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IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.57 OF 2012

Bajaj Allianz General Insurance
Having its Branch office at
G.E. Plaza, Airport Road
Yerwada Pune, 411 006.

... Appellant.

Versus

1. Miss Sarita Satish Malik,
Wife of Satish Shivram Malik
Housewife, 37 years of age

2. Master Saish Satish Malik,
Son of Satish Shivram Malik
Student, 16 years of Age

3. Kum. Smita Satish Malik,
Daughter of Satish Shivram Malik
Student, 4 years of age

4. Kum. Shivani Satish Malik,
Daughter of Satish Shivram Malik
Student, 13 years of age,
Respondents 2, 3 and 4
being minors are represented by
Respondent No. 1 being mother
and Natural Guardian.
All the above are residing at
Sai Shiv Housing Co-op. Society
MIG Colony (GHB) New Pundalik Nagar,
Alto Porvorim, Bardez-Goa

5. Smt. Sughandi Shivram Malik
Wife of Late Shivram Deu Malik
79 years of age,
residing at House no. 228,
Hansapur, Pernem, Goa

6. Shri. Santosh Basavraj Vasumani
Major, residing at House No. 546,
near Petrol Pump,
Caranzalem, Taleigao,
Ilhas Goa
(Driver of Tavera Jeep
No. GA-01-S-9106)
(Native of Bailhongal Village
Amtur, Belgaum Karnataka)

7. Mrs. Lizette Gonsalves e Menezes
Major, w/o Joaquim E. E. Menezes
r/o H. No. A/8,
Chamunda Apartments,
Cujira Kalapur, Tiswadi Goa
(Owner of Tavera Jeep
No. GA-01-S-9106)

8. Manager
HDFC General Insurance Co. Ltd.
6th Floor Leela Business Park,
Andheri Kurla Road,
Andheri east,
Mumbai-400 059
(Insurer of Tavera Jeep
No. GA-01-S-9106)

9. Shri. Raghunath Atmaram Naibagkar,
Major, r/o Deulwada,
Mandrem, Pernem Goa.
(Driver of Bus No. GA-01/T-4087)

10. Shri. Hanumant Shetgaonkar,
Major r/o H. No. 222/1,
Gawdewada, Korgao, Pernem, Goa
(Owner of Bus No. GA-01/T-4087) ... Respondents.

Mr. Amey Kakodkar, Advocate for the Appellant.

Mr. Joaquim Godinho, Advocate for Respondents No.6 and 7.

Coram: M.S. SONAK, J.

Date: 14th October 2021.

ORAL JUDGMENT:

1. Heard Mr. Amey Kakodkar for the Appellant, Mr. Joaquim Godinho for Respondents No.6 and 7.

2. Respondents No.1 to 5 – Original Claimants, though served, are neither present nor represented.

3. Mr. Kakodkar points out that he has been informed that Respondent No.5, the mother of the deceased Satish Shivram Malik, who was 77 years old when the claim petition was instituted in the year 2009 has since expired. The impugned award indicates that 50% of the compensation was awarded to the widow and the balance of 50% was ordered to be distributed between the three minor children of Satish and Sarita, and Respondent No.5 i.e. mother of Satish. At this stage, therefore, it will not be appropriate to adjourn the hearing in this appeal. This appeal was instituted in the year 2012. Suitable orders can always be

made to protect the interest of representatives of Respondent No.5 which might include Respondents No.1 to 4 as well.

4. The challenge in this appeal is to the impugned Judgment and Award dated 22.07.2011 by which Motor Accident Claims Tribunal has held that the driver of the bus bearing no. GA-01-T-4087 was responsible for the accident in which Satish Shivram Malik who was traveling in a Tavera jeep bearing no. GA-01-S-9106 died. The Tribunal has determined the compensation at ₹24,33,400/- and awarded interest at the rate of 8% per annum. Orders have also been made for apportionment of compensation between the claimants *inter se*.

5. Mr. Kakodkar, the learned Counsel for the Appellant – Insurance Company has submitted that the evidence on record establishes that the accident took place on account of the negligence of the driver of the Tavera jeep and not the driver of the bus that was insured with the Appellant - Insurance Company. He points out that there is no dispute that the accident has taken place on a slope and the bus was climbing up the slope. He pointed out that the version of the claimants' witnesses that the bus was traveling at a speed of 90 kilometers per hour is inherently improbable and, in any case, there is no evidence in support of the same. He pointed out that the evidence on the record as also the sketch accompanying the panchanama, clearly makes out that the driver of the Tavera jeep drove the jeep in a rash and negligent manner and was solely responsible for the unfortunate accident. He submits that the Tribunal, in

this case, has not properly appreciated the evidence on record, but has been influenced by the fact that the owner of the Tavera jeep had defaulted in payment of insurance installments. Mr. Kakodkar, therefore, submits that the finding of negligence on the part of the driver of the bus is quite perverse and warrants interference.

6. Mr. Kakodkar also pointed out that the compensation as determined by the Tribunal, is on the higher side and the same is required to be suitably scaled down. He, therefore, submitted that this appeal may be allowed and the impugned Judgment and Award be set aside.

7. Mr. Godinho appears for Respondents No.6 and 7 i.e. driver and the owner of Tavera jeep. He points out that the evidence on record points out the negligence on the part of the driver of the bus. He points out that the driver of the Tavera jeep examined himself, but the bus driver failed to step into the witness box and the Tribunal has quite correctly drawn an adverse inference. He submits that this appeal may be dismissed.

8. On the aspect of negligence on the part of the driver of the bus, according to me, there is ample evidence and consequently, there is no error in the finding recorded by the Tribunal.

9. In the first place, it is necessary to note that the driver of the bus failed to step into the witness box and depose about his version about the

accident. In such circumstance, the Tribunal was justified in drawing an adverse inference against the driver, and consequently, rejecting the version which is now sought to be projected.

10. Secondly, in this case, the driver of the Tavera jeep examined himself as RW1. He has deposed to the circumstance in which the accident took place. In his cross-examination, he has stated that since the bus came on the wrong side and at a fast speed, he became nervous and attempted to take his vehicle on the right-hand side to avoid impact. It is, however, stated that since the bus was at a great speed, the driver of the bus could not control the bus, resulting in the collision/ accident.

11. Thirdly, one Anand (AW5) was also examined as an eyewitness to the accident. He has also deposed that the bus was traveling at a great speed and had come on the wrong side. All this evidence, according to me, was quite correctly considered by the Tribunal to record the finding that it is the driver of the bus who drove the bus in a rash and negligent manner and was consequently responsible for the accident. No case is made out to interfere with this finding of fact recorded by the Tribunal.

12. On the aspect of determination of compensation as well, the Tribunal has noted that the deceased was a Secretary of a Village Panchayat and consequently was a Government servant having a fixed salary. Documentary evidence was produced about income as well as age.

Based upon all this, the Tribunal has applied the correct multiplier and substantially correct principles for determining the compensation.

13. The Tribunal, however, has erred in awarding compensation of only ₹10,000/- towards consortium, only ₹5,000/- towards loss of asset, and only ₹5,000/- towards funeral expenses. The Tribunal, in terms of the law laid down in *National Insurance Company vs. Pranay Sethi*¹, should have awarded compensation of ₹50,000/- towards loss of consortium, ₹15,000/- towards loss of asset, and ₹15,000/- towards funeral expenses. Since there is a shortfall of ₹50,000/-, this amount will have to be added to the compensation amount of ₹24,13,362/-, rounded up to ₹24,33,400/- by the Tribunal. The just compensation, in this case, would, therefore, come to ₹24,83,400/-.

14. This appeal is therefore disposed of. The finding of negligence on the part of the driver of the bus is upheld. Just compensation is determined at ₹24,83,400/-. The rest of the directions warrant no interference.

15. Now that it is pointed out that Respondent No.5, the mother of deceased Satish, has expired, the share of compensation awarded to her will have to be paid to her legal representatives. The compensation amount has been deposited in this Court.

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16. The Registry to accordingly make payment to the claimants and their legal representatives in terms of the impugned award. The Appellant is directed to deposit a further amount of ₹50,000/- in this Court within four weeks from today. The Registry to take steps to see that the deposited amount, as also the amount now directed to be deposited, reaches the original claimants, preferably via bank transfers. If there is any difficulty in this regard, the Goa State Legal Services Authority to render assistance so that the claimants get the compensation now determined in their favor at the earliest.

17. The Registry to take note of the directions in the impugned award on the aspect of minor claimants and the apportionment of the compensation in their favor.

18. The appeal is disposed of in the aforesaid terms.

M.S. SONAK, J.