

Suchitra

**IN THE HIGH COURT OF BOMBAY AT GOA
FIRST APPEAL NO.11/2011**

**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 VENANCIO FURTADO,
major, married, service, having address at
Porvorim, Goa.

... APPELLANT

Versus

**1. MR. DEVESH TUKARAM
CHODANKAR, since deceased through LR's**

1(a) Mrs. Pragana Devesh Chodankar
(widow), major aged 43 years, married, widow
of Late Devesh Tukaram Chodankar

1(b) Mr. Tanvesh Devesh Chodankar (son)
s/o late Devesh Tukaram Chodankar,
Aged about 11 years, minor,
Rep. By Guardian Res. No. 1(a).

1(c) Mr. Sarthak Devesh Chodankar (son)
s/o Late Devesh Tukaram Chodankar
Aged about 7 years, minor, Rep. By
Guardian Res. No. 1(a), All residents of
House No.122, Mala, Panaji, Goa.

**2. MR. SANDESH TUKARAM
CHODANKAR, major, service,**

**3. MS. KALPANA TURARAM
CHODANKAR alias MRS. SNEHAL**

VOLVOIKAR, major, widow,

4. MR. RAJENDRA TURARAM
CHODANKAR , major, Advocate,
all r/o House No. 122,
Mala, Panaji, Goa.

5. SHRI. MARTIN CAETANO
FERNANDES, major, driver, resident of
House No. 685, Kodli Tisk,
Dabal, Sanguem, Goa.

...RESPONDENTS

Mr. A. Kantik, Advocate for the Appellant.

**Mr. J. E. Coelho Pereira, Senior Advocate with Mr. S. Karpe
and Ms. Vaigankar, Advocates for the Respondents.**

**WITH
CROSS OBJECTIONS NO.10/2011
IN
FIRST APPEAL NO.11/2011**

1. MR. DEVESH TUKARAM
CHODANKAR, since deceased through LR'S

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VOLVOIKAR, major, widow,

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CHODANKAR , major, Advocate,
all r/o House No. 122,
Mala, Panaji, Goa.

... CROSS OBJECTORS
ORI. RESPONDENTS NO.1 TO 4

Versus

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 VENANCIO
FURTADO, major, married, service,
having address at Porvorim, Goa.

... APPELLANT

**Mr. J. E. Coelho Pereira, Senior Advocate with Mr. S. Karpe
and Ms. Vaigankar, Advocates for the Cross-Objectors/Ori.
Respondents.**

Mr. A. Kantak, Advocate for the Appellant.

CORAM: M. S. SONAK, J.

DATED: 3rd January 2022

JUDGMENT:

Correction
carried out as
per Order
dated
10.06.2022

1. This appeal and cross-objections are directed against
the Judgment and Award dated ~~21.09.2020~~ ^{21.09.2010}, the operative portion
of which reads as follows:

“ The petition is partly allowed holding the respondents jointly and severally liable to pay the compensation in the sum of ₹6,41,970/- to the claimant no.3 as the widowed sister and her 3 minor children alone as held before, which shall carry interest @ 9% p.a. from the date of the application till the date of the award and further interest at the same rate in case the said amount is not paid within a month from today till payment. The amount, if any, awarded in their favour under Section 140 of the Act shall be adjusted against the compensation appropriately.

The amount shall be apportioned 50:50 in favour of the claimant no.3 on the one hand and the balance 50% equally between the 3 minor children whose shares shall be invested in fixed deposits in any Nationalized Bank/s till they attain their respective ages of majority. The claimants shall also be entitled to the costs of the petition.

Award to be drawn accordingly.”

2. Mr. Kantak learned counsel for the Kadamba Transport Corporation (KTC) – the owner of the bus involved in the accident at the outset submitted that there is no evidence to establish negligence on the part of the driver of the KTC bus and therefore no award for compensation should have been made against the KTC.

3. In this case, there is evidence that the driver of the KTC bus was prosecuted by the State and convicted for offenses

under Sections 279 and 304A IPC. In a criminal prosecution, the State is required to establish the guilt of the driver beyond a reasonable doubt. In a matter seeking compensation before the Tribunal, the aspect of rashness and negligence on the part of the driver of the offending vehicle has to be established only on a standard of preponderance of probabilities. This is sufficient to uphold the finding recorded by the Tribunal on the aspect of rashness and negligence on the part of the driver of the KTC bus involved in the accident. Even otherwise, the evidence on record is more than sufficient to sustain such a finding. The first contention of Mr. Kantak will therefore have to be rejected.

4. Mr. Kantak then submitted that there is no evidence on record about the claimant no.3, the widowed sister of the deceased Sagar Chodankar, and her three daughters being dependent upon deceased Sagar. He submits that in the claim petition originally filed, there was no such plea taken and such plea was taken by amending the claim petition after almost three years. He submits that this is indicative of an afterthought. He submitted that the deceased was a bachelor and therefore, there should have been a deduction to the extent of 50% towards the expenses that the deceased would have incurred upon himself. He submitted that the Tribunal erred in making a deduction of only 1/3rd in the present case. He submits that the deceased had

no promotional prospects and there was no evidence that claimant no.3 had no independent source of income or was not provided for by her other brothers.

5. Mr. Kantak submits that even the multiplier adopted by the Tribunal is incorrect. He relied on *National Insurance Co. Ltd. v. Pranay Sethi & Ors. - 2017 (16) SCC 680* in support of his contentions. Based on all this Mr. Kantak submitted that the compensation determined by the Tribunal is excessive and warrants interference.

6. Mr. J. E. Coelho Pereira, learned Senior Advocate appearing on behalf of the respondents-claimants submitted that the compensation determined by the Tribunal was much less than the just compensation due and payable to claimant no.3 the widowed sister of deceased Sagar. He submitted that no allowance has been made towards future prospects and the compensation awarded towards the loss of estate, funeral expenses are too meager. He submits that there is no award made towards the loss of consortium. He submits that the appeal is liable to be dismissed and the cross-objections seeking enhancement, liable to be allowed. He relied on *Magma General Insurance Co. Ltd. v. Nanu Ram alias Chuhru Ram & Ors. - 2018 (18) SCC 130* in support of his submissions.

7. In this case, there is no dispute that the deceased was employed as a Junior Deckhand in the Department of Fisheries, Government of Goa and was earning a monthly salary of ₹7,605/-. There is also no dispute that the deceased was 42 years old at the time of the accident/demise. Though Mardolkar-AW3 deposed that the deceased did not have any promotional avenues, he pointed out that the deceased would have drawn ACP (Assured Career Progression) on completion of every ten years. This means at the end of every ten years, in the normal course, the deceased would have drawn the salary equivalent to the promotional post. Even if all this is ignored, it is reasonable to proceed on the basis that the deceased, who was a Government servant, would be certainly benefited from the increased salary based on the recommendations of various pay commissions. The Tribunal, therefore, erred in making no addition towards future prospects in the present case.

8. In *Pranay Sethi (supra)*, the Hon'ble Supreme Court has held that where the deceased was self-employed or on a fixed salary, an addition of 25% is warranted towards future prospects. Thus, in this case, the monthly income of the deceased should be taken at ₹9,506.25.

9. Mr. Kantak is quite right in his submission that the multiplier, in this case, cannot be 15 but will have to be only 14 having regard to what is set out in para 42 of *Sarla Verma v. Delhi Transport Corporation – 2009 (6) SCC 121* as approved in para 42 of *Pranay Sethi (supra)*. Thus, the compensation towards dependency works out to ₹15,97,050/- minus the amount that the deceased would have spent upon himself.

10. Mr. Kantak, relying on the observations in para 37 of *Pranay Sethi (supra)* which in turn refers to the observations in para 30, 31, and 32 of *Sarla Verma (supra)* submitted that a deduction to the extent of 50% is due since the deceased Sagar was a bachelor. On the other hand, Mr. Pereira submitted that deduction to the extent of 1/3rd would be appropriate in the facts of the present case, because there was evidence that claimant no.3 (widowed sister of the deceased) had to provide for her three daughters, one of whom was a minor and two of whom were still studying in college having no source of income. Mr. Pereira relied on *Magma General Insurance Co. Ltd. (supra)*.

11. In para 37 of *Pranay Sethi (supra)*, this is what the Hon'ble Supreme Court has observed:-

“37. Before we proceed to analyze the principle for the addition of future prospects, we think it seems to clear the maze which is vividly reflectible from Sarla Verma, Reshma Kumari, Rajesh, and Munna Lal Jain. Three aspects need to be clarified. The first one pertains to deduction towards personal and living expenses. In paras 30, 31, and 32, Sarla Verma lays down: (SCC p. 136)

“30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra, the general practice is to apply standardised deductions. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six.

31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered

as dependants, because they will either be independent and earning, or married, or be dependent on the father.

32. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third."

12. In *Pranay Sethi (supra)*, the Hon'ble Supreme Court has approved the observations in paras 30, 31, and 32 of *Sarla Verma (supra)*. The Hon'ble Supreme Court has held that normally where the deceased is a bachelor, a deduction of 50% must be made towards his personal and living expenses and only the balance 50% should be considered as a contribution to his family. However, where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and a large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third. Thus, there is no general rule that in every

case where the deceased is a bachelor, the deduction should be to the extent of 50%.

13. In *Magma General Insurance Co. (supra)*, the deceased was a bachelor. Having regard to the fact that his father and unmarried sister were dependent on him, the Hon'ble Supreme Court held that the deduction to the extent of 1/3rd of the income towards the personal expenses would be appropriate.

14. In the present case, there is evidence that claimant no.3, the widowed sister of the deceased was dependent on his income. There is evidence that this widowed sister had three daughters, one of whom was a minor and two of whom had barely attained the majority but were still studying in college. Having regard to these facts, there is no reason to disturb the finding recorded by the Tribunal that deduction to the extent of 1/3rd would be proper. This finding is supported by the evidence on record and aligns with the law laid down by the Hon'ble Supreme Court in *Pranay Sethi (supra)* and *Magma General Insurance Co. (supra)*.

15. Thus, from the amount of ₹15,97,050/- a deduction will have to be made to the extent of 1/3rd. The total

compensation towards dependency, in this case, will have to be taken at ₹10,64,700/-.

16. To the aforesaid amount, we will have to add ₹15,000/- towards loss of estate, ₹15,000/- towards funeral expenses, and ₹40,000/- towards loss of consortium. This again will be consistent with the law laid down by the Hon'ble Supreme Court in *Pranay Sethi (supra)* and *Magma General Insurance Co. (supra)*. This means that the just compensation payable in this case would come to ₹11,34,700/-.

17. There is evidence on record in this case that claimant no.3 is the widowed sister of deceased Sagar. There is evidence that she has three daughters, one of whom was a minor as on the date of the accident and two of whom had just attained majority but were still studying in college. This accident took place in the year 2004 and the claimant no.3 was widowed sometime in the year 2000. There is evidence that the other brothers of deceased Sagar were not dependent upon him. Based on the preponderance of probabilities, a case is made out that the claimant no.3 i.e. the widowed sister was dependent upon deceased Sagar, who was a bachelor, aged 42 years at the time when he died in the vehicular accident. Simply because these aspects were specifically pleaded by amending the claim statement three years after the same was

instituted, does not mean that the pleadings were like an afterthought.

18. Rajendra Chodankar-AW1, a lawyer and the brother of deceased Sagar has deposed to these facts and there is no dent made to his testimony in the course of the cross-examination. Rajendra-AW1 admitted that there was no documentary evidence that the deceased was providing for his widowed sister. However, in such matters, it is not always reasonable to expect documentary evidence. The circumstances brought out on record more than probabalize the case pleaded in the amended claim petition.

19. For all the aforesaid reasons, the appeal and cross-objections are disposed of by making the following order:

(a) First Appeal No.11/2011 is hereby dismissed;

(b) Cross-Objection No.10/2011 is partly allowed and the compensation amount is now enhanced to ₹11,34,700/-;

(c) The impugned Award is modified to the aforesaid extent only.

20. The appellant – KTC is directed to deposit the enhanced amount in this Court within three months from today.

21. The original claimant no.3 i.e. Ms. Kalpana Tukaram Chodankar alias Mrs. Snehal Volvoikar is permitted to withdraw the compensation amount presently deposited in this Court together with the interest that may have accrued thereon. She is also permitted to withdraw the enhanced compensation no sooner the same is deposited, without the requirement of making any fresh application to the Court.

22. There shall be no order for costs.

M. S. SONAK, J.