Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.88 OF 2017

National Insurance Company Limited,
having office at Div. No.10,
Flat No.101 to 106, N-1, BMC House,
Connought Place, New Delhi,
110001, having its branch at First Floor,
Town Centre, Bicholim. … Appellant

Versus

1. Shri Kashiram Yeswant Dharne,
   s/o late Yeshwant Dharne, aged
   about 50 years, Farmer, married,
   Indian National, (since deceased
   represented through legal heirs i.e.
   Respondent Nos. 2 and 3.)

2. Smt. Sunita Kashiram Dharne,
   w/o Shri Kashiram Y. Dharne,
   aged about 45 years, housewife,
   married, Indian National.

3. Miss Saroj Kashiram Dharne,
   d/o Shri Kashiram Y. Dharne,
   aged about 21 years, student,
   married, Indian National,
   All resident of Village Sateli Bedshi,
   Taluka Dodamarg, District Sindudurg,
   Maharashtra.

4. Shri Gundoo Fuising Rajput,
   s/o Jalalbhai, major of age,
   Service, r/o Shanjanpur,

Uttar Pradesh, Presently r/o
Bhuipal Honda Sattari Goa
(Driver of Hero Honda Motorcycle
bearing No.GA-04-B-7900)

5. Shri Nilesh Raghunath Kanekar,
s/o Raghunath Kanekar, major in age,
Indian National, business,
r/o H.No.12/1, Sonarpeth,
Bicholim Goa (Owner of Hero Honda
Motorcycle bearing No.GA-04-B-7900). ...Respondents

Mr. Amey Kakodkar, Advocate for the Appellant-Insurance Company.

Mr. Sagar Dhargalkar, Advocate for respondent Nos. 1 to 3 – Claimants.

WITH

CROSS OBJECTIONS NO.9 OF 2017

IN

FIRST APPEAL NO.88 OF 2017

1. Shri Kashiram Yeshwant Dharne,
s/o late Yeshwant Dharne,
50 years of age, Farmer, married,
Indian National,
r/o Village Sateli Bedshi, Taluka
Dodamarg,
District Sindudurg, Maharashtra.
(Appellant No.1 since deceased represented
through his legal heirs Appellant Nos.2
and 3 who are already on record).

2. Smt. Sunita Kashiram Dharne,
w/o Shri Kashiram Yeshwant Dharne,

45 years of age, housewife,
Indian National,
r/o Village Sateli Bedshi, Taluka
Dodamarg,
District Sindudurg, Maharashtra.

3. Mrs. Saroj Kashiram Dharne,
d/o Shri Kashiram Dharne,
21 years of age, married,
Indian National,
r/o Village Sateli Bedshi,
Taluka Dodamarg, District Sindudurg, ...Cross Objectors
Maharashtra.

IN

National Insurance Company Limited,
Through its Branch Manager
having office at Div. No.10,
Flat No.101 to 106, N-1, BMC House,
Connought Place, New Delhi,
110001, having its Branch at First Floor,
Town Centre, Bicholim Goa. ...Appellant

Versus

1. Shri Kashiram Yeshwant Dharne,
s/o late Yeshwant Dharne, 50 years of age,
Farmer, married,
Indian National,
r/o Village Sateli Bedshi, Taluka Dodamarg,
District Sindudurg, Maharashtra.

2. Smt. Sunita Kashiram Dharne,
w/o Shri Kashiram Yeshwant Dharne,
45 years of age, housewife,
Indian National, r/o Village Sateli Bedshi,
Taluka Dodamarg,
District Sindudurg, Maharashtra.

3. Mrs. Saroj Kashiram Dharne,
d/o Shri Kashiram Dharne,
21 years of age, married, Indian National,

r/o Village Sateli Bedshi, Taluka Dodamarg,
District Sindudurg, Maharashtra.

4. Shri Gundoo Fuising Rajput,
s/o Jalalbhai, major of age,
r/o Shanjanpur,
Uttar Pradesh, Presently r/o
Bhuipal Honda Sattari Goa
(Rider of Hero Honda Motorcycle
bearing No.GA-04-B-7900)

5. Shri Nilesh Raghunath Kanekar,
s/o Raghunath Kanekar, major in age,
r/o H.No.12/1, Sonarpeth, Bicholim Goa.
(Owner of Hero Honda Motorcycle bearing
No.GA-04-B-7900). ...Respondents

Mr. Sagar Dhargalkar, Advocate for the Cross Objectors-Claimants.
Mr. Amey Kakodkar, Advocate for respondent – Insurance Company.

CORAM: M. S. SONAK, J

DATE : 6th May 2022

ORAL JUDGMENT:

1. Heard Mr. Sagar Dhargalkar, learned counsel for the Cross Objectors (claimants), and Mr. Amey Kakodkar, learned counsel for the respondent -Insurance Company.

2. In the Appeal by the Insurance Company, admittedly, no leave was obtained under Section 170 of the Motor Vehicles Act, 1988 before the Motor Accident Claims Tribunal. Therefore, by following the law laid 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 others[1]**,** the appeal will have to be dismissed, but the Cross Objections filed by the claimants-respondents will have to be considered.

3. Mr. Dhargalkar, learned counsel for the claimants/cross objectors, submits that the tribunal has incorrectly discarded the salary certificate and the evidence of Vishwajeet Ghadi (AW2) employer, who was examined in this matter. He submits that based on both oral and documentary evidence, the income of the deceased Yeshwant Dharne should have been assessed at ₹6000/- per month. He relies on ***Royal Sundaram Alliance Insurance Company Ltd., Vs Smt. Varsha Rajendra Pache and others***[2] and ***Sangita Sudhakar Turke and others Vs National Insurance Co. Ltd. and Another***[3] in support of this contention.

4. Mr. Dhargalkar submits that in this case, the deduction towards the personal expenses of Yeshwant Dharne should have been 1/3rd and not ½. He relies on ***Magma General Insurance Company Limited Vs Nanu Ram alias Chuhru Ram and others***[4] to support this contention.

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1 (2020) 2 Bom CR 465
2 2018(2) ALL MR 852
3 2021(2) ALL MR 661
4 (2018) 18 SCC 130

5. Mr. Dhargalkar also submits that the compensation towards the consortium should have been awarded in favor of each of the claimants. Since that is not done, the award warrants interference.

6. Mr. Amey Kakodkar, learned counsel for the insurance company, submits that Yeshwant Dharne was not some regular employee but only placed under observation. He points out that Yeshwant Dharne died within two days of being placed under observation, and therefore, the tribunal was justified in going by notional income.

7. Mr. Kakodkar points out that no compensation should have been awarded for the loss of love and affection. Further award of ₹1,00,000/- towards loss of consortium is contrary to the law laid down in ***National Insurance Company Limited Vs Pranay Sethi and others***[5].

8. Mr. Kakodkar points out that the law laid down in *Pranay Sethi* (supra) requires a deduction of 50% in the case of a bachelor. He points out that in this case, the family of Yeshwant Dharne was not large, and therefore, para 32 of ***Sarla Verma Vs DTC***[6] will not apply. Mr. Kakodkar, based on the above submissions, urged the dismissal of the cross-objections.

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5 (2017) 16 SCC 680

6 (2009) 6 SCC 121

9. The rival contentions now fall for my determination.

10. On the aspect of Yeshwant's income, I agree with Mr. Dhargalkar that the documentary and oral evidence on record should not have been ignored. The documentary evidence does refer to the income of ₹6000/- per month. Moreover, AW2 Vishwajeet Ghadi, a security contractor, stepped into the witness box and deposed to the certificate at Exhibit 41. Therefore, although Yeshwant may have been placed under observation, the document at Exhibit 41 coupled with the deposition of AW2 indicates that Yeshwant was almost assured of a job with a salary of ₹6000/- per month but for his unfortunate demise in the vehicular accident. In such circumstances, the tribunal should have accepted claimants' case that Yeshwant's income was indeed ₹6000/- per month.

11. In *Royal Sundaram* (supra), the learned Single Judge of this Court has held that there is no cogent reason why an employer's bare words should not be sufficient or should demand corroboration each time. This decision also holds that the fact that there is no documentation does not of its own, mean that the oral evidence of the employer should always be disbelieved. The observations of another learned Single Judge of this Court are similar to the same effect in *Sangita Turke* (supra). Applying the principles in these two decisions, Mr. Dhargalkar's first contention about Yeshwant's income being ₹6000/- per month will have to be accepted.

12. The second aspect is about the deduction towards personal expenses. The tribunal has deducted 50% based on the premise that Yeshwant was a 23 years old bachelor at his unfortunate demise.

13. *Magma* (supra) relies on para 32 of *Sarla Verma* (supra) and upholds the High Court award that had made a deduction of only 1/3rd from a bachelor's income as against normal ½. In *Magma* (supra) the claimants were the father and unmarried sister. The discussion is to be found in para 16 of *Magma* (supra) which reads as follows:-

> "**16**. *With respect to the issue of deduction from the income of the deceased, the Insurance Company contended that the deduction ought to have been ½, and not 1/3rd, since the deceased was a bachelor. This issue has been dealt with in paragraph 32 of the judgment in Sarla Verma (supra) wherein this Court took the view that where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third, as contribution to the family will be taken as two-third. Considering that the deceased was living in a village, where he was residing with his aged father who was about 65 years old, and Respondent No. 2, an unmarried sister, the High Court correctly considered them to be dependents of the deceased, and made a deduction of 1/3rd towards personal expenses of the deceased. The judgment of the High Court is, therefore, affirmed on this count."*

14. In the present case, the claimants are parents and an unmarried sister. There is evidence that the claimant lived along with his family in a border village of Dodamarg. Moreover, there is evidence that the claimant's father was involved in agriculture. Considering these peculiar facts and circumstances and the decision of the Hon'ble Apex Court in *Magma* (supra), the deduction, in this case, should be to the extent of 1/3rd and not ½.

15. Towards consortium, considering the law laid down in *Pranay Sethi* (supra) and *Magma* (supra), each claimant should have been awarded compensation of ₹40,000/-. Similarly, considering the decision in *Pranay Sethi* (supra) the claimants would be entitled to the compensation of ₹15,000/- towards loss of estate and ₹15,000/- towards funeral expenses.

16. There is no dispute about Yeshwant's age, and consequently, the applicable multiplier is 18. The compensation towards dependency will thus have to be assessed at ₹12,09,600/-. A further amount of ₹1,50,000/- will be added towards consortium, loss of estate, and funeral expenses. In this case, the just compensation will have to be determined at ₹13,59,600/-.

17. Therefore, the cross objections are allowed, and the just compensation is determined at ₹13,59,600/- instead of ₹6,11,000/- determined by the tribunal.

18. The insurance company is now directed to deposit the enhanced compensation portion within two months from today, together with interest awarded by the tribunal. Necessary intimation will have to be given to the cross objectors' learned counsel before making such a deposit. The cross objectors will be entitled to withdraw this amount after providing proper documentation and bank details. The registry to facilitate the remission of this amount directly into the claimants' bank accounts.

19. Before any amount is withdrawn, the cross objectors, consistent with their undertaking, will have to pay the balance Court fees.

20. There is some ambiguity in the impugned award whether any compensation was awarded towards loss of love and affection. However, considering the law laid down in *Pranay Sethi* (supra) and other decisions, there was no question of making any award in this head.

21. Accordingly, the appeal is dismissed, but the cross-objections are allowed in the above terms.

22. Accordingly, there shall be no order for costs.

M. S. SONAK, J