

Santosh

**IN THE HIGH COURT OF BOMBAY AT GOA
FIRST APPEAL NO. 34 OF 2022**

1. Smt. Celina Joseph Gonsalves,
wife of Mr. Joseph Gonsalves,
aged 53 years, housewife,

2. Mr. Joseph Marshal Gonsalves,
Son of Mr. Marshal Gonsalves,
aged 58 years, unemployed,
Both Indian Nationals, resident of House
No. 92, Pratapnagar, Dharbandora-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.

Mr. Clayton Fonseca, Advocate for Respondent No.3.

Respondents No.1 and 2 though served, *neither present nor represented.*

CORAM : M. S. SONAK, J.

DATE : 22nd December 2022

ORAL JUDGMENT: -

1. Heard Mr. Milton Marshal for the Appellants and Mr. C. Fonseca for Respondent No.3-Insurance Company. Respondents No.1 and 2 though served, were neither present nor represented.
2. The Appellants are the parents of Lorence Gonsalves, who died in a vehicular accident on 10/03/2019. Lorence was 26 years old at the time of his unfortunate demise.
3. The Appellants-Claimants challenge the impugned Judgment and Award dated 31/3/2022 made by the Motor Accident Claims Tribunal at Panaji (Tribunal) in Claim Petition No. 59/2019 because the Tribunal has awarded them the compensation of only ₹9,16,400/- with interest at the rate of 7% per annum from the date of claim petition till actual payment.
4. The Appellants, through their Counsel Mr Marshal, contended that the oral and the documentary evidence established that Lorence was earning ₹16,000/- per month, and

the Tribunal erred in taking his income at only ₹6,000/- per month. Mr Marshal further submitted that the Tribunal considered the incorrect multiplier of 16 instead of the correct multiplier of 17. Based upon all this, Mr Marshal presented that the just compensation, in this case, would work out to ₹24,05,800/-.

5. Mr C. Fonseca, learned Counsel for the Insurance Company, submitted that Lorence was allegedly employed and paid by the contractor Jai Ganesh. However, this contractor was never examined. Instead, the General Manager of Hi-Tek Brass Products Pvt. Ltd., who engaged the contractor, was examined. This witness admitted that the Company never paid any amounts to Lorence.

6. Mr Fonseca pointed out that even appellant No.1, *i.e.* Lorence's mother, deposed that her son's salary was credited into his bank account and she had the passbook. However, she failed to produce the passbook. Based on this, Mr Fonseca submitted that the Claimant suppressed the best evidence. Therefore, he submitted that the Tribunal correctly drew an adverse inference and Lorence's income was notionally taken at ₹6,000/- per month. He relied on ***Chandra alias Chanda alias Chandraram and anr. vs. Mukesh Kumar Yadav and others*** – (2022) 1 SCC

198 where the Hon'ble Supreme Court took a driver's income at ₹8,000/- per month though the claim of income of ₹15,000/- per month was made.

7. Rival contentions now fall for my determination.

8. Regarding income, the Claimants relied upon a certificate issued by Hi-Tek Brass Products Pvt. Ltd. and not any certificate issued by Lorence's immediate employer – Jai Ganesh. Similarly, the proprietor of Jai Ganesh was also not examined. But the General Manager of Hi-Tek Brass Products Pvt. Ltd. was examined as AW.2.

9. Hi-Tek Brass Products Pvt. Ltd. was not the employer of Lorence and consequently made no payments to Lorence. However, AW2 deposed that Lorence was engaged to work in the Company through the contractor. He also deposed that payments were made in his presence earlier in cash but later on strictly by cheque. Furthermore, he deposed that payments to the extent of ₹10,000/- were made by cash earlier and beyond that by cheque. He also deposed that the Company maintained an attendance register, and attendance of Lorence was marked in this register.

10. In terms of the certificate issued by General Manager (AW.2), Lorence worked in the Company through the contractor

for the period between 8/1/2019 and 9/3/2019, *i.e.* hardly three months. The First Appellant, who examined herself, stated that Lorence's salary was credited to the bank account, and she had the passbook. However, no passbook was produced.

11. Therefore, based upon the evidence of AW.1 and AW.2, there is merit in the contention of Mr Fonseca about Lorence's income not being taken at ₹16,000/- per month. Since Jai Ganesh allegedly paid this amount to Lorence, some representative of Jai Ganesh should have been examined. Similarly, since AW.1 claimed that this amount was paid through a banking channel and further she also had the passbook, this evidence should have been produced. Accordingly, the Appellants' case about Lorence's earning of ₹16,000/- per month is difficult to accept.

12. Be that as it may, there is evidence that Lorence was working at the Company through the contractor. AW. 2 deposed about marking Lorence's attendance and seeing payments being made to Lorence. In 2019, the notional income of ₹6,000/- appears to be too inadequate. The Tribunal should have taken Lorence's income of at least ₹10,000/- per month. The evidence on record justified this inference.

13. In *Chandra alias Chanda alias Chandraram and anr. vs. Mukesh Kumar Yadav* (supra), relied upon by Mr Fonseca, the Hon'ble Supreme Court has held that some amount of guesswork is permissible in the absence of documentary evidence on record. However, such guesswork should not be totally detached from reality. Further, merely because claimants could not produce documentary evidence to show the monthly income of the deceased, the same does not justify the adoption of the lowest tier of minimum wage while computing the income.

14. The circumstance that the driver in *Chandra alias Chanda alias Chandraram and anr. Vs Mukesh Kumar Yadav* (supra) had claimed ₹15,000/- per month, and the Hon'ble Supreme Court determined his income at ₹8,000/-is, not the ratio. What is relevant is the principle explained by the Hon'ble Supreme Court that some amount of guesswork is permissible in the absence of documentary evidence as long as such guesswork is not totally detached from reality. Further, the principle is that because claimants could not produce documentary evidence, the same does not justify the adoption of the lowest tier minimum wage while computing the income. Therefore, applying the principle in *Chandra alias Chanda alias Chandraram and anr. vs. Mukesh Kumar Yadav* (supra), and considering the evidence

on record, Lorence's income could be safely taken at ₹10,000/- per month.

15. The Tribunal, in this case, erred in adopting the multiplier of 16 when the correct multiplier considering Lorence's age, would be 17. Lorence was a bachelor, and therefore, deductions to the extent of 50% were justifiably made by the Tribunal. The award towards consortium, loss of estate, and funeral expenses are consistent with the law in *Smt. Anjali & ors. vs. Lokendra Rathod & ors.* - Civil Appeal No. 009014 of 2022 decided by the Hon'ble Supreme Court on 6th December 2022.

16. Accordingly, the just compensation is now determined at ₹15,49,000/- based on the premise that Lorence was earning a monthly salary of ₹10,000/-. An addition of 40% was made towards future prospects, and the deduction of 50% because Lorence was a bachelor.

17. This Appeal is, therefore, partly allowed, and the compensation amount is enhanced from ₹9,16,400/- to ₹15,49,000/- with interest at the rate of 7% per annum from the date of the Claim Petition till actual payment. The Appellants are also awarded costs throughout.

18. The Respondents, including Respondent No.3 in particular, are to deposit the enhanced amount together with interest and costs in this Court within six weeks from today. The necessary intimation must be given to Mr Marshal before making the deposit.

19. The Appellants will be entitled to withdraw the awarded amount in the proportion indicated in the impugned award after furnishing the necessary identification and bank details. Registry to permit the withdrawal by effecting transfers directly into the bank accounts of the Appellant-Claimants.

20. The Appeal is disposed of, with costs in the above terms.

M. S. SONAK, J.

SANTOSH S
MHAMAL

Digitally signed by
SANTOSH S MHAMAL
Date: 2022.12.23
11:12:03 +05'30'