Niti

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.10 OF 2015

1. Smt. Susheela Kamble,
wife of late Krishna Kamble,
Major in age, widow.

2. Kum. Medha Krishna Kamble,
Daughter of late Krishna Kamble,
18 years, student,
Both residents of
C/o. Ratish Naik,
H.No.153/E9,
Near St. Xavier's College
Housing Board Colony Road,
Mapusa, Bardez, Goa. … Appellants

Versus

1. Mr. Pritesh Vithoba Kalekar,
Major in age,
Son of Vithoba Kalekar,
Resident of H.No.175,
Quinamol, Kalay,
Sanguem, Goa.
(Driver and owner of the vehicle).

2. United India Assurance Company Ltd.,
Jamnadas Bldg., 2nd Floor,
Church Road, Sanvordem,
Curchorem, Goa. … Respondents

Mr. J.J. Mulgaonkar, Advocate for the Appellants.
Mr. Suraj Rohidas Naik, Advocate for the Respondent No.2.

CORAM: M. S. SONAK, J.

DATED: 4th FEBRUARY 2022

ORAL JUDGMENT :

1. Heard Mr. J.J. Mulgaonkar, learned Counsel for the appellants, and Mr. Suraj Naik, learned Counsel for respondent no.2.

2. The challenge in this appeal is to the judgment and award dated 16.04.2014 to the extent the Tribunal has not awarded the claimed compensation of ₹10,50,000/- but awarded compensation of only ₹4,34,000/-.

3. Mr. Mulgaonkar submits that, in this case, the Tribunal erred in taking the monthly income of the deceased Sanju at ₹4,500/- when, in fact, his employer (AW3) had deposed that the deceased was a truck driver employed by him and was paid a salary of ₹12,000/- per month.

4. Mr. Mulgaonkar, without prejudice, submitted that the Tribunal erred in not making any addition for future prospects and consortium. He submitted that even the amount awarded towards the loss of estate should have been ₹15,000/- and not merely ₹5,000/-.

5. Mr. Suraj Naik, learned Counsel for the Insurance Company, defended the impugned award based on the reasonings reflected therein. In particular, he pointed out that A3, who claims to be an employer of the deceased, had neither produced any employment letter nor salary certificate in support of his bare statement that the deceased was employed by him. Mr. Suraj

Naik pointed out that A3 had not even bothered to produce any evidence to show that he indeed had some truck and was engaged in the business of transporting ore. Mr. Suraj Naik submitted that in the absence of any evidence about salary/income, the Tribunal was justified in resorting to the notification on a minimum basis. Mr. Suraj Naik submitted that this appeal, therefore, deserves to be dismissed.

6. The rival contentions now fall for my determination.

7. At the outset, I agree with the submissions of Mr. Suraj Naik that, in this case, there is no legal evidence to sustain the claim that the deceased was drawing a salary of ₹12,000/- per month. The salary certificate or any other proof of payment was not forthcoming on the record. In these circumstances, the Tribunal was quite justified in taking the salary at ₹4,500/- per month or ₹54,000/- per year.

8. The Tribunal, however, erred in not taking into account the future prospects. In paragraph 59.4 of ***National Insurance Company V/s. Pranay Sethi***[1], the Hon'ble Supreme Court has held that in case the deceased was self-employed or had a fixed salary, an addition of 40% of the established income should be warranted where the deceased was below the age of 40 years. In this case, the deceased was 27 years old at the time of his unfortunate demise. Therefore, an addition of 40% was due on the established income of ₹54,000/- per year. There is no dispute about the multiplier which in this case would be 17. Thus,

1 (2017) 16 SSC 680

towards dependency, the compensation will have to be determined at ₹6,42,600/-.

9. The appellant is entitled to compensation of ₹15,000/- towards loss of estate and not merely ₹5,000/- as has been awarded by the Tribunal. The appellant is also entitled to funeral expenses of ₹15,000/- and not ₹20,000/- as has been awarded by the Tribunal.

10. The aforesaid awards are consistent with the ruling of the Hon'ble Supreme Court in ***Pranay Sethi*** (supra). In this case, no award has been made towards the consortium. The claimants are the wife and daughter of the deceased. Therefore, compensation of ₹40,000/- is due to each of the claimants towards the consortium. This is again consistent with the law laid down in ***Pranay Sethi*** (supra) and explained in ***Magma General Insurance Company Limited V/s. Nanu Ram alias Chuhru Ram & Ors.***[2]. In ***Magma*** (supra), the Hon'ble Supreme Court has explained that the word "consortium" would include not just spousal consortium but parental consortium and filial consortium. Accordingly, additional compensation of ₹80,000/- is due on this count as well.

11. For the aforesaid reasons, just compensation, in this case, will have to be determined at ₹7,52,600/-.

12. In this case, the Tribunal has awarded compensation at the rate of 9% per annum when the accident took place on 12.01.2012. For the year 2012, the award of interest at the rate

2 (2018) 18 SCC 130

of 9% per annum seems to be excessive and, therefore, the same is required to be reduced at 7% per annum. Ultimately, it is for this Court to determine just compensation. The term 'just' suggests that the same should be fair to both parties.

13. Accordingly, this appeal is partly allowed and the just compensation payable to the claimant is now determined at ₹7,52,600/- together with interest at the rate of 7% per annum, from the date of registration of the claim petition on 07.04.2012 till the final payment. The compensation will have to be shared by the two claimants equally.

14. Mr. Mulgaonkar points out that the awarded compensation has already been withdrawn by the claimants and, therefore, the reduction of interest ought to apply only to the enhanced portion. This is unacceptable. The reduced interest rate will apply to the entire awarded amount. The Insurance Company, can factor in the reduced interest rate and pay the balance amount to the claimants. This means that there will be no question of the claimants having to refund any amounts.

15. The Insurance Company is directed to deposit the enhanced compensation amount after factoring the reduced interest component on the entire compensation amount within eight weeks from today in this Court. Once the amount is deposited the claimants will be at liberty to withdraw the same, which means that the Registry should ensure that such amount is deposited directly in the bank accounts of the claimants. Mr. Mulgaonkar states that the bank details will be provided to the Registry.

16. The appeal is partly allowed in the aforesaid terms. There shall be no order for costs.

M.S. SONAK, J.