Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.125 OF 2017
WITH
CIVIL APPLICATION NO.257 OF 2017

IFFCO TOKIO GENERAL INSURANCE CO. LTD.
A/2, 1st Floor, Reliance House, Isidorio Baptista Road, Pajifond, Margao, Goa 403 601 .... Appellant.

Versus.

1. Mrs. Bindiya Kushali Velip
w/o late Kushali Velip, major of age, Housewife,

2. Miss. Teja Kushali Velip,
d/o late Kushali K. Velip, major of age,

3. Sidharth Kushali Velip,
S/o late Kushali Velip, minor of age, all residents o H.No. 570, Velipwado, Barcem, Quepem-Goa (respondent no.1 is natural guardian of respondent no. 3)

[4. Shri Duraisamy P.,
son of Periyasamy, major of age, r/o H. No.2/147, Pothapuram, Mallkutti, Palacode, TK Dharmapuri, Tamil Nadu, (Driver of the Innova Car bearing Reg.

No.KA-01-AC-5993).

5. Shri Ganpath Rao,
son of Maruti Rao, major in age, r/o. H. No. 2, Rajgopal Reddi Building, 1st Floor-Haralur village, Agra Post, Bangalore-56010 (owner of the Innova Car No.KA-01-AC-5993).]
Respondents No.4 and 5 deleted as per order dated 22.09.2022. ….. Respondents.

Mr. Clayton Anthony Fonseca, Advocate *for the Appellant.*

Mr. Sanman R. Keny, Advocate *for the Respondents No.1 to 3.*

CORAM : M. S. SONAK, J.

DATE : 21st October 2022

ORAL JUDGMENT: -

1. Heard Mr. Fonseca for the Appellant and Mr. Keny for Respondents No.1, 2 and 3.

2. The challenge in this Appeal is to the Award dated 7th February, 2017 made by the Motor Accident Claims Tribunal, at Margao (Tribunal), awarding the Claimants compensation of ₹24,53,000/-, with interest at the rate of 9% per annum, from the date of Claim Petition till payment.

3. Mr. Fonseca submits that the insured vehicle had no valid permit and this amounts to fundamental breach of the insurance policy. Without prejudice, he submits that the compensation awarded is not in terms of the law laid down in ***National Insurance Company Limited vs. Pranay Sethi & Ors.***[1]. He also submits that the interest awarded is excessive.

4. Mr. Keny defends the impugned award by submitting that there was no evidence on the aspect of permit. He submits that the compensation awarded, amounts to just compensation, in the facts and circumstances of the present case.

5. Rival contentions now fall for my determination.

6. Mr. Keny is justified in contending that there is no proper evidence on the aspect of valid permit. It is settled law that the onus is on the Insurance Company to plead and prove any breach of the terms of the insurance policy. Considering the evidence, or rather the lack of evidence on this aspect, the Tribunal has correctly imposed the liability, *inter alia,* on the Appellant-Insurance Company.

7. On the second point, a reference can be made to the table in paragraph 66 of the impugned Award, which reads as follows :

Sr. No.	**Head of compensation**	**Amount**
1	Loss of dependency	₹ 20,28,000/-
2	Loss of consortium	₹ 1,00,000/-

1. (2017) 16 SCC 680

3	Loss of love and affection	₹ 2,00,000/-
4	Loss of estate	₹ 1,00,000/-
5	Funeral expenses	₹ 25,000/-
	Total ….	₹ 24,53,000/-

8. On the aspect of loss of dependency, there is no error. The evidence on record supports this determination. There is no serious dispute about the age of the deceased and the multiplier to be adopted. There is also no dispute on the income of the deceased. Therefore, the compensation towards loss of dependency in the sum of ₹20,28,000/- is sustained.

9. Towards loss of consortium, each of the Claimants were entitled to compensation of ₹40,000/- in terms of *Pranay Sethi* (supra). Therefore, the compensation under the head of loss of consortium will have to be increased from ₹1,00,000/- to ₹1,20,000/-. The compensation of ₹2,00,000/- for loss of love and affection will, however, have to be deleted now that this compensation is awarded towards loss of consortium. This is consistent with the law laid down by the Hon'ble Supreme Court in *Pranay Sethi* (supra). This position was reiterated in ***United India Insurance Co. Ltd. vs Satinder Kaur @ Satwinder Kaur &***

ors[2].

10. Towards loss of estate and funeral expenses, the compensation due would be ₹15,000/- each, and not ₹1,00,000/- and ₹25,000/-, as awarded in the impugned award.

11. The accident, in this case, occurred on 14/4/2014. Therefore, the interest at the rate of 9% per annum, is excessive. An appropriate interest in such a case would be 7% per annum.

12. Thus, in this case, the just compensation will have to be determined at ₹21,78,000/-, with interest at the rate of 7% per annum from the date of claim petition, till actual payment.

13. This appeal is partly allowed by determining the compensation and the interest as above.

14. The Claimants will be entitled to withdraw the above amount from out of the entire amount deposited by the Appellant-Insurance Company by furnishing appropriate identity documents and bank details. Registry to ensure that the amounts are directly transferred to the Claimants' bank accounts. The Appellant-Insurance Company will be entitled to withdraw the balance amount.

---

2. (2021) 11 SCC 780

15. Both, the Claimants and the Appellant-Insurance Company, will be entitled to appropriate interest that shall have accrued on the deposited amount.

16. The Appeal is disposed of in the above terms. In view of the disposal of the Appeal, Civil Application also stands disposed of. Accordingly, there shall be no order for costs.

M. S. SONAK, J.

SANTOSH S MHAMAL Digitally signed by SANTOSH S MHAMAL Date: 2022.10.21 15:45:18 +05'30'