Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.35 OF 2022

1 Smt. Nisha Sunil Naik
wife of late Mr. Sunil Naik,
aged 39 years, housewife,

2 Mast. Varad Sunil Naik
Son of late Mr. Sunil Naik,
aged 07 years (minor)
represented by his mother
Mrs Nisha Sunil Naik as
natural guardian.

3 Mast. Vignesh Sunil Naik
Son of late Mr. Sunil Naik
aged 04 years (minor),
represented by his mother
Mrs Nisha Sunil Naik as natural
guardian.

4 Smt. Anjani Ratnakar Naik,
Wife of Mr. Ratnakar Naik,
aged 57 years, housewife,

5 Mr. Ratnakar Pandurang Naik
Son of late Mr. Pandurang Naik,
aged 63 years, unemployed,
All resident of House No.979,
Palwada, Usgao, Ponda Goa. … Appellants

Versus

1 Shri Rajaram Ganapati Toruskar
Son of Mr. Ganapati Toruskar,
major in age,

resident of House No.1748,
Sainagar, Tisk-Usgao,
Ponda Goa (driver),

2 Shri Pritesh Premanand Naik Shirodkar,
Son of Mr. Premanand Naik Shirodkar,
major in age, resident of
House No.504, Shiroda, Ponda Goa.

3 Iffco Tokio General Insurance Co. Ltd., (through its Manager),
Branch Panaji Goa, Behind Military Hospital, Panaji Goa. … Respondents

Mr. Milton Marshal, Advocate for the Appellants/Claimants.
Mr. Clayton Fonseca, Advocate for Respondent No.3 – Insurance Company.

CORAM: M. S. SONAK, J.

DATED : 22nd DECEMBER 2022

ORAL JUDGMENT

1. Heard Mr Milton Marshal, learned counsel for the Appellants/Claimants and Mr C. Fonseca, learned counsel for Respondent No.3-Insurance Company. Respondents Nos. 1 and 2 served neither present nor represented.

2. The Appellants/Claimants challenge the judgment and award dated 31.03.2022 in Claim Petition No.57/2019, by which they have been awarded compensation of only ₹12,88,400/- for the death of Sunil Naik on whom they were dependent.

3. Mr Marshal, learned counsel for the Appellants, submits that the tribunal erred in rejecting the evidence about Sunil's income being ₹18,000/- per month. He presents that the employer (AW2) was examined in this matter who deposed to driving, supervisory and agricultural works that Sunil used to undertake for him against a monthly salary of ₹18,000/- per month. He submits that the tribunal also applied the incorrect multiplier of 18 when the correct multiplier should be 15. Based on all this, Mr Marshal presented that the compensation of ₹36,55,000/- was awardable to the Appellants/Claimants.

4. Mr C. Fonseca, learned counsel for the Insurance Company, submitted that the evidence of AW2 inspired no confidence whatsoever and pointed out that even AW2 had deposed that no payment was being made to any of his employees, including Sunil, when there was no work. He, therefore, pointed out that Sunil was employed in a temporary capacity. He further pointed out that there was no evidence about educational qualifications of Sunil. Finally, he relied on ***Chandra alias Chanda alias Chandraram and Another Vs Mukesh Kumar Yadav and others***[1] to submit that the Hon'ble Supreme Court had taken the monthly income of the driver at

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₹8000/- per month though the driver had claimed that he was earning ₹15,000/- per month.

5. Based on all this, Mr Fonseca submitted that this Appeal should be dismissed.

6. The rival contentions now fall for determination.

7. On the aspect of income, the claimants produced a salary certificate issued by G. S. Gobre, PWD Civil Contractors certifying that Sunil was working in his firm and drawing a salary of ₹18,000/- per month. Mr Ganpati Gobre (AW2), owner of G. S. Gobre, PWD Civil Contractor, deposed in the matter. He stated that Sunil was working in his firm and doing all types of work, such as supervisory, driving, and even agricultural work. He identified his signature on the salary certificate. He said Sunil's salary would have increased if he had been alive and working.

8. In his cross-examination, AW2 admitted that he has no fixed number of employees but engages employees as and when he is awarded PWD or private contracts. He deposed that the employees would not get any payment if there were no work. He deposed that he did not know Sunil's educational qualifications. He also deposed that Sunil worked with him for 2 to 2½ years, i.e. from 2017 till he expired in the accident on 10.03.2019. He denied the suggestion that the salary certificate he issued was false or that Sunil was not even his employee.

9. From the evidence on record, it is reasonable to accept the claimants' case that Sunil was indeed employed with G. S. Gobre, PWD Civil Contractor. However, the evidence of AW2 shows that this employment was not permanent. As and when the contractor would be awarded the Government or private contracts, his services would be commissioned. Therefore, it would not be safe to accept that Sunil was regularly earning a monthly income of ₹18,000/- per month.

10. At the same time, Sunil was associated with the Contractor G. S. Gobre and, working in a supervisory capacity or as a driver, can be accepted. Even though there is no clear documentary evidence about Sunil's income, based upon some reasonable guesswork which is permissible. Even in terms of *Chandra Vs Mukesh Kumar Yadav and others* (supra), Sunil's monthly income can be taken as ₹12,000/- per month instead of ₹18,000/- per month.

11. In *Chandra Vs Mukesh Kumar Yadav and others* (supra) the crucial issue was not that driver's income was taken at ₹8000/- per month when he had claimed ₹15,000/- per month. The principle in the said case is that some guesswork is permissible even in the absence of documentary evidence about the income, so long as such, the guesswork for assessing the deceased's income should not be totally detached from reality. The second principle is that merely because the claimants were unable to produce the documentary evidence to show the monthly income of the deceased, the same was not in all cases justified the adoption of the lowest tier of minimum wage while computing the income.

12. Incidentally, in *Chandra Vs Mukesh Kumar Yadav and others* (supra), the Hon'ble Supreme Court was concerned with the death of a 32-year-old driver in a road accident on 27.02.2016. However, in the absence of documentary evidence, the Hon'ble Supreme Court took his income at ₹8000/- per month. In the present case, the accident took place in the year 2019, and Sunil was about 36 years old at the time of his demise in this accident. Moreover, there is evidence that Sunil was engaged in supervisory and agricultural work besides driving. Considering all these aspects, Sunil's income can be safely taken at ₹12,000/- per month even after accepting Mr Fonseca's contention that the finding about Sunil's income being ₹18,000/- per month is excessive.

13. Since Sunil was 36 years old at the time of his demise, the multiplier to be adopted is 15 and not 14. Further, since Sunil left behind five dependents, including two minors aged 1 and 4, the deduction of $1/4^{th}$ towards his personal expenses would be in order. This deduction will have to be made after adding 40% towards future prospects. Each claimants would be entitled to the consortium of ₹44,000/-. In addition, the claimants would be entitled to the compensation of ₹16,500/- towards loss of estate and another ₹16,500/- towards funeral expenses considering the date of the accident.

14. Based upon the above calculations, the total compensation works out to ₹25,21,000/-. On this amount, the claimants would be entitled to the interest at the rate of 7% per annum from the date of the claim petition till the actual payment. Besides, the claimants would be entitled to their costs as are usually awarded by the tribunals in such matters.

15. The Appeal is disposed of. The impugned award is therefore modified by enhancing the compensation amount of ₹25,21,000/-. The orders for interest apportionment and costs are maintained. However, it is directed that the shares awarded to the two minors should be invested in a Nationalized bank so they can be made available to such minors upon their attaining majority. Copies of fixed deposit receipts should be retained in the tribunal file. Liberty is granted to apply to the concerned MACT for the disbursement of this amount.

16. Mr Marshal states that the insurance company has paid the claimants in terms of the impugned award. Now that the compensation is enhanced, the Respondents, particularly the Insurance Company, are directed to deposit the enhanced components together with interest in this Court within six weeks from today. Necessary intimation should be given to Mr Marshal just before this deposit is made. After that, the claimants would be entitled to withdraw the enhanced compensation amount by furnishing their identification and bank details. Registry to ensure that the deposited amount is directly transferred into the bank accounts of the claimants.

M. S. SONAK, J.

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