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IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.8 OF 2018

The New India Assurance Co. Ltd.
Panaji Divisional Office, 7th Floor,
Sanchar Bhavan, BSNL Building Patto,
Panaji-Goa. … Appellant

Versus

1. Mr. Antonio Lourenco Correia,
Aged 60 years, Son of Caitano Correia,
R/o. H.No.73, Ground Floor, Souza
Complex, Betim, Bardez-Goa 403 101.

2. Mrs. Esperanca Eceza Natalina
Correia, Aged 59 years,
W/o. Mr. Antonio Lourenco Correia,
r/o. H.No.73, Ground Floor,
Souza Complex, Betim,
Bardez-Goa 403101.

3. Mr. Rajkumar Shridayani Mourya,
Major of age, R/o. House No. not
known, Fattepur, District Gaunda,
Uttar Pradesh (driver).

4. M/s. Heavy Lifters of India Pvt.
Ltd., a Company registered under the
Indian Companies Act having office at
11 Truck Terminal Kalamboli, Navi
Mumbai, Dist. Thane, Maharashtra,
represented herein by its
Managing Director (Owner). ... Respondents

Mr. U.R. Timble, Advocate *for the Appellant.*
Mr. A.D. Bhobe, Advocate *for Respondent Nos.1 & 2.*

CORAM: M. S. SONAK, J.

DATE : 15th OCTOBER 2022

ORAL JUDGMENT:

1. Heard Mr U.R. Timble for the Appellant and Mr A.D. Bhobe for respondents nos.1 & 2 (claimants).

2. The challenge in this appeal is to the judgment and award dated 06.10.2016 in Claim Petition No.42/2012 by which the Tribunal has awarded compensation of ₹37,72,800/- along with 9% interest per annum to the parents of deceased Norman Savio Correia in a vehicular accident that occurred on 27.04.2012.

3. Mr Timble submits that there was no evidence in support of the deceased monthly income of ₹32,850/-. He presents that the evidence on this aspect was sketchy, and even the dollar rates at the relevant time were not appropriately considered. AW5 stated that the deceased income was around USD 2000, but no details were provided. Therefore, this figure was rightly rejected by the Tribunal, but there was also no convincing evidence of monthly earnings of USD 657.

4. Mr Timble further states that the award of ₹1,00,000/- to each of the claimants towards love and affection or ₹25,000/- towards funeral expenses is also contrary to the law in ***National Insurance Company Ltd. V/s. Pranay Sethi & Ors.***[1].

5. Mr Bhobe, however, defends the impugned award based on the reasonings reflected therein. He states that the compensation awarded is just in the circumstances so that this appeal may be dismissed.

6. The rival contentions now fall for my determination.

7. The Tribunal has evaluated the evidence on record in some detail on the first aspect of the deceased monthly income. As was accepted, the Tribunal disagreed with the claimants' contention about deceased earnings of USD 2000. However, after analysing the oral and documentary evidence, the Tribunal believed that the deceased earned around USD 657. The Tribunal also did not accept the exchange rate of ₹67/- to a dollar. It went by the document that the rate at the appropriate time would be ₹50/- to a dollar.

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1 (2017) 16 SCC 680

8. There is evidence about the deceased working abroad on a cruise liner. Therefore, the amount of USD 657, corresponding to ₹32,850/- per month, is within the bounds of reasonability and the same is separated by the oral and documentary evidence on record. Accordingly, there is no error in the Tribunal's determination on this count.

9. However, Mr Bhobe is justified in contending that the Tribunal should not have awarded ₹1,00,000/- to each claimant for loss of love and affection. In the case of *Pranay Sethi* (supra), each claimant would be entitled to ₹40,000/- towards the consortium. Similarly, the award of ₹25,000/- towards funeral expenses will have to be scaled down to ₹15,000/-, but the claimants would be entitled to an additional ₹15,000/- towards loss of estate. Thus, as against the claim of ₹1,25,000/- in paragraph 20 of the impugned award, the claimants will be entitled to ₹1,10,000/-.

10. The appeal is partly allowed. The impugned award is reduced by ₹15,000/-. Save, and except this modification, the impugned award will operate and continue to bind the parties.

11. The appeal is disposed of in the above terms without any order for costs.

12. The claimants will be entitled to withdraw the deposited amount in terms of the impugned award as now modified. However, the claimants will have to furnish identification and bank details so that the Registry can directly transfer the amounts to their bank accounts.

13. The Appellant – Insurance Company will also be entitled to withdraw the balance amount. Both parties would be entitled to the proportionate interest accrued on the deposited amount.

14. At this stage, Mr Bhobe states that respondent no.1, father, has since expired. Therefore, Mr Bhobe states that the entire compensation may be paid to respondent no.2, the mother of the deceased Norma Savio Correia. This request is accepted. The Registry is to pay the compensation amount in terms of the impugned order as modified by this order to respondent no.2.

M. S. SONAK, J.

NITI K HALDANKAR

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