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IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.42 OF 2017

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

... Appellants

Versus

1) Smt. Manda Madhu Shetgaonkar, Wife
of late Madhu Shetgaonkar, Age 52 years,
housewife.

2) Mr. Sagun Madhu Shetgaonkar Son of
late Madhu Shetgaonkar, age 28 years,
bachelor, unemployed,

3) Mr. Snehal Madhu Setgaonkar, Son of
late Madhu Shetgaonkar, Age 23 years,
bachelor, homeguard, All are Indian
Nationals and Residents of H. No. 1020,
Kancholem Wada, Morjim,
Pernem-Goa.

4) Mr. Nilu Krishna Gauns,
Son Krishna Gauns,
Major in age,

5) Mrs. Suchita Nilu Gauns (Owner)
W/o Nilu Gauns, major of age,
R/o H. No. 331, Pilliem, Dharbandora
Goa.

... Respondents

**Mr. U.R. Timble with Ms. Y. Mandrekar, Advocate for the
Appellant.**

**Mr. R.G. Ramani, Senior Advocate with Mr. P. Kakodkar,
Advocate for Respondent Nos.1 to 3.**

CORAM: M. S. SONAK, J.

DATE: 23rd September 2022

ORAL JUDGMENT:

1. Heard Mr Timble for the appellant and Mr R.G. Ramani learned Senior Advocate for the respondent nos.1 to 3.
2. The appellant – Insurance Company, challenges the judgment and award dated 10.11.2016 made by the Tribunal in Claim Petition No.101/2015.
3. Mr. Timble points out that the award of an additional ₹1,00,000/- towards love and affection is contrary to the law in *National Insurance Company Ltd. V/s. Pranay Sethi*¹. He points out that claimant no.3 had her own income and, therefore, was not even dependent upon the deceased. He, therefore, submits that the impugned award warrants modification.
4. Mr Ramani concedes that the award of ₹1,00,000/- towards love and affection will have to be deleted. However, he submits that an additional ₹20,000/- will have to be awarded towards the loss of consortium, considering that three claimants

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were entitled to ₹40,000/- each. He submits that compensation of ₹15,000/- is due towards funeral expenses and another ₹15,000/- towards loss of estate.

5. Mr Ramani points out that in terms of *Pranay Sethi* (supra) 15% addition should have been made to the deceased's income because he was 59 years of age. If this were to be made, the compensation towards dependency would come to ₹20,05,913.16, not merely ₹17,44,272/-. Again, he relies on *Pranay Sethi* (supra).

6. The rival contentions, therefore, now fall for determination.

7. The contentions about claimant no.3 not being dependent cannot be accepted. In any case, compensation towards the consortium will have to be paid to her for losing her father. However, Mr Timble is justified in contending that the award of ₹1,00,000/- towards loss of love and affection was improper, and the amount will have to be deleted.

8. In terms of *Pranay Sethi* (supra), a 15% addition is due to future prospects. After making this addition, the compensation towards dependency thus works out to ₹20,05,913.16. Further,

in terms of *Pranay Sethi* (supra), the claimants would be entitled to ₹40,000/- each towards consortium, ₹15,000/- towards funeral expenses and another ₹15,000/- towards loss of estate. Thus, the claimants would be entitled to total compensation of ₹21,55,913.16.

9. Mr Tinble is further justified in contending that the award of interest at the rate of 9% per annum is quite excessive, given that the accident occurred on 10.04.2015. Accordingly, this interest is required to be scaled down to 7% per annum.

10. In *Surekha W/o. Rajendra Nakhate & Ors. V/s. Santosh S/o. Namdeo Jadhav & Ors.*² The Hon'ble Supreme Court has held that the Hon'ble Court must determine and award just compensation even though the claimants may have filed no cross-appeal or cross-objections.

11. Accordingly, this appeal is disposed of by determining the total compensation at ₹21,55,913.16 along with interest at the rate of 7% per annum from 29.10.2015 until the amount is paid to the claimants. Further 50% of the compensation shall be payable to respondent no.1, i.e. the widow, and the balance 50% shall be shared equally by respondents nos.2 & 3. The claimants

will, however, have to pay an additional Court fee before withdrawing the amount.

12. The appellant has deposited the compensation amount in this Court. Parties are at liberty to withdraw the same proportionately as per the above determination in this appeal. The claimants will have to provide identification and bank details so that the Registry can directly transfer their share into their bank accounts. The appeal is disposed of in the above terms without any order for costs.

M.S. SONAK, J.