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**IN THE HIGH COURT OF BOMBAY AT GOA
FIRST APPEAL NO.13 OF 2016**

The New India Assurance Company
Ltd., Branch Office at Ajmer,
Rajasthan

.... Appellant

Versus

1) Vishwajit V. Mayekar
s/o Vinod Mayekar,
aged 14 years, student.

2) Kum. Vaishnavi V. Mayekar
s/o Vinod Mayekar,
age 12 years, student,
both r/o H.No. 22, Nanus,
Betskikar Wada, Valpoi, Sattari Goa.

Represented herein through their
guardian/Aunty Smt. Akshada Anil
Shirodkar, w/o Anil Shirodkar,
major, married, Housewife, r/o
H.No. 353, Padribhat, Taleigao Goa.

3) Mohanlal Jagdishprasad Saini
s/o Jagdishprasad Saini,
major of age, r/o PN2-A, Shiv
colony, Dada Badike pass, Sanganer,
Jaipur, native of Village Nayagao,
Post Mehrukal, Kekadi, Ajmer,
Savar PS, Rajasthan. (Driver of
Trailer)

4) Shambudevi R. Choudhary,
w/o Ramdhan Choudhary,
major of age, r/o H.No.372, G.

School, Loharwada, Nasirabad,
Ajmer, Rajasthan. (Owner of trailer)

5) Shri Prakash D. Naik,
s/o Data Naik, major of age,
r/o H.No.44, Velgeum, Valpoi,
Sattari, Goa. (Driver cum Owner of
Bolero Maxxi Truck)

6) National Insurance Co. Ltd,
Branch office at Bicholim Goa.
Insurer of Bolero Maxxi Truck)

...Respondents

Mr. Amey Kakodkar, Advocate for the Appellant.

Mr. P. Sawant, Advocate for Respondent Nos.1 & 2.

Ms. Yadika Mandrekar, Advocate for Respondent No.6.

CORAM : M. S. SONAK, J.

DATE : 21st APRIL 2022

ORAL JUDGMENT :

1. Heard learned Counsel for the parties.

2. This appeal is directed against the judgment and award dated 26.11.2015, made by the Motor Accident Claims Tribunal (Tribunal) disposing of Claim Petition No.17/2014 and awarding respondents nos.1 & 2 (claimants) compensation of ₹21,36,000/- together with interest at the rate of 9% per annum on account of the demise of their mother, Varsha in a vehicular accident that took place on 24.03.2013.

3. Varsha was traveling in a Bolero owned and driven by Prakash (respondent no.5). The accident was with a parked trailer truck owned by Shambudevi (respondent no.4) and driven by Mohanlal (respondent no.3). There is evidence of negligent parking, and the trailer carrying a massive piece of machinery jetted out on the road. The Bolero was insured by respondent no.6. The insurer of the trailer truck institutes this appeal.

4. Mr. Kakodkar learned Counsel submits that there was no negligence on the part of the trailer truck and, in any case, the evidence makes out some case of composite negligence. He submits that the liability of the Bolero and consequently its insurer should have been fixed at least 50%, if not more. He submits that the Tribunal has not appreciated the evidence on record in its proper perspective. He submits that the sketch accompanying the panchanama does not reflect the correct position. Based on all this, he submits that the impugned award warrants modification to reduce the Appellant's liability and proportionately increase respondents' liability nos.5 &6.

5. Mr. Kakodkar, without prejudice, submits that there is no legal evidence to sustain the findings that Varsha was earning ₹9,000/- per month. He submits that, in any case, the compensation awarded towards consortium, loss of estate, and

funeral expenses is much above what is prescribed in *National Insurance Company Limited V/s. Pranay Sethi & Ors.*¹.

6. Mr. P. Sawant, learned Counsel for respondents nos.1 & 2 submits that the Appellant makes out no case to warrant interference on the aspect of liability. Mr. Sawant, learned Counsel for the claimants, however, submits that the Tribunal has ignored the evidence of AW3 and AW4, who had deposed that Varsha's income was almost ₹30,000/- per month and not merely ₹9,000/- per month. Accordingly, he submits that it is the duty of the Tribunal and consequently this Court to determine the just compensation and, therefore, the compensation as awarded must be enhanced.

7. The rival contentions now fall for determination.

8. Regarding the first contention of Mr. Kakodkar, reference is necessary to the deposition of Prakash (RW1), the owner and driver of the Bolero. He has deposed that the trailer was parked without any precautions and negligently. He deposed about the absence of any signboard and how the indicator lights were off, and there was no red cloth tied to the iron structure (bracket), which was loaded in the trolley/trailer. He deposed how no

¹ (2017) 16 SSC 680

indicator lights were displayed either on the trailer/trailer or on the iron structure (bracket). He also deposed how iron structure (bracket) was loaded in the trolley/trailer and was projecting two mtrs on the tar road from the carrier of the trolley/trailer.

9. In the cross-examination, hardly anything was elicited on behalf of the owner and driver of the trolley. Mohanlal, the trolley driver, had deposed as RW2. In his deposition, he had claimed that there were about 4 to 5 persons along with him, and one of the persons was standing behind the trailer to divert the traffic. He also deposed about the light seen on the spot of the accident on both sides of the road and how the light of the trailer was also on. However, curiously none of this was suggested to Prakash. Even otherwise, the evidence of Mohanlal hardly inspires any confidence. The person allegedly kept behind to divert the traffic was also never examined.

10. Now, if the evidence of Prakash (RW1) is considered along with the documentary evidence like FIR, panchanama, and the sketch accompanying the panchanama, there is no reason to disturb the finding of the Tribunal on the aspect of composite negligence. Pertinently, in this case, only Mohanlal was prosecuted for negligence. Therefore, based upon a preponderance of probabilities, the finding of composite

negligence was correctly arrived at and now warrants no interference in this appeal.

11. On the aspect of income, again, there is sufficient evidence to sustain the finding that she was earning ₹9,000/- to ₹10,000/- per month. AW3 and AW4 may have been prone to exaggeration, but there is no reason to doubt the testimony of AW1, who had deposed that Varsha was a fish vendor earning ₹9,000/- per month. Based upon the testimony of AW3 and AW4, at the highest, this amount could have been rounded up to ₹10,000/- per month.

12. Considering Varsha's income to be 10,000/- per month, the compensation towards dependency would come to ₹20,40,000/-. Mr. Kakodkar is right in his submission that the compensation towards consortium, loss of estate, and funeral expenses would come to only ₹1,10,000/-, considering that compensation towards consortium would be only ₹40,000/- per claimant. Thus, the total compensation, having regard to the law laid down in *Pranay Sethi* (supra), would come to ₹21,50,000/- and not ₹21,61,000/-.

13. The record bears out that the claimants were aged 12 and 14 years when their mother died in the accident. The record also

bears out that the claimants' father eventually expired on account of heart complications. Considering this aspect, there is no point in reducing the compensation by ₹11,000/-.

14. Accordingly, this appeal is dismissed. But there would be no order for costs.

15. The claimants can now withdraw the amount deposited by the Appellant in this Court after furnishing proper identification documents and bank details. The Registry to ensure that this amount and the interest that might have accrued on the same should be deposited directly into the claimants' bank accounts at the earliest.

16. Respondent no.6 – Insurance Company is also directed to deposit its share of the compensation in this Court within six weeks from today after giving necessary intimation to the learned Counsel for the claimants. This deposit should be together with the proportionate interest amount as awarded. Once this is done, the claimants can withdraw the said amount on the above terms.

M. S. SONAK, J.

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HALDANKAR

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