

Santosh

**IN THE HIGH COURT OF BOMBAY AT GOA
FIRST APPEAL NO. 80 OF 2014**

1. Jivas Gaonkar
Major, R/o. H. No.6,
Near Don Bosco, Sulcorna, Quepem, Goa
(Owner)

2. United India Insurance Co. Ltd.
Salgaonkar Chambers, 2nd Floor, Margao,
Goa

... Appellants.

Versus

1. Smt. Sushmita alias Amrutem Deikar,
W/o. late of Sanjay Deikar,
40 years of age, housewife,

2. Ms. Anchal Deikar,
D/o. late Sanjay Deikar, 8 years old,
student,

3. Parvati Deikar,
W/o. late Nilu Deikar,
60 years of age, housewife,
All are R/o. H. No.106, Keriarnagal,
Ambaulim, Quepem Goa.

4. Sarvesh Gaonkar,
S/o. Krishna Gaonkar, Major, H. No.492,
Sulcorna, Quepem, Goa

...Respondents.

Mr. A.R. S. Netravalkar, Advocate for the Appellants.

Mr. Cleofato Coutinho Almeida, with Mr. Shailesh Redkar, Advocates for Respondents No.1 and 3.

CORAM : M. S. SONAK, J.

Reserved on : 24th September 2021

Pronounced on : 30th September 2021

JUDGMENT :

1. Heard Mr. Netravalkar for the appellants and Mr. C.A. Coutinho, who appears along with Mr. S. Redkar for respondents No.1 and 3.

2. This appeal is directed against the Judgment and Award dated 28/4/2014, made by the Motor Accident Claims Tribunal (Tribunal), awarding the claimants compensation of ₹ 12,43,400/-, together with interest at the rate of 9 % per annum from 9/3/2011 i.e. the date of the application, till actual payment.

3. Mr. Netravalkar submitted that there is no legal evidence to establish that the driver of the Maruti Swift car drove this car

rashly and negligently and, therefore, the claim petition should have been dismissed.

4. Mr. Netravalkar, without prejudice to the aforesaid, submitted that the compensation awarded is quite exorbitant and contrary to the law laid down by the Hon'ble Supreme Court in the case of *National Insurance Company Limited vs. Pranay Sethi and others*¹. He submits that the deceased was only a mason and daily wager and, therefore, the Tribunal erred in accepting that he was earning ₹ 9,000/- per month. He, therefore, submits that the impugned award warrants interference.

5. Mr. Coutinho, the learned Counsel for the claimants defends the impugned award, based on the reasoning reflected therein. He, however, submits that the Tribunal failed to enhance the monthly earning of the deceased by 40% in terms of the law laid down in *Pranay Sethi* (supra). He, therefore, submits that based on this, loss of dependency would come to ₹ 13,97,760/-. He submits that this Court has to award just compensation and, therefore, the appeal of the Insurance Company may be

1. (2017) 16 SCC 680

dismissed, but, the compensation as awarded may be suitably enhanced. He also relies on *Kajal vs. Jagdish Chand and ors.*² in support of his submissions.

6. The rival contentions now fall for my determination.

7. In this case, there is overwhelming evidence on record to establish that the driver of the Maruti car drove the said car in a rash and negligent manner and dashed the deceased from behind, resulting in the death by the accident.

8. AW.2, Namidas Velip was examined as an eyewitness to the accident. He stated that he saw the Maruti car coming at a fast speed and dashing the deceased. The car dragged the deceased even further. All this is corroborated by the sketch accompanying the panchanama. In his cross-examination, he stated that the deceased was on the left side of the road *i.e.* the correct side and the speed of the car must have been about 70-80 km. per hour.

9. AW.3, Antonio Gomes conducted the panchanama and drew the sketch attached to the panchanama. In his cross-

2. Civil Appeal No.735 of 2020 (arising out of SLP (C) No.15505 of 2019)

examination, he referred to the location of the vehicle after the accident. From the sketch as well, the inference that the Maruti car was driven in a rash and negligent manner, stands established.

10. The evidence of RW.1 was quite correctly rejected by the Tribunal. Though this witness stated that the deceased came on the road quite suddenly, without paying attention to the traffic on the road, in his cross-examination, this witness accepted that the position of the vehicle and the accident spot as reflected in the panchanama is quite correct.

11. Mr. Netravalkar did try to submit that the driver of the Maruti car was acquitted in the criminal prosecution launched against him and, therefore, the rashness and negligence were not proved. However, it is quite well-settled that the standard of proof in a criminal case and a case before the Tribunal is quite different. Before the Tribunal, the issue of rash and negligent driving has to be proved only by the standard of preponderance of probability and not beyond a reasonable doubt.

12. The Tribunal has quite correctly evaluated the evidence on record and returned the finding that the accident was caused on account of rash and negligent driving by the driver of the Maruti car. There is no case made out to interfere with this finding of fact which, according to me, is quite well-supported by the evidence on record.

13. On the aspect of compensation, there is no error on the part of the Tribunal in accepting that the deceased was working as a mason and was paid ₹ 300/- per day. The Tribunal has taken the income of the deceased as ₹ 7,800/- per month and not ₹ 9,000/- per month, because, the Tribunal thought it difficult to believe that a mason would work for all the days of the month, without taking any break.

14. The Tribunal has correctly relied upon the testimony of Joao Fernandes (AW.4) who deposed that he was a sub-contractor and he used to engage the deceased for working as a mason. The circumstance that AW.4 had not produced any document that he was a P.W.D. sub-contractor or produced income-tax returns is really not sufficient to disbelieve AW.4.

15. In *Kajal* (supra), the victim was a young girl child of 12 years only, and that the High Court had taken her notional income at ₹ 15,000/- per annum. The Hon'ble Supreme Court, however, disapproved this and observed that the young girl, after studying, would have earned much more than ₹ 15,000/- per annum. In this regard, the Hon'ble Supreme Court accepted the material placed on record that minimum wages payable to a skilled workman would come to ₹4,846/- per month and held that this minimum amount which the child would have earned on becoming a major. To this amount, the Hon'ble Supreme Court added 40% for future prospects and determined her monthly income as ₹ 6,784-40.

16. In the present case, there is no serious dispute that the deceased was a mason. Therefore, the income of ₹ 7,800/- per month, as determined by the Tribunal, is certainly within the bounds of reasonability, and the same is supported by the evidence on record. There is no case made out to interfere with this finding of fact recorded by the Tribunal.

17. The Tribunal, however, failed to make an addition towards future prospects, after determining the monthly income of the deceased. In *Pranay Sethi* (supra), it is held that where the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. In this case, there is no dispute that the deceased was 32 years old at the time of his death. Therefore, a 40% increase was required to be granted and the monthly income should have been determined at ₹10,920/- and the yearly income at ₹ 1,31,040/-.

18. Having regard to the law laid down in *Pranay Sethi* (supra), the multiplier to be adopted in this case is 16, because, the deceased was in the age limit between 31 – 35 years. This means that the compensation would come to ₹ 20,96,640/-. From out of this, 1/3rd will have to be deducted as the expenses which the deceased would have incurred on himself. The compensation towards dependency would then come to ₹ 13,97,760/-.

19. In terms of the law laid down in *Pranay Sethi* (supra), further compensation of ₹ 40,000/- would be awarded towards the loss of consortium to the spouse. Compensation of ₹ 25,000/- each has to be awarded to the daughter of the deceased and the mother of the deceased. Compensation of ₹ 15,000/- has to be awarded towards funeral expenses and another ₹ 15,000/- has to be awarded towards loss of estate. This means that the total compensation would come to ₹ 15,17,760/-.

20. The Tribunal, relying on *Sarla Verma and ors. Vs. Delhi Transport Corporation and anr.* – (2009) 6 SCC 121, had made an excess award in favour of the claimants. Therefore, the said amounts have been reduced to the aforesaid extent. However, even upon reduction of the said amounts, the total compensation amount increases because, the Tribunal, in this case had, without justification, refused to take into consideration the future prospects that were required to be taken into consideration.

21. In *Nagappa vs. Gurudayal Singh*³, the Hon'ble Supreme Court has held that the Courts have to determine the just

3. (2003) 2 SCC 274

compensation. Therefore, this is a fit case where the just compensation is determined at ₹ 15,17,760/- (rupees fifteen lakhs seventeen thousand seven hundred and sixty). There is also no case made out to reduce the interest that has been awarded by the Tribunal in the facts of the present case.

22. This appeal is, therefore, disposed of by rejecting the contentions raised by the appellants herein, but by determining the just compensation at ₹ 15,17,760/- (rupees fifteen lakhs seventeen thousand seven hundred and sixty). This amount will have to be paid by the appellants jointly and severally, to the claimants, after making adjustments to the amounts that may have already been paid up to now.

23. The Registry is directed to permit the claimants to withdraw the deposited compensation, together with the interest that may have accrued thereon. If the additional compensation is required to be paid by the appellants, then, the appellants are to do so within 2 (two) months from today.

24. The appeal is disposed of in the aforesaid terms, without making any orders for costs.

M. S. SONAK, J.

SANTOSH S MHAMAL Digitally signed by SANTOSH S MHAMAL
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