

Niti

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.35 OF 2018

IFFCO TOKIO General Insurance
Company Ltd., having office at A/2,
Reliance House, Isidorio Baptista
Road, Pajifond, Margao, Salcete,
Goa.

... Appellant

Versus

1. Smt. Ratna Shetty,
Widow of late Vithal @ Vittal
Shetty, aged 50 years, housewife.

2. Mr. Sudhir Shetty,
Son of Mr. Vithal @ Vittal Shetty,
age 30 years.

3. Mr. Sujay Shetty,
Son of Mr. Vithal @ Vittal Shetty,
age of 28 years, service,
through his POA,
Smt. Ratna Shetty.

4. Mr. Sampan Shetty,
Son of Mr. Vithal @ Vittal Shetty,
age of 23 years, student,

All residents of G-12, Priyanka
Enclave, Behind Kerkar Hospital,
Aquem-Alto, Tolsabzor (part),
Margao, Salcete, Goa.
Pin Code 403601.
Phone 7709599999

... Respondents

5. Shri Godfrey Silva,
Son of Shri Gabriel Silva,
Aged 23 years,
R/o. H.No.291, Comba,
Sao Jose de Areal, Salcete, Goa.

} Deleted as per order dated
15.02.2018 passed in MCA
No.662/2017.

Mr. Clayton A. Fonseca, *Advocate for the Appellant.*
Ms. Gauri Borkar, *Advocate for Respondent Nos.1 to 4.*

CORAM : M. S. SONAK, J.

DATE : 7th JULY 2022

ORAL JUDGMENT :

1. Heard Mr. Clayton Fonseca for the Appellant – Insurance Company and Ms. Gauri Borkar for the respondents – claimants.
2. Learned Counsel for the respondents had undertaken to prepare the paper book in this matter. However, to date, no paper book has been prepared; therefore, the matter could not be taken up for final hearing.
3. When the matter was placed for directions, the learned Counsel for the parties agreed that the same could be disposed of finally based on the records and proceedings that are readily available. Accordingly, the matter was finally heard. The records and proceedings were also perused.

4. The challenge in this appeal is to the judgment and award dated 12.10.2016 in Claim Petition No.97/2014 made by the Motor Accident Claims Tribunal, Margao (Tribunal).

5. By the impugned judgment and award, the Tribunal has awarded compensation of ₹40,25,000/- to the respondents - claimants for the demise of Vithal Shetty in a vehicular accident. The claimants are the widow and his three sons.

6. Mr. Fonseca, learned Counsel for the Appellant – Insurance Company, submits that the Tribunal erred in taking Vithal's monthly income at ₹50,000/- when the income tax returns produced by his Chartered Accountant Mr. Vilas V. Shanbag (AW5) refer to Vithal's annual income for the assessment year 2012-13 at ₹4,72,026/-. Mr. Fonseca submits that respondents nos.2 & 3 were of major age and consequently not dependent upon the income of Vithal. He submits that in such circumstances, a case was made out to deviate from the normal rule of deduction of 1/4th. He submits that in the present case, the deduction was correctly held by the Tribunal as 1/3rd. He relies on *United India Insurance Company Ltd. V/s. Satinder Kaur @ Satwinder Kaur*¹.

¹ 2021 11 SCC 780

7. Mr. Fonseca then submits that the Tribunal was not justified in awarding compensation of ₹1,00,000/- towards consortium and ₹1,00,000/- each towards love and affection, and ₹25,000/- towards funeral expenses. He submits that in terms of the law in *National Insurance Company Limited V/s. Pranay Sethi & Ors.*² and *Satinder Kaur* (supra) the total compensation towards consortium, funeral expenses, and loss of estate could not have exceeded ₹1,90,000/-. Finally, Mr. Fonseca submitted that the award of interest at the rate of 9% is excessive, and the same ought to be scaled down to 7% per annum.

8. Ms. Borkar defends the impugned award based on the reasoning reflected therein. She points out that the Assistant Branch Manager of Vijaya Bank, Mr. Nishant Kumar Singh (AW2), had produced the statements of earnings of Vithal. Based upon the same, the Tribunal was justified in assuming Vithal's income at ₹50,000/- per month. However, she submits that the Tribunal erred in not adding 10% towards future prospects in terms of *Pranay Sethi* (supra).

9. The rival contentions now fall for my determination.

² (2017) 16 SCC 680

10. The Tribunal, in this case, has gone by the evidence produced by AW2 to conclude that Vithal's annual income was in the range of ₹50,000/-. However, the Tribunal failed to notice that Vithal as a Pigmy Bank collector did not have any fixed income. Even the statements produced by AW2 reflect this position.

11. Moreover, the Tribunal ignored the most vital evidence of income tax returns for the assessment year 2012-13 produced on record by none other than AW5 – Vithal's Chartered Accountant. This statement reflects that Vithal's income at the unfortunate accident was ₹4,76,026/- per annum, which translates into a monthly income of ₹39,335/-. This can be rounded to ₹40,000/- per month.

12. In terms of *Pranay Sethi* (supra) the Tribunal should have made an addition of 10%, considering that Vithal was 56 years old at the time of the accident and his demise. Therefore, Vithal's monthly income should have been taken at ₹44,000/-.

13. The Tribunal was not justified in making a deduction of 1/3rd. His widow and three children survived Vithal. Ms. Borkar pointed out that two of the children though majors were unemployed and dependent on Vithal. There was no cross-

examination by the respondents on the issue of dependence. The Tribunal was therefore not justified in deducting 1/3rd towards personal expenses of Vithal. The deduction, in terms of law laid down in *Reshma Kumari Ors. V/s. Madan Mohan & Anr.*³ and *Sarla Verma (Smt.) & Ors. V/s. Delhi Transport Corporation & Anr.*⁴ should have been 1/4th and not 1/3rd. This means that Vithal's contribution to his dependents should have been taken as ₹33,000/- per month.

14. There is no dispute about the appropriate multiplier being 9. This means that the total compensation towards dependency would come to ₹35,64,000/-.

15. Mr. Fonseca is, however, justified in contending that excessive amounts have been awarded by the Tribunal towards consortium, loss of love and affection, and funeral expenses. In terms of *Pranay Sethi* (supra) and *Satinder Kaur* (supra), ₹40,000/- each could have been awarded towards loss of consortium, ₹15,000/- towards funeral expenses, and ₹15,000/- towards loss of estate. Therefore, to the above amount, an addition of ₹1,90,000/- is due.

3 2013 9 SCC 65

4 2009 6 SCC 121

16. The total compensation, in this case, works out to ₹37,54,000/-. This would represent the just compensation payable to the respondents – claimants in the present matter.

17. Since the accident occurred in 2012, there is no case made out to interfere with the award of interest at the rate of 9% per annum.

18. Accordingly, this appeal is partly allowed, and the compensation of ₹40,25,000/- is reduced to ₹37,54,000/-. The award of interest is, however, maintained.

19. Mr. Fonseca states that the entire awarded amount is deposited in this Court. Accordingly, the Appellant and the respondents – claimants will be entitled to withdraw such amount proportionately. The Appellant will also be entitled to the proportionate interest that shall have accrued on the deposited amount.

20. The appellants and the respondent nos.1 to 4 – claimants to exchange the calculations and furnish identification documents and bank details to the Registry so that the Registry can transfer the proportionate amounts to their respective bank accounts.

21. The appeal is partly allowed in the above terms. However, there shall be no orders for costs.

22. Misc. Civil Application No.101/2022 does not survive, and the same is disposed of.

M. S. SONAK, J.

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HALDANKAR

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