

Niti

**IN THE HIGH COURT OF BOMBAY AT GOA
FIRST APPEAL NO.18 OF 2018**

1. M/s. Kadamba Transport
Corporation Ltd.
A company having their
registered office at Paraiso de
Goa, Porvorim, Goa,
represented herein by their
Managing Director Shri Mr.
Derrick Pereira Neto, major,
married, service, having address
at Porvorim, Goa.

2. Shri Baburao Naik
major, driver, s/o. Umakant
Naik, r/o. House no.31, Has de
Rachol, Raia, Salcete, Goa.

... Appellants

Versus

1. Shri Vishram Jadhav
major, married, S/o. Lingaji
Jadhav

2. Smt. Vishranti V. Jadhav
Major, married,
W/o. Vishram Jadhav
Both R/o. House No.293/A,
Regina Mundi School,
Chicalim, Vasco-da-Gama, Goa.

... Respondents

Mr. A.R. Kantak, Advocate for the Appellants.

Mr. V.D. Pangam, Advocate for the Respondents.

CORAM: M. S. SONAK, J.

DATED: 23rd June 2022

ORAL JUDGMENT :

1. Heard Mr. Kantak for the appellant and Mr. V. Pangam for the respondents.

2. The challenge in this appeal is to the judgment and award dated 06.10.2017 made by the Motor Accident Claim Tribunal awarding the respondents - claimants compensation of ₹10,35,000/- with interest at the rate of 9% p.a. from the date of filing of the petition till the date of payment of the said amount.

3. The claimant's 18 years old son was riding the pillion of Hero Honda CBZ bearing registration no.MH-07-H-9775 when a KTC bus bearing registration no.GA-01-X-0362 dashed the motorcycle. As a result of this accident, the driver of the motorcycle Padloskar and the claimant's son sustained injuries and consequently expired.

4. The dependents of Padloskar instituted Claim Petition No.141/2012. By judgment and award dated 30.05.2016, the Tribunal awarded the dependents a compensation of ₹36,26,556/- with interest at the rate of 9% p.a. The appellant-

KTC did not appeal this award, and there is no dispute that the amounts have been paid to the dependents of the driver Padloskar.

5. However, when it comes to the impugned award made in the Claim Petition No.142/2012/II, instituted by the claimants of the pillion rider, the KTC has instituted this appeal.

6. Fortunately, no submissions were made on the issue of rashness and negligence by Mr. Kantak, learned Counsel for the appellant, though the grounds have been raised in the memo of appeal. Any such submissions would have amounted to contradictions in terms. Because when it comes to the driver of the motorcycle, the KTC accepts the finding of the Tribunal that it was the driver of the KTC bus who was rash and negligent and caused the accident. However, when it comes to the case of the pillion rider, the KTC would have contended that the motorcycle's driver was rash and negligent. Fortunately, such a situation did not arise in this appeal.

7. Mr. Kantak, however, submitted that the quantum of compensation awarded by the Tribunal is excessive. He submitted that there is no evidence about the claimants' son earning ₹5,000/- per month by giving tuitions. He referred to the mark

list of the claimants' son of F.Y. B.Com. and pointed out that he was not a bright student, having failed in one of the subjects.

8. Mr. Kantak then submitted that the Tribunal erred in adding 50% towards future prospects when in terms of the law laid down by the Constitution Bench in *National Insurance Company Limited V/s. Pranay Sethi & Ors.*¹ and in *Magma General Insurance Co. Ltd V/s. Nanu Ram Alias Chuhru Ram*², such addition could have been to the extent of only 40%.

9. Mr. Kantak then submitted that award of ₹1,00,000/- towards loss of estate or ₹50,000/- towards funeral expenses was contrary to the law laid down in *Pranay Sethi* (supra), and an amount of not more than ₹15,000/- could have been awarded under both these heads.

10. Mr. Kantak submitted that the impugned award warrants interference for the above reasons.

11. Mr. V. Pangam submitted that the evidence on record established that the claimants' son was earning ₹7,000/- per month. He submits that towards the consortium, an award of

¹ (2017) 16 SSC 680

² 2018 18 SCC 130

₹40,000/- should have been made to each of the parents. Based on all this, Mr. Pangam submitted that compensation of ₹11,68,400/- will be the just compensation. He submitted that the appeal Court is duty-bound to award just compensation even in the absence of any cross-objection or cross-appeal by the claimants, as was held by the Hon'ble Supreme Court in the case of *Surekha and Ors. V/s. Santosh and Ors.*³

12. The rival contentions now fall for my determination.

13. In my opinion, the Tribunal has erred in taking the income of the deceased pillion rider at only ₹5,000/- instead of ₹7,000/- as was claimed in this matter.

14. The contention based on the mark sheet of the deceased in F.Y. B.Com cannot be accepted because the evidence on record indicates that the deceased was taking tuitions for middle school and earning ₹7,000/- approximately per month.

15. Claimant no.1 has deposed that his deceased son would return from college at about 3.00 p.m. and teach about ten students in the hall of their house between 5.00 p.m. and 7.00 p.m. He has also deposed that after that, the deceased would go

3 (2021) 201 PLR 795

to other students' homes to give tuition, which would go till 9.00 p.m.

16. AW4, Shri Laxman Gosavi has also deposed in this matter and stated that the deceased Virendra Jadhav was giving tuitions to his son studying in standard IVth at the relevant time from 8.00 p.m. to 9.00 p.m. He has deposed that he used to pay Virendra ₹2,000/- per month. He has also deposed Virendra, giving tuition to about ten students in the claimants' house.

17. The Tribunal, without anything further, simply held that there could be an exaggeration about the tuition fees but has accepted the position that deceased Virendra was giving tuition to school students in his own house and the houses of some of the students. If the deceased Virendra was earning ₹2,000/- per month from AW4's son, then the claim of the deceased Virendra overall earning ₹7,000/- per month can hardly be styled as some exaggeration. Therefore, the Tribunal erred in restricting the income of the deceased Virendra to ₹5,000/- and should have taken his income at ₹7,000/-.

18. Mr. Kantak is, however, justified in his submission that the addition towards future prospects would be only 40% and not 50% as held by the Tribunal.

19. Mr. Kantak is also justified in his contention that an award of ₹1,00,000/- could not have been made towards loss of estate or an amount of ₹25,000/- towards future expenses. Therefore, towards both these heads, compensation of only ₹15,000/- each or ₹30,000/- consolidated could have been awarded. Towards consortium, each claimant would be entitled to ₹40,000/-.

20. In *Surekha and Ors.* (supra), the Hon'ble Supreme Court has held that by now, it is well settled that in a matter of insurance claim compensation about the motor accidents, the Court should not take a hyper-technical approach and ensure that just compensation is awarded to the affected persons or the claimants. This was in the context of the High Court determining the just compensation at ₹49,85,376/- but declining to grant the enhancement merely because the claimants had failed to file a cross-appeal. The Hon'ble Supreme Court enhanced the compensation amount to ₹49,85,376/- which represented the just compensation.

21. In *Kadamba Transport Corporation Ltd. V/s. Smt. Akshata Santosh Sawant*⁴ following the decision in *Surekha and Ors. V/s. Santosh and Ors.* (supra), this Court has also held that

4 FA No.110/2015 decided on 10.03.2022

just compensation cannot be denied to the claimants merely because they may not have filed cross-appeal or cross-objection.

22. In *The State of Maharashtra V/s. Kamaladevi Kaushal and Ors.*⁵, *New India Assurance Co. Ltd. V/s. Seema Sudam Auti and Ors.*⁶ and *The New India Assurance Company Ltd. V/s. Smt. Fatima Malik Shaikh & Ors.*⁷, this Court has held that the absence of cross-objections or cross-appeal cannot preclude the determination and award of just compensation.

23. Accordingly, this appeal is dismissed, but the compensation amount is determined at ₹11,68,400/-, including the amount of no-fault liability. The interest awarded in the impugned award is also maintained.

24. Mr. Pangam submits that respondent no.2, the mother of Virendra Jadhav has cancer; therefore, the directions for the investment of the compensation amount may be modified. Accordingly, the directions for investment are vacated.

25. The respondents – claimants will now be entitled to withdraw the balance amount of compensation deposited in this

5 FA No.103/2017 decided on 15.03.2017

6 FA No.1991/2011 decided on 09.06.2017

7 FA No.10/2016 decided on 07.04.2022

Court by furnishing bank details so that the amount can be directly transferred into their bank accounts.

26. The appellant - KTC is directed to deposit the enhanced compensation in this Court within four weeks after giving notice to the learned Counsel for the respondents – claimants. After that, the respondents – claimants will be entitled to withdraw this amount by furnishing bank details.

27. The respondents – claimants to pay the additional court fees before seeking withdrawal of the enhanced amounts. However, it is clarified that the Registry should permit the withdrawal/transfer of the amount already deposited in this Court by the appellant – KTC, together with the interest that will have accrued on this amount.

28. The appeal is dismissed with the above directions. However, there shall be no orders for costs.

M. S. SONAK, J.