Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.95 OF 2017

The New India Assurance Company Ltd.,
Karpagam, 5 GIC Nagar,
Kovai Road,
Pollachi, Tamil Nadu
642 002 (insurer) ...Appellant

Versus

1. Mrs. Maria Salvocao Especiosa Fernandes,
wife of late Mr. Pascoal Ferrao,
housewife, aged 73 years,
and her daughter

2. Miss Blanche Maria Ferrao,
daughter of late Mr. Pascoal Ferrao,
aged 44 years, spinster,
both residents of H.No.738(1),
Fradilem, Navelim,
Salcete Goa 403 601.

3. Mrs. Maheshwari M. Arumugam,
wife of Madhuraj Arumugam,
14 N.No.28,
Mahatma Gandhi Mandapam Street,
Pollachi, Tamil Nadu 642 001 (owner)

4. Mr. Maduraj P S, son of Subramania
Chettiar,
22 Jublee Well St. Pollachi, Tamil Nadu
(Driver). ...Respondents

Mr. Amey Kakodkar, Advocate for the appellant.

Mr. Tarshish Pereira, Advocate for respondent Nos. 1 and 2.

CORAM: M. S. SONAK, J

DATE : 17th June 2022

ORAL JUDGMENT:

1. Heard Mr. Kakodkar, learned counsel for the appellant and Mr. T. Pereira, learned counsel for respondent Nos. 1 and 2 (claimants).

2. This appeal is directed against the judgment and award dated 16.03.2017 in Claim Petition No.15/2016 by which the tribunal has awarded the claimants additional compensation of ₹26,74,760/- along with simple interest at the rate of 9% per annum from the date of the claim petition till final payment.

3. Mr. Kakodkar submits that the evidence on record does not make out the case of negligence on the part of the driver of the insured vehicle. He submits that unless the issue of negligence is suitably proved, there was no question of imposing any liability on the insurance company. He submits that the evidence on record in fact rules out any negligence on the part of the driver of the insured vehicle.

4. Mr. Kakodkar submits that the deceased was a bachelor and whilst his mother may be entitled to compensation on account of filial consortium, no such compensation is due to the sister Blanche.

5. Mr. T. Pereira, learned counsel for the claimants defends the impugned award based on the reasoning reflected therein. He points out that the additional compensation of ₹80,000/- was due towards consortium because there were two claimants involved. He points out that the driver of the truck (insured vehicle) did not even step into the witness box and the tribunal was therefore justified in drawing an adverse inference.

6. I have considered the rival contentions and even perused the material on record.

7. The evidence on record indeed bears out that the driver of the truck bearing No. TN-41-AA-1055 was driven rashly and consequently was responsible for the accident to the Scooty Pep of Francisco Ferrao, which resulted in death of Francisco Ferrao.

8. Mr. Toni Da Silva (AW3) is an eye witness to the accident and he has deposed about the truck being driven rashly and dashing the Pep Scooty from behind. The record indicates that the dash to the Pep Scooty was from behind and the same resulted in the instant death of the deceased. AW3 has deposed that the truck was driven in a fast speed and had overtaken his scooter and went ahead and dashed to the Scooty Pep. There are police documents in respect of the accident and they corroborate the clear and cogent testimony of AW3. Above all, there is no explanation as to why the truck driver was not examined in this matter. The tribunal has correctly drawn an adverse inference. The tribunal has also correctly relied upon ***Dulcina Fernandes & Ors. Vs Joaquim Xavier Cruz & Anr.***[1]

9. Therefore, considering the above aspect, no case is made out to reverse the tribunal's finding on rashness and negligence.

10. In this case, there were two claimants and both claimants are entitled to the compensation towards consortium at the rate of ₹40,000/- each.

11. The record indicates that the deceased was a bachelor and was living with his aged mother and spinster sister. In these circumstances, even the sister would be entitled to the compensation towards consortium for the death of her brother.

12. Accordingly, whilst no interference is warranted with the finding on rashness and negligence, the compensation amount is further enhanced by ₹80,000/-.

13. Mr. Kakodkar points out that the award of ₹25,000/- towards funeral expenses is excessive and in terms of ***National Insurance Company Limited Vs. Pranay Sethi and others***[2], this amount could be the amount of ₹15,000/-. The tribunal in this case made no award towards loss of estate. In terms of *Pranay Sethi* (supra), an amount of

1 2014(1) Goa L.R. 66

2 (2017) 16 SCC 680

₹15,000/- has to be awarded under this head. Thus, even after accepting Mr. Kakodkar's contention, an additional compensation of ₹85,000/- becomes payable to the claimants.

14. This appeal is disposed of by making the following order:-

(a) The appeal of the insurance company is hereby dismissed;

(b) But the impugned award is enhanced by further amount of ₹85,000/-;

(c) The insurance company is directed to deposit additional amount together with interest within six weeks in this Court with due intimation to the learned counsel for the claimants;

(d) The claimants shall be entitled to withdraw the balance of the deposited amount together with interest that has accrued thereon;

(e) The claimants are also permitted to withdraw the enhanced compensation amount upon its deposit;

(f) The claimants should furnish the bank details to the registry so that the registry can transfer the amount directly into their bank accounts.

(g) There shall be no order for costs.

M. S. SONAK, J

TARI AMRUT NAGESH Digitally signed by TARI AMRUT NAGESH Date: 2022.06.18 12:38:08 +05'30'