Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.36 OF 2017

National Insurance Co. Ltd.,
Ponda Branch, Ponda Goa.
Through its Divisional Manager. … Appellant

Versus

1. Smt. Tejaswini Vivek Nabar
   wife of late Vivek Y. Nabar,
   39 years, married

2. Kum. Vaidehi Vivek Nabar
   D/o late Vivek Nabar
   14 years, represented by respondent No.1
   as natural guardian,
   Both resident of H.No.77, Guleli,
   Valpoi, Sattari Goa.

3. Shri Ankush Topyo Gaonkar
   Major, s/o Topyo Gaonkar,
   Resident of Anandwadi, Shiroda,
   Ponda Goa.

4. Shri Rajendra B. Naik,
   Resident of L-475, Rumdamol,
   Housing Board Davorlim,
   Dist. South Goa.
   Since deceased through its legal heirs:
   a) Mrs. Smita Rajendra Naik,
   age 51 years,
   widow of late Rajendra Naik,
   b) Miss. Rakshanda Rajendra Naik,
   age 22 years,
   daughter of late Rajendra Naik,

c) Mr. Rohan Rajendra Naik,
age 20 years,
son of late Rajendra Naik,
All Indian Nationals,
residing at H. No.L-475,
situated at Rumdamol,
Davorlim Housing Board,
Margao-Goa. ...Respondents

Mr. U. R. Timble and Ms. Y. Mandrekar, Advocates for the appellant.
Mr. Guru Shirodkar and Ms. V. Parab, Advocates for respondent Nos.1 and 2.

CORAM: M. S. SONAK, J

DATE : 4th March 2022

ORAL JUDGMENT :

1. This appeal is directed against the judgment and award dated 26.10.2015 made by the Motor Accident Claims Tribunal (Tribunal) in Claim Petition No.25/2014.

2. Mr. Timble, learned counsel for the appellant points out that even though several grounds have been raised in this appeal, he would press the ground that the award of compensation as reflected in para 26 of the impugned award is not in accord with the law laid down by the Hon'ble Supreme Court in ***National Insurance Company Limited vs Pranay Sethi and others.***[1]

1 (2017) 16 SCC 680

3. Mr. Timble points out that towards consortium the compensation of ₹40,000/- each could have been awarded to the widow and daughter and not ₹1,00,000/-. He points out that once the compensation is awarded towards loss of consortium, there was no question of making any further award of ₹1,00,000/- towards loss of love and affection since this would amount to overlapping or duplication. He submits that even towards funeral expenses, the compensation ought to be ₹15,000/- and not ₹25,000/-.

4. Mr. Shirodkar learned counsel for the claimants at the outset points out that there is no material about leave being granted under Section 170 of the Motor Vehicles Act to the insurance company. He, therefore, submits that the insurance company ought not to be heard on the issue of quantum.

5. Without prejudice, Mr. Shirodkar submits that the award as reflected in para 26 is consistent with the law laid down in ***Rajesh and others Vs Rajbir Singh and others***[2] which was then holding the field. He submits that even according to *Pranay Sethi* (supra), the additional compensation of ₹15,000/- is due towards loss of estate.

2 (2013) 9 SCC 54

6. In this case, the record does indicate that the insurance company had applied under Section 170 of the Motor Vehicles Act because there was no contest on behalf of the owner and the driver of the offending vehicle. However, there is no clarity as to whether this application was disposed of or not. Now in the peculiar facts of the present case, considering the lapse of time and also the reasonable approach on the part of the insurance company, no useful purpose would be served by simply remanding the matter to the tribunal for deciding the application under Section 170 of the Motor Vehicles Act, assuming that the same was not actually decided. Such a course of action would prolong the matter and deprive the claimants of the compensation due to them.

7. Besides, in such matters, there is a duty cast upon the Court to determine the just compensation. There are instances where the respondents/claimants have been awarded enhanced compensation even though they may not have appealed against the award or filed any cross objections claiming enhanced compensation.

8. *Pranay Sethi* (supra) is quite clear in determining the compensation towards consortium at ₹40,000/-. This will have to be held as ₹40,000/- each towards each of the claimants. Further, once the compensation is granted towards loss of consortium, there is no question of grant of further compensation towards loss of love and affection. Even the compensation towards funeral expenses will have to be determined at ₹15,000/-. In addition, ₹15,000/- will have to be awarded towards loss of estate.

9. The aforesaid calculation would result in a reduction of ₹1,15,000/- from out of the total award of ₹82,47,504/-. Further, as was correctly held by the tribunal, the amount of ₹50,000/- which was already awarded towards no-fault liability will also have to be deducted.

10. In the peculiar facts of the present case, the compensation amount is now redetermined at ₹80,82,504/- after taking into account ₹50,000/- already received by the claimants.

11. Mr. Timble submits that the interest rate should also be scaled down to 6% or 7% since the accident took place on 30.08.2013. Normally, such a plea could have been accepted. However, in the peculiar facts of the present case and since there is a lack of clarity on the issue of the Section 170 application, the interest as awarded by the tribunal can be maintained. This is also a case where the husband and the father of the claimants expired at the age of 44 years leaving the claimants to fend for themselves.

In particular, it is necessary to note that claimant No.2 was hardly 13 years old at the time of the accident. Upon cumulative consideration of these peculiar circumstances, the interest rate is not interfered with.

12. This appeal is therefore partly allowed. The compensation amount is now redetermined at ₹80,82,504/- and the interest rate is maintained.

13. The respondents-claimants will be entitled to withdraw the balance compensation amount as now determined together with proportionate interest thereon from out of deposit made by the insurance company in this Court. The insurance company will also be entitled to withdraw the remaining amount together with proportionate interest thereon. Both the parties to submit their calculations to the registry and the registry will facilitate the withdrawals. The claimants will have to furnish the bank details so that the amount can be directly deposited in their accounts.

14. The appeal is partly allowed in the aforesaid terms. There shall be no order for costs.

M. S. SONAK, J