

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA
FIRST APPEAL NO.10 OF 2016

The New India Assurance Company Ltd.
Jagannath Building,
Jose Inacio de Loyola road, Near Fly over,
Margao Goa. (Insurance Company of the Tata
Tipper Truck)

... Appellant

Versus

1. Smt. Fatima Malik Shaikh,
widow of late Shri Malik Shaikh,
aged 56 years, housewife,
2. Smt. Raziya Ibrahim Shaikh,
widow of late Shri Ibrahim Shaikh,
aged 19 years, housewife,
3. Miss. Rihana Ibrahim Shaikh,
Daughter of late Shri Ibrahim Shaikh,
Aged 1 year (represented by the Applicant
No.2, Smt. Razia Ibrahim Shaikh being
mother and natural Guardian).
4. Miss. Amina Malik Shaikh,
Daughter of late Shri Mallik Shaikh,
Aged 35 years,
5. Miss. Meheroon Malik Shaikh,
Daughter of late Shri Mallik Shaikh,
Aged 24 years,
6. Miss. Hasina Malik Shaikh,
Daughter of late Shri Mallik Shaikh,
Aged 21 years,
All resident of H.No.297,
Pilliem, Dharbandora,

Sanguem Goa 403 704
9822626488

7. Shri Jaya Suryavanshi,
Son of Janardhan Suryavanshi,
R/o Vithava ward, Pusad,
Yavatmal, Maharashtra,
(Driver of Trailer Truck (Tata)
Reg. No.MH-46-H-5445)

8. Shri Anil V. Ingole,
Son of Shri Vasantao Ingole,
r/o Flat No.101, Bhalchandra Society,
Plot No.19, Sector No.4, Kalmoli,
New Mumbai, MIDC Taloja,
Maharashtra – 410208,
(Owner of Trailer Truck (Tata)
Reg. No.MH-46-H-5445)

...Respondents

Ms. Y. Mandrekar, Advocate for the appellant.

Mr. Shailesh Redkar, Advocate for respondents Nos. 2 and 3.

CORAM: M. S. SONAK, J

DATE : 7th April 2022

ORAL JUDGMENT:

1. Heard Ms. Y. Mandrekar, learned counsel for the appellant,
and Mr. S. Redkar, learned counsel for respondents Nos. 2 and 3.

2. The challenge in this appeal is to the judgment and award dated
27th October 2015 made by the Motor Accident Claims Tribunal,
Margao, in Claim Petition No. 82/2014, instituted by the claimants
on account of the death of Ibrahim Shaikh in a motor accident that

took place on 24.04.2013. Ibrahim Shaikh was 35 years old at the time of the accident.

3. The first claimant is his mother, Fatima; the second claimant is his wife, Raziya; and the third claimant is his daughter Rihana who was one year old at the time of the accident. The fourth, fifth, and sixth claimants are the sisters of Ibrahim Shaikh. The fourth claimant has been deleted since she was found not to be dependent upon Ibrahim Shaikh. Therefore, in this matter, we are concerned with the claim of five claimants.

4. Ms. Mandrekar, learned counsel for the appellant, pointed out that her basic objection was to the award of compensation in paragraphs 23 and 24 of the impugned award in terms of which the Tribunal has granted ₹1,00,000/- towards love and affection and further ₹1,00,000/- towards loss of consortium. She pointed out that the compensation at the rate of ₹50,000/- each has also been awarded to the sisters Meheroon and Hasina. She relied on *National Insurance Company Limited Vs Pranay Sethi and others*¹ to submit that the compensation at the rate of ₹40,000/- each in the maximum could have been granted towards the loss of consortium, and there was no question of further making any payment towards love and affection.

1 (2017) 16 SCC 680

5. There is merit in the submission of Ms. Mandrekar. Having regard to the law laid down in *Pranay Sethi* (supra) and *Magma General Insurance Co. Ltd. Vs Nanu Ram alias Chuhru Ram and others*², the compensation of ₹40,000/- each is what could have been awarded to each of the five claimants. The award, to that extent, requires modification.

6. However, Mr. Redkar has pointed out that even otherwise, the compensation as determined is not in accord with the ruling in *Pranay Sethi* (supra) because the Tribunal has omitted the reference to future prospects after concluding that the monthly income of Ibrahim Shaikh was ₹15,000/-. He referred to para 59.4 of *Pranay Sethi* (supra) to point out that since the deceased Ibrahim Shaikh was a driver on a fixed salary, an addition of 40% of the established income was warranted because Ibrahim Shaikh was less than 40 years old, i.e., he was 35 years old. He submitted that if this factor is taken into account, as it is required to be taken into account, the total compensation, even after accepting Ms. Mandrekar's contention would come to ₹34,55,600/-. He relied on *United India Insurance Company Ltd. Vs Kunti Binod Pande and others*³.

7. In the case of *Surekha and others Vs Santosh and others*⁴, the Hon'ble Supreme Court has held that the appellate Court should not deny just compensation to the claimants merely because they may not

2 (2018) 18 SCC 130

3 2019 SCC OnLine Bom 5606

4 (2021) 201 PLR 795

have preferred any cross objection or cross-appeal. This Court has also held the same in the *State of Maharashtra Vs Kamaladevi Kaushal and others*⁵ and *New India Assurance Co. Ltd. Vs Seema Sudam Auti and others*⁶. In *Kadamba Transport Corporation Ltd. Vs Smt. Akshata Santosh Sawant and others*⁷, the same proposition has been reiterated.

8. Now, in this case, if a 40% addition is made to the established income, the same will have to be taken at ₹21,000/- in place of ₹15,000/- taken by the Tribunal. A deduction to the extent of 1/5th is due since there were five dependents, and therefore, this amount will have to be taken at ₹16,800/- per month or ₹2,01,600/- per annum. There is no dispute that the multiplier, in this case, would be 16, and therefore, the total dependency would come to ₹32,25,600/-. To this amount, for loss of consortium, a further amount of ₹40,000/- each dependent would have to be added. Towards loss of estate, ₹15,000/- will have to be awarded, and another ₹15,000/- towards funeral expenses. This will take the total compensation amount of ₹34,55,600/- which will represent just compensation based on evidence on record.

9. The accident, in this case, took place on 24.04.2013, and therefore, the award of interest at the rate of 9% per annum does not

5 FA No.103/2017 decided on 15.03.2017

6 FA No.1991/2011 decided on 09.06.2017

7 FA No.110/2015 decided on 10.03.2022

appear to be justifiable. This will have to be scaled down from 9% per annum to 7% per annum.

10. The appeal is disposed of by modifying the impugned award and determining the compensation at ₹34,55,600/- together with interest at the rate of 7% per annum from the date of the petition. Out of this determined amount, the claimants Meheroon and Hasina will be entitled to only ₹40,000/- each. After deducting this amount, 50% of the compensation will have to be paid to Ibrahim's widow Raziya. The balance of 50% will have to be shared by Ibrahim's mother Fatima and daughter Rihana. This is consistent with what is directed by the Tribunal in the impugned award.

11. The Appellant – Insurance Company should now deposit the enhanced amount within two months from today. The amounts which are already deposited by the Insurance Company can now be withdrawn by the claimants in the above proportions by furnishing proper documents of identity and bank details. Once the compensation amount is deposited, the same can also be withdrawn on the same terms.

12. The appeal is disposed of in the aforesaid terms without any orders for costs.

M. S. SONAK, J