

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
FIRST APPEAL NO.7 OF 2016
WITH
MISC. CIVIL APPLICATIONS NO.440/2016
& 779/2016

The New India Assurance Company
Ltd.,

Dadaji Mension, Opp. Saraswat Bank,
2nd Floor, Ponda, Goa.

.... Appellant.

Versus.

1. Smt. Savita Sajjan Naik,
widow of Sajjan Naik,
aged 38 years, housewife,

2. Miss Sankita Sajjan Naik,
d/o. Late Sajjan Naik, aged 8 years,
Student.

3. Miss Sanjana Sajjan Naik
d/o. Late Sajjan Naik, aged 6 years,
(Respondents No.2 & 3 being minors
represented by their mother & natural
guardian Respondent No.1)

4. Smt. Shanta Gurudas Naik
w/o. Late Gurudas Naik,
aged 62 years, All residents of
House No.452, Nr. Temple, Vollant,
Cortalim, Mormugao, Goa.

5. Basappa Bheemappa Walikar,
s/o. Bheemappa Walikar, r/o.
H.No.382/25, Shincollim, Mapusa, Goa Respondents.

**Mr. Amey Kakodkar with Mr. Pankaj Shirodkar, Advocates
for the Appellant.**

**Mr. Dharmendra Vernekar, Advocate for the Respondents No.1
to 3.**

CORAM : M. S. SONAK, J.

DATE : 7th July 2022

ORAL JUDGMENT: -

1. Mr. Kakodkar produces a copy of the affidavit dated 28/11/2016 about service upon Respondent No.5 by publication in 'Lokmat' and 'Gomantak Times' dated 19/11/2016. These newspapers are also on record. Therefore, service is complete on Respondent No.5.

2. This Appeal challenges the Judgment and Award dated 31/10/2015 in Claim Petition No.76/2014 made by the Motor Accident Claims Tribunal at Margao (Tribunal).

3. The Tribunal has awarded compensation of ₹34,62,500/-, with interest at the rate of 9% per annum from the date of Petition till realization to the widow and two minor daughters of Sajjan Naik, who died in a vehicular accident on 16/11/2013.

4. Mr. Kakodkar, learned Counsel for the Appellant, submits that there was no legal evidence on record to establish any rashness and negligence on the part of the driver of the tempo bearing registration No.GA-09-T-5239 (offending vehicle). He submits that the evidence shows that the tempo driver was not at fault; therefore, the Tribunal erred in holding otherwise.

5. Mr. Kakodkar submitted that there was no legal evidence to hold that Sajjan's income was ₹15,000/- per month at the time of his death. No documents were produced, though it was claimed that Sajjan was appointed abroad (Oman). He, therefore, submits that the Tribunal erred in taking Sajjan's income at ₹15,000/- per month.

6. Finally, Mr. Kakodkar submits that the Tribunal's Award towards consortium loss; care and guidance loss, love and affection loss, and funeral expenses are contrary to the law in *National Insurance Company Limited vs. Pranai Sethi & ors.*¹. He submits that towards all this, compensation of a maximum ₹40,000/- could have been awarded to each of the Claimants. He submits that the compensation towards funeral expenses could not have exceeded ₹15,000/-.

1. (2017) 16 SCC 680

7. On all the above grounds, Mr. Kakodkar submits that this Appeal may be allowed.

8. Mr. Vernekar defends the impugned Award based on the reasoning reflected therein. He points out that the tempo driver did not step into the witness box even though the charge sheet was filed against him for rashness and negligence. He submits that there is ample evidence about Sajjan's income of ₹15,000/- per month. He, therefore, submits that this Appeal may be dismissed.

9. The rival contentions now fall for determination.

10. On the aspect of rashness and negligence, there is ample evidence on record to sustain the findings recorded by the Tribunal. The tempo driver did not even bother to step into the witness box and explain his version. The record bears out that prosecution was launched against the tempo driver for rashness and negligence.

11. Considering the law laid down by the Hon'ble Supreme Court in *Sunita and others vs. Rajasthan State Road Transport Corporation and ors.*² and *Anita Sharma and ors.*

2. (2020) 13 SCC 486

*vs. New India Assurance Company Limited and anr.*³, there is no case made out to interfere with the findings of rashness and negligence as recorded by the Tribunal.

12. On the aspect of income, again, there is evidence that Sajjan was working as a Cleaner/Operator for BEC Company at Oman and earning an amount of ₹15,000/- per month. There was no serious cross-examination on this issue, and there is no case made out to interfere with the findings recorded by the Tribunal. An employment agreement was produced, but the same was marked 'B for proof', possibly because the employer was not examined. However, the Tribunal has relied correctly on Sajjan's resident and identity cards. His passport is also on record. On a cumulative consideration of all this material, the Tribunal was justified in accepting the Claimants' case that Sajjan was indeed employed in Oman and was earning ₹15,000/- per month.

13. Mr. Kakodkar is, however, right in his submission that the Tribunal could not have awarded the amounts which it has in Clauses (v), (vi), (vii), and (viii) of paragraph 21 of the impugned Award. In terms of *Pranay Sethi (supra)*, the Tribunal could have awarded ₹40,000/- to each claimant towards the consortium. In addition, the Tribunal could have awarded ₹15,000/- towards

3. (2021) 1 SCC 171

funeral expenses and a further sum of ₹15,000/- towards loss of estate. Therefore, the impugned Award will have to be modified to this extent. Upon such modification, the compensation amount is assessed at ₹32,27,500/-.

14. This Appeal is, therefore, partly allowed. The compensation amount is reduced from ₹34,62,500/- to ₹32,27,500/-. The Award of interest by the Tribunal is maintained.

15. The Respondents/Claimants will now be entitled to withdraw the portion of the amount deposited by the Appellant/ Insurance Company consistent with this Judgment and Order. The Respondents/Claimants will also be entitled to interest on the deposited amount. The Appellant/Insurance Company will be entitled to withdraw the balance amount.

16. The Appellant and the Claimants should exchange and furnish calculations to the Registrar. The Claimants/Respondents should also produce identification papers and furnish bank details so that the Registry can transfer proportionate amounts, together with interest, directly in their bank account.

17. In terms of the impugned Award, if the Respondents/ Claimants have not paid additional court fees, they should do the same before withdrawing the amount.

18. Misc. Civil Applications do not survive in view of the disposal of the Appeal and, therefore, they are also disposed of. Accordingly, there shall be no order for costs.

M. S. SONAK, J.