

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.139/2017

1. MR. NEWTON CRUZ, aged 30,
service, son of late Sebastiao Cruz,
Bachelor.

2. MR. DENZIL CRUZ, aged 28,
service, son of late Sebastiao Cruz,
Bachelor.

3. MR. FRANKY CRUZ, aged 27,
service, son of late Sebastiao Cruz,
Bachelor.

(applicant nos.1, 2 & 3 are all
residents of H. No.567/1, Karai-
Bhag, Shiroda, Ponda-Goa). Pin Code
403703.

... APPELLANTS

Versus

1. MR. SARANG BETKIKER, aged
27, son of Ratanji Betkiker, Bachelor,
service, resident of H. No.1163,
Shiroda, Ponda, Goa. (rider of TVs
Apache motorcycle bearing Reg.
No.GA-05-C-6143).

2. MR. KEDAR BETKIKER, major
in age, son of Ratanji Betkiker,
Bachelor, service, resident of H.
No.1163, Shiroda, Ponda, Goa. (rider
of TVs Apache motorcycle bearing
Reg. No.GA-05-C-6143).

3. BAJAJ ALLIANZ INSURANCE,
112, & 113, First Floor, Guno Sai
Plaza, Near Adarsh School, Pajifond,
Margao, Goa.

... RESPONDENTS

Mr. Jeevan Bandekar, Advocate *for the Appellants*.

Mr. Milton Marshal, Advocate *for the Respondents No.1 and 2*.

Mr. Amey Kakodkar and Mr. Pankaj Shirodkar, Advocates *for the Respondents No.3*.

CORAM.: M. S. SONAK, J.

DATED: July 14, 2022

ORAL JUDGMENT:

1. Heard learned counsel for the parties.
2. This appeal is directed against the Judgment and Award dated 10.11.2016 in Claim Petition No.97/2015, by which the Motor Accident Claims Tribunal (Tribunal) awarded the appellants (claimants) compensation of ₹1,25,000/- inclusive of No-Fault Liability amount with interest 9% p.a. from the date of the petition till actual payment. The Tribunal apportioned this compensation equally between the three claimants, who are brothers of Vicky D'Cruz, who died in the vehicular accident on 04.06.2014.
3. Mr. Bandekar, the learned counsel for the claimants, submitted that the claimants were legal representatives of the

deceased Vicky and, further, were dependent upon him. He offers that the claimants had already lost their parents and therefore depended on each other for sustenance. He submitted that claimant no.3 - Franky was unemployed at the time of Vicky's death and, therefore, was entirely dependent on Vicky. He submits that the award of only ₹1,25,000/- does not amount to just compensation. He relies on *The New India Assurance Company Ltd. vs. Sunil Parsharam Garud & Ors.*¹, *National Insurance Company Limited vs. Birender and Others*² and *Gujarat State Road Transport Corporation, Ahmedabad vs. Ramanbhai Prabhatbhai, and another*³ in support of his submission.

4. Mr. Amey Kakodkar, the learned counsel for respondent no.3, submits that there was no evidence of any of the claimants being dependent on Vicky in this case. He proposes that the locus to maintain an application for compensation and the ultimate compensation award are two different matters. He submits that the legal representatives may maintain an application seeking compensation. Still, unless they establish a dependency, there is no question of the Tribunal awarding them any compensation, except perhaps payment towards consortium and funeral

1. 2016 (2) ALL MR 354

2. (2020) 11 SCC 356

3. 1987 ALL MR ONLINE 379 (S.C.)

expenses. He submits that the impugned award may not be interfered with.

5. Mr. Marshal appears for respondents nos.1 and 2 and submits that this appeal may be dismissed.

6. On the aspect of the locus of the claimants to maintain an application under Section 166 of the Motor Vehicles Act, there can be no dispute. Even the Tribunal has not held that the claim petition was not maintainable. The decisions relied upon by Mr. Bandekar hold that such a claim petition by a legal representative is maintainable, irrespective of whether such legal representative is a dependent or not.

7. However, the maintainability of a claim petition or the *locus standi* of a legal representative is one aspect. Still, the award of compensation by a Tribunal based on the dependency of the claimants is quite another aspect. This latter aspect will have to be examined based on the evidence that the parties lead before the Tribunal.

8. In *Farzana vs. Maharashtra State Road Transport Corporation*,⁴ the Coordinate Bench has explained this

4. 2016 (4) MLJ 602

distinction and held that while it would be open for a legal representative to maintain proceedings for grant of compensation, the entitlement to the same would depend on the material placed on record concerning dependency of the claimants vis-a-vis the deceased. The right to seek compensation cannot straightway lead to the conclusion that such a claimant depended on the deceased. It would be a matter of evidence to be led in the proceedings while determining the amount of compensation. The aspect of dependency has to be pleaded and proved by the claimants before any compensation is granted to them.

9. The Coordinate Bench referred to and distinguished the decision in *Gujarat State Road Transport Corporation, Ahmadabad (supra)* that was relied upon by Mr. Bandekar in this case. Even otherwise, in *Gujarat State Road Transport Corporation (supra)*, the Hon'ble Supreme Court has held that in an Indian family, brothers, sisters, children, and sometimes foster children live together and are dependent upon the breadwinner of the family. Therefore, if the breadwinner is killed due to a motor vehicle accident, there is no justification to deny them compensation. In the present case, there is no evidence about Vicky being the family's breadwinner. He was the youngest, and the two eldest brothers earned more than Vicky.

10. Claimant no.1 Newton Cruz, the eldest brother of Vicky deposed in this matter. In his chief, he had deposed that Vicky was working in Holiday Inn Resort and drawing a monthly salary of ₹6,500/- at the time of his death. He also deposed that Vicky was 24 years old at the time of the accident and was enjoying good health. He deposed that Vicky's death caused the brothers much agony, pain, and loss of company. He also deposed that the claimants were deprived of the love and care they received from Vicky after Vicky's death. He also added that after Vicky's death, there was no help/support for them. He claimed compensation for pain and agony, loss of income, association, funeral expenses, and other miscellaneous expenditures.

11. No particulars whatsoever are to be found in the affidavit in lieu of examination-in-chief on the aspect of whether or how the claimants, who were the three elder brothers, were dependent on Vicky. Simply saying that Vicky was help and support does not establish dependency. The evidence, at the highest, supports the case for some compensation towards the consortium.

12. In the cross-examination, there is a statement that claimant no.3 – Franky, was unemployed. However, Newton admitted that at the time of his deposition on 18.08.2016, Franky was on a Visit Visa abroad. Newton clarified that Franky had gone on a

Visit Visa to look for a job abroad. Based on this, Mr. Bandekar submitted that Franky was unemployed and dependent on Vicky.

13. Franky was about 27 years old at the time of the accident. Even assuming he was unemployed, no inference can be drawn about his dependence on his younger brother Vicky. Neither any pleadings nor any persuasive evidence to support such an inference. At the highest, some inference can be drawn that Vicky would have contributed something to Franky's search for employment abroad or his sustenance until employed.

14. The situation was quite different in *National Insurance Company Ltd. vs. Birender (supra)*. There, the Court found that the two major sons were indeed largely dependent on their mother, who was a Government servant. Such evidence of dependency is not to be found in the present case. Similarly, *Sunil Parsharam Garud (supra)* was a case of the wife's death in a vehicular accident. The Court held that merely because the husband was earning does not mean he was not dependent on his wife. The Court held that the incomes of the husband and wife were equally essential and supplemented the domestic operations. Such evidence is not to be found in the present case.

15. The claimants are entitled to compensation of ₹40,000/- each towards loss of consortium, ₹15,000/- towards the funeral expense, and another ₹15,000/- towards loss of estate. Besides, Franky (claimant no.3) can be awarded an additional amount of ₹50,000/- as Vicky's potential contribution to Franky's settling in life. Thus, the just compensation, in this case, can be assessed at ₹2,00,000/-.

16. However, the Tribunal has already awarded ₹1,25,000/-, which means that the claimants would be entitled to additional compensation of ₹75,000/-. Out of this further compensation of ₹75,000/-, an amount of ₹50,000/- will have to be paid to Franky. Therefore, the balance of ₹25,000/- will have to be equally apportioned amongst the three claimants.

17. The appeal is partly allowed. The impugned award is modified to the above extent. There shall be no order for costs.

18. The respondents, including in particular respondent no.3, are directed to deposit the entire compensation amount as determined above together with the interest that shall have accrued thereon, within six weeks from today in this Court, after due intimation to the learned counsel for the appellants. Upon deposit, the claimants will be entitled to withdraw the same in the

proportions indicated by the Tribunal and this Court. In addition, the claimants will have to furnish identity documents and bank details so that the Registry can transfer the amounts into their bank accounts.

M. S. SONAK, J.

SUCHITRA
NANDAN
SINGBAL

Digitally signed by
SUCHITRA NANDAN
SINGBAL
DN: cn=2022.07.15
10:32:22 +05'30'