

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
FIRST APPEAL NO. 86 OF 2016

National Insurance Co. Ltd.
Through its Authorised Officer,
Souza Towers, Office No, S/4-5
Domingos Souza Road,
Near Municipal Garden Panaji-Goa, Appellant.

Versus.

1. Smt. Gauri Gurudas Gaonkar,
Widow of late Shri. Gurudas
Gaonkar, Aged 41 years, Housewife,
Indian National, Residing at H. No.
22/5, Ambedi, V.P. Nagargao, Sattari
Taluka, Goa,

2. Mast. Ashish Gurudas Gaonkar,
Son of late Shri. Gurudas Gaonkar,
Aged 13 years, student, Residing at
H. No. 22/5, Ambedi, V.P. Nagargao,
Sattari Taluka, Goa,

3. Kum. Ankita Gurudas Gaonkar,
Daughter of late Shri. Gurudas
Gaonkar, Aged 15 years, student
residing at H. No, 22/5, Ambedi V.P.
Nagargao, Sattari Taluka, Goa

4. Kum. Ashwinin Gurudas Gaonkar,
Daughter of late Shri. Gurudas

Gaonkar Aged 17 years, student,
Residing at H. No. 22/5, Ambedi,
V.P. Nagargao, Sattari Taluka, Goa,

5. Shri. Venkatesh Vishwanath
Rathod, Son of Shri. Vishwanath
Rathod, Aged 21 years, Indian
National, Residing at H. No. 05,
Near Govt. School, New Vaddem,
Vasco Da Gama, Goa,

6. Shri. Vishwanath C. Rathod,
Major of age, Indian National,
Residing at H. No. 05, Near Govt.
School, New Vaddem, Vasco Da ... Respondents.
Gama, Goa.

**Mr. U.R. Timble, with Ms. Yadika Mandrekar, Advocates
for the Appellant.**

None for the Respondents.

CORAM : M. S. SONAK, J.

DATE : 18th August 2022

ORAL JUDGMENT. :-

1. Heard Mr. Timble, the learned Counsel for the Appellant-Insurance Company.
2. The Appellant-Insurance appeals the judgment and award

dated 30th September 2015 in Claim Petition No.107/2014, by which the Motor Accident Claims Tribunal, Mapusa (Tribunal) has awarded the widow and two minor children of late Gurudas Gaonkar additional compensation of ₹51,83,440/-, with 9% interest per annum.

3. Mr. Timble submits that in this case, there is no cogent evidence to sustain the findings of rashness and negligence on the part of the driver of the offending WagonR car (insured vehicle). He submits that the evidence shows that a goat came running on the road unexpectedly and this was the cause for the accident. He submits that in the absence of any negligence on the part of the driver of the insured vehicle, no liability can be imposed, *inter alia*, on the Insurance Company.

4. Mr. Timble, without prejudice, contended that the Tribunal failed to deduct 1/3rd of the determined annual income and awarded amounts in excess of what is prescribed in ***National Insurance Company Limited vs. Pranay Sethi & ors.***¹. He, therefore, submits that the compensation awarded does not constitute a just compensation.

5. This is an appeal by the Insurance Company. Admittedly,

1. (2017) 16 SCC 680

no leave was obtained by the Insurance Company under Section 170 of the Motor Vehicles Act. Considering the contentions raised, this appeal will have to be dismissed as not maintainable given the law down by the Division Bench of this Court in *I.C.I.C.I. Lombard General Insurance Co. Ltd., Amravati vs. Surekha wd/o. Prakash Ghurde and ors.*².

6. Now that this appeal is dismissed, the Respondents-Claimants will be entitled to withdraw the deposited amount, together with interest that shall have accrued thereon, **after 6 weeks** from today unless, in the meanwhile, there is any restraint order for such withdrawal.

7. The Respondents-Claimants will have to furnish proper identification documents and bank details so that the Registry can transfer the amounts, after six weeks, directly into their bank accounts.

8. The appeal is, accordingly, disposed of. There shall be no order for costs.

M. S. SONAK, J.

2. (2020) 2 Bom CR 465,