for a picnic and they were in a drunken state.”

14. The written statement on behalf of the insurance company has been verified by Mr. S. G. Rane, Divisional Manager of the insurance company and the verification clause reads as follows:

“ VERIFICATION

I, Shri S. G. Rane Divisional Manager, United India Insurance C. Ltd. major in age, resident of Margao state on oath and affirm that contents of paras 2 to 10 are true and correct as per the verified sources and record maintained and remaining paras are legal submission which I believe to be true.”

15. The aforesaid means that Shri S. G. Rane, Divisional Manager has made a statement on oath that the deceased and his pillion rider were in a drunken state “*as per verified sources and*

record maintained". Obviously, the insurance company will not have a record about the deceased and the pillion rider being in a drunken state. Therefore, this statement has been made on oath "*as per verified sources*".

16. In the first place, this verification is completely defective, and therefore, the Tribunal should not even have considered the written statement. The Divisional Manager of an insurance company cannot simply make a factual statement on oath "*as per verified sources*" without disclosing such sources. It is apparent that this statement was made without any sense of responsibility and only to defeat the claim of the widow and minor children.

17. Mr. Netravalkar states that Mr. S. G. Rane has already retired. Otherwise, this Court was inclined to refer this matter to the Regional Manager of the Insurance Company so that, after issuing of some show cause notice appropriate entries could have been made on the service record of this officer. The officers of the insurance company are not expected to go to these lengths for denying legitimate claims.

18. Mr. Netravalkar pointed out that even the claimants have admitted that the deceased had gone for a picnic. He

submits that from this it ought to be inferred that the deceased was in a drunken state. This submission, with respect, is noted only for it to be rejected. No such inference or presumption can be drawn that every person who proceeds on a picnic returns in a drunken state. It is quite unfortunate that such a submission should be made on behalf of the insurance company.

19. There is no evidence whatsoever either medical or otherwise to even remotely support the contention that the deceased and his pillion rider were in a drunken state. Quite correctly, therefore, the Tribunal has rejected such a contention.

20. For all the aforesaid reasons, there is no case made out to interfere with the findings of the Tribunal that the accident took place on account of rashness and negligence on the part of the driver of the truck which resulted in the instantaneous death of the deceased on the spot.

21. Now insofar as determination of compensation is concerned, the Tribunal, has quite correctly, disbelieved the claimants' claim that the deceased was having an income of ₹15,000/- per month. However, the Tribunal has held that the evidence on record did establish that the deceased was carrying on the business of operating a bar and restaurant. There is evidence

that the deceased was maintaining the claimants which included two wives (Mr. Netravalkar points out that out of the two, only one was the legal wife) and minor children. Based on this the Tribunal concluded that the deceased must have been earning at least ₹10,000/- per month. In such matters, some amount of guesswork is quite inevitable. The Tribunal, from the admitted facts, has drawn some inferences and according to me, the inferences drawn are not so unreasonable as to warrant interference. Therefore, there is no case made out to interfere with the finding that the deceased was earning an income of ₹10,000/- per month or ₹1,20,000/- per annum.

22. The Tribunal has applied the correct multiplier because there did not seem to be any serious dispute about the age of the deceased. The marriage certificate as well as the birth certificate confirmed that the age of the deceased was 43 years and 9 months at the time of his death. The Tribunal has accordingly applied the correct multiplier of 14 and determined the loss of dependency at ₹12,60,000/-. According to me, there is no case made out to interfere with this portion of the determination.

23. The Tribunal has then awarded the following compensation under the various heads:

“The claimants will thus be entitled to following compensation under the said heads:

<i>Loss of consortium</i>	<i>:₹ 1,00,000/-</i>
<i>Loss of care and guidance for minor children</i>	<i>:₹ 1,00,000/-</i>
<i>Funeral expenses</i>	<i>:₹ 25,000/-</i>
<i>Loss of estate</i>	<i>:₹ 20,000/-</i>

24. Insofar as the aforesaid award is concerned, reference is required to be made to the decision of the Constitution Bench in *Pranay Sethi (supra)* based thereon, the compensation towards loss of consortium will have to be reduced from ₹1,00,000/- to ₹40,000/- having regard to paragraph 54 of the said Judgment. Similarly, the compensation towards funeral expenses will have to be reduced from ₹25,000/- to ₹15,000/- and towards loss of estate from ₹20,000/- to ₹15,000/-.

25. In paragraph 54 the Hon'ble Supreme Court has held that the head relating to the loss of care to minor children does not exist. But Mr. Netravalkar submitted that compensation of a maximum ₹15,000/- per child could have been awarded. According to me, this submission is correct because some

compensation is due to the minor children. Accordingly, the award of ₹1,00,000/- is reduced to ₹45,000/-.

26. Based on the aforesaid reasoning, the total compensation of ₹15,05,000/- is reduced to ₹13,75,000/- The rest of the award remains the same and is undisturbed.

27. This appeal is therefore partly allowed and the impugned award is modified to the aforesaid extent only. There shall be no order for costs in this appeal.

M. S. SONAK, J.