

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA
FIRST APPEAL NO.54 OF 2017

National Insurance Company Ltd.
Through its Manager, having Branch Office
at 1st Floor Town Centre,
Bicholim Goa 403 504 ...Appellant

Versus

1. Mrs. Monica Vithal Kanekar
Widow of late Vithal Kanekar
Aged about 34 years, housewife,
2. Master Vismay Vittal Kanekar,
s/o late Vithal Kanekar,
aged 5 years,
Both resident of H.No.77, Kudshe
Sattari Goa.
(Through natural guardian Mrs. Monica
Kanekar (Respondent No.1 herein).
3. Shaikh Anwar,
s/o Abbas Shaikh Anwar,
Aged 51 years, driver,
Resident of Near Masjid in front of
CHC Hospital, Valpoi.
4. Mr. Sujit Suresh Salunke
s/o Suresh Salunke
resident of H.No.111, Velus,
Sattari Goa. ...Respondents

Mr. Amey Kakodkar and Mr. P. Shirodkar, Advocates for Appellant.

CORAM: M. S. SONAK, J

DATE : 7th July 2022

ORAL JUDGMENT

1. Heard Mr. A. Kakodkar, learned counsel for the Appellant.
2. Respondent Nos. 3 and 4, i.e., the owner and the driver of the offending vehicle, have not yet been served despite several opportunities. Accordingly, the appeal is liable to be dismissed against the said respondents.
3. However, Mr. Kakodkar was heard on his contentions concerning the respondent Nos.3 and 4. He submitted that the driver had no valid license, which amounted to a breach of the insurance policy.
4. The driver, in this case, stepped into the witness box and deposed that he not only had a license but further the same was renewed at the time of the accident. The Appellant - Insurance Company, in fact, examined the driver. Therefore, now the Appellant - Insurance Company cannot be heard to say that the driver did not possess a valid driving license on the date of the accident. Thus, even on merits, there is no ground to disturb the finding qua the respondent Nos. 1 and 2.
5. Mr. Kakodkar then submitted that there is no legal evidence to sustain the finding that the deceased was earning ₹11,000/- per month. He offered that the document indicated that the deceased was earning ₹9,000/- per month, and the balance amount of ₹2000/- was

paid to him as a transport allowance. Mr. Kakodkar also submitted that the award made towards future prospects, loss of consortium, love, and care, funeral expenses, and loss of estate is more than what is provided in *National Insurance Company Limited Vs Pranay Sethi and others*¹. He, therefore, submits that the impugned award warrants interference.

6. On the issue of compensation, there is ample evidence to sustain the finding that the deceased was drawing a monthly income of ₹11,000/-. There is evidence that the deceased had passed the course of civil engineering in 1994. There is evidence of employment with Ramkrit Cashew Industry in his capacity as a technical supervisor. The co-employees have been examined. All this evidence is sufficient to sustain the finding on monthly income.

7. Mr. Kakodkar is, however, justified in contending that the addition of only 40% was due to future prospects and not 50%. This contention derives support from *Pranay Sethi* (supra). Mr. Kakodkar is also justified in submitting that the amount of ₹40,000/- each is all that could have been awarded towards the consortium and not ₹2,00,000/- towards loss of consortium and loss of love and care. Mr. Kakodkar is also justified in contending that only ₹15,000/- each could have been awarded toward funeral expenses and loss of estate. Thus, by partially accepting Mr. Kakodkar's contentions, the

1 (2017) 16 SCC 680

compensation amount will have to be assessed at ₹19,57,880/- instead of ₹22,25,000/- as determined by the tribunal.

8. The appeal is partly allowed. The compensation amount of ₹22,25,000/- is reduced to ₹19,57,880/-. However, the award of interest at the rate of 8% per annum is maintained. The directions for the investment of the amount awarded to the minor son are maintained.

9. The Appellant has deposited the awarded amount. The claimants have also withdrawn an amount of rupees five lakhs. The Appellant and the claimants will now be entitled to withdraw the proportionate amount in terms of the impugned award as modified by this judgment and order. Both the parties will be entitled to the proportionate interest that shall accrue on this amount. The amount already withdrawn by the claimants will be appropriately adjusted.

10. Parties to furnish calculations, identification papers, and documents. Based upon the same, the registry to effect transfers directly into their bank accounts.

11. The appeal is partly allowed without any order for costs.

M. S. SONAK, J