

Niti

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.1 OF 2020

United India Insurance Company Limited,
Through its Authorized Officer,
Having office at Mascarenhas Building,
2nd floor, M.G. Road, Panaji-Goa.

...Appellant

Versus

1. Mrs. Maya Jangbahadur Gharti Magar,
Wife of Jangbahadur Gharti Magar,
Aged 32 years, married, housewife,

2. Mr. Jangbahadur Gharti Magar,
Son of Jahar Singh Gharti Magar,
Aged 40 years, married, service,

Both Nepal Nationals and
Permanent residents of Village
Development Committee
Shantinagar, Ward No. 9,
Dang District, Post Office Chira Ghat,
Nepal,
Temporary address
C/o. H. No. (Not Known) Near Fish
Market, Near Holiday inn Resort,
Carmona, Salcete-Goa.

3. Mrs. Jacinta Alfonso,
Wife of Socorro Alfonso, Major of age,
married, housewife, Indian National,
Resident of H. No. 232/1/A, Caranzalem,
Tiswadi, North Goa.

4. Mr. Socorro Alfonso,
Son of Pedro Alfonso, Major of age,

married, Driver by Profession, Indian
National, Resident of not known,
Kalwado, Corlim, Ilhas, Tiswadi — Goa. ...Respondents

Mr. A.R.S. Netravalkar, Advocate for the Appellant.

Mr. A. Govekar, Advocate for Respondent Nos.1 & 2.

CORAM: M. S. SONAK, J.

DATED: 17th MARCH 2022

ORAL JUDGMENT :

1. Heard Mr. A.R.S. Netravalkar, learned Counsel for the appellant and Mr. A. Govekar, learned Counsel for respondents nos.1 & 2.

2. This is an extremely unfortunate case where Master Arman Jangbahadur Gharti Magar, a ten-year-old son of the respondents/claimants, expired in a road accident on 17.09.2011. The offending vehicle, a minibus bearing registration no.GA-01-T-2753, which was driven in a rash and negligent manner dashed the little boy, who suffered grievous injuries and succumbed to them soon thereafter. The distraught parents of the little boy have claimed a meager compensation of ₹8,00,000/-.

3. The Tribunal, in this case, has awarded compensation of ₹5,35,000/- together with interest thereon at the rate of 9% per

annum from the date of filing of the petition till full payment. Despite this, the Insurance Company has chosen to institute this appeal.

4. At the very outset, it is quite clear that no leave was applied for by the Insurance Company under Section 170(b) of the MV Act. In the absence of such leave, it is difficult to accept the contention of Mr. Netravalkar that the present appeal is maintainable. This is more so considering the law laid down by the Division Bench of this Court in *I.C.I.C.I. Lombard General Insurance Co. Ltd., Amravati V/s. Surekha, w/o. Prakash Ghurde and Ors.*¹. Therefore, I feel that this appeal at the instance of the Insurance Company primarily questioning the quantum of compensation is not maintainable.

5. Mr. Netravalkar did try to distinguish by submitting that appeal may not be maintainable when an award is made under Section 163-A of the MV Act. However, he could place on record not a single judgment to sustain this type of distinction. Accordingly, it will have to be held that this appeal is not maintainable at the behest of the Insurance Company.

6. Even assuming that such an appeal was maintainable, there is no case made out to interfere with a meager compensation awarded by the Tribunal in this matter.

1 (2020) 2 Bom CR 465

7. Mr. Netravalkar contended that since the application was made under Section 163-A, the Tribunal ought to have scrupulously followed the formula and the rates set out in the second schedule to the MV Act. The Tribunal has dealt with this contention by referring to the decision of the Hon'ble Supreme Court in the case of ***R.K. Malik and Anr. V/s. Kiram Pal & Ors.***². In the said decision, the Hon'ble Supreme Court has indeed held that ordinarily, the Tribunal will have to follow the structured formula provided in the second schedule *except in exceptional cases*.

8. The Tribunal has quite correctly held that this was an exceptional case and, based thereon, the Tribunal instead of taking the annual income of the child at ₹15,000/- per annum, as provided in the second schedule, has taken the income at ₹36,000/- per annum. From out of this amount the Tribunal has deducted 50% towards personal expenses which, according to me, is quite excessive considering that the victim was a ten-year-old boy. Based on this, the Tribunal has determined the annual income of the child at ₹18,000/- which is only marginally higher than the income prescribed in the second schedule which is ₹15,000/- per annum.

9. The Tribunal has then applied the law laid down in ***R.K. Malik*** (supra), where compensation of ₹75,000/- was granted towards future prospects. The Tribunal, however, did not grant compensation of

₹75,000/- in the present case but restricted this amount to only ₹50,000/- on the specious plea that there was no evidence about the performance of this little child in school. The tribunal, in this case should have granted at least Rs.1,50,000/- because the accident in this case, took place in September 2011.

10. The Tribunal then proceeded to grant compensation of ₹1,00,000/- towards each of the claimants towards love and affection and ₹15,000/- towards funeral expenses.

11. True the Tribunal, in this case, seems to have adopted some kind of hybrid approach which may, ordinarily not be permissible. The Tribunal has treated this as an exceptional case and the overall determination made by the Tribunal, according to me, is rather on the lower side. The Tribunal, in this case, was not justified in making a deduction to the extent of 50% towards the personal expenses of the little child. The Tribunal was also not justified in denying the compensation of ₹150,000/- towards future prospects. The Tribunal also failed to make any award towards loss of estate which would come to an additional ₹15,000/-. True, the compensation of ₹1,00,000/- towards love and affection may not pass the muster of *National Insurance Company V/s. Pranay Sethi*³ which provides for compensation towards loss of consortium at ₹40,000/- to each of the parents. However, in the peculiar facts of this case, even if this

3 (2017) 16 SSC 680

amount is scaled down to ₹80,000/- there would be a proportionate increase under the other heads. Upon holistic consideration of the material on record and accepting the view of the Tribunal that this was indeed an exceptional case, the award warrants no interference even assuming that the appeal of the Insurance Company was maintainable.

12. Mr. Netravalkar relied on *United India Insurance Co. Ltd. V/s. Buro Mahara & Ors.*⁴. That was not at all a case wherein exceptional circumstances were brought on record. Besides, there is nothing in the said decision that supports the submission made by Mr. Netravalkar in this appeal. Mr. Netravalkar also relied upon *National Insurance Co. Ltd. V/s. Chandi Banerjee & Anr.*⁵, where the issue was whether in a claim under Section 163-A the multiplier should be selected with reference to the age of the victim. In this case, Mr. Netravalkar did not even dispute the adoption of a multiplier of 15. Therefore, none of the decisions advance the submissions made by Mr. Netravalkar in this matter.

13. For the aforesaid reasons, this appeal is dismissed. The amounts deposited by the Insurance Company can now be withdrawn by the claimants together with the interest that may have accrued thereon. The claimants will have to submit proper identification and bank details so that the Registry can directly transfer the amounts into their bank accounts.

4 2015 ACJ 2561

5 2015 ACJ 2524

14. The appeal is disposed of in the aforesaid terms. No costs.

M. S. SONAK, J.