Esha

# IN THE HIGH COURT OF BOMBAY AT GOA

## FIRST APPEAL NO. 82 OF 2018

1. Mr. Romulo Fernando Carvalho @ Mr. Romeo Carvalho, son of late Mr. Joaquim Luis Carvalho, aged 49 years, unemployed,

2. Mrs. Julia Clara Coelho Carvalho, wife of late Mr. Joaquim Luis Carvalho, age 66 years, housewife,

Both resident of House No. 38, Gaule Bhatt, Chimbel, Tiswadi, Goa. … APPELLANTS

Versus

1. Mr. Ratan Kumar Saroj, son of Mr. Bolanath Saroj, Driver, resident of Room No. 216, Patra Chawl, Parel-Village, Road Parel, Maharashtra-State.

2. Mr. Mario Valadares, son of Mr. John Valadares, resident of House No. 33/C, Ave Miriam, Verna, Salcette-Goa.

3. The New India Assurance Company Ltd., Jagannath Building, Near Railway Flyover, Margao-Goa. … RESPONDENTS

Mr. Milton Marshal, Advocate for the Appellants.

Mr. Vissili Braganza, Advocate for Respondent No. 2.

Mr. Amey Sinai Kakodkar with Ms. Amanda Godinho, Advocates for Respondent No. 3.

**CORAM: M.S. SONAK, J.**

**DATED: 24th August 2022**

ORAL JUDGMENT:

**1.** Heard Mr. Milton Marshal for the appellants, Mr. V. Braganza for respondent no. 2, and Mr Kakodkar for respondent no. 3.

**2.** This Appeal challenges the judgment and award dated 27.03.2018 made by the Motor Accident Claims Tribunal, North Goa at Panaji (Tribunal) in Claim Petition No. 17/2016. By the impugned judgment and order, the Tribunal has awarded the appellants compensation of ₹23,57,170/- together with interest at 9% per annum from the filing date till full and final payment.

**3.** The above compensation was awarded to the appellants on account of the death of Judy in a vehicular accident on 05.11.2015. Judy was the wife of appellant no. 1 and daughter-in-law of appellant no. 2.

**4.** Mr. Marshal submits that the Tribunal erred in making the deductions at 50% from out of Judy's income when the deductions could not have exceeded 1/3rd of her income. He submits that appellant no. 2 was indeed dependent on Judy, and the finding to the contrary is recorded by the Tribunal. Mr Marshal submitted that there was evidence that if it were not for Judy's unfortunate demise in a vehicular accident, she would have benefited from the 7th pay commission recommendations. He pointed out that Judy was a Government servant, and she would have benefited from the pay commission had she not died in the vehicular accident. He submitted that the Tribunal did not consider this evidence.

**5.** Mr. Marshal handed in the calculation sheet, determining the compensation at ₹31,59,560/-, even without considering the revisions as per the pay commission recommendations. After considering the pay revisions, he also handed in the calculation sheet determining compensation at ₹37,10,000/-. He submitted that the pay revisions have to be considered; therefore, the just compensation, in this case, would come to ₹37,10,000/-.

**6.** Mr. Kakodkar and Mr. Braganza submit that appellant no. 2 was never dependent on Judy; therefore, the Tribunal was justified in deducting 50%. They propose that the pay revisions are not required to be considered, mainly because 50% has already been added towards future prospects. They rely on **Sarla**

**Verma Vs. Delhi Transport Corporation and Another**[1] in support of their contentions.

**7.** The rival contentions now fall for my determination.

**8.** In this case, the Tribunal was not justified in holding that appellant no. 2 was not dependent on Judy. Merely because appellant no. 2 was the mother-in-law and not the mother of Judy, no such inference could have been drawn based on stereotyping.

**9.** Appellant no. 1 has stepped into the box and deposed on the mother-in-law's dependency. Therefore, his evidence should have been considered. If this evidence is considered, the deductions from Judy's monthly or annual income could be $1/3^{rd}$ and not 50% as held by the Tribunal. To this extent, therefore, Mr Marshal is justified in his contention.

**10.** On the second aspect of pay revisions, Mr. Marshal's contention cannot be accepted. An identical argument was raised in **Sarla Verma** (supra), but the same was rejected. The relevant discussion is found to be in paragraphs 43 to 47, transcribed below for the convenience of reference:

1 (2009) 6 SCC 121

*"43. In this case as noticed above the salary of the deceased at the time of death was Rs.4,004. By applying the principles enunciated by this Court to the evidence, the High Court concluded that the salary would have at least doubled (Rs.8008/-) by the time of his retirement and consequently, determined the monthly income as an average of Rs.4004/- and Rs.8008/- that is Rs.6006/- per month or Rs.72072/- per annum. We find that the said conclusion is in conformity with the legal principle that about 50% can be added to the actual salary, by taking note of future prospects.*

*44. Learned Counsel for the appellants contended that when actual figures as to what would be the income in future, are available it is not proper to take a nominal hypothetical increase of only 50% for calculating the income. He submitted that though the deceased was receiving Rs.4004/- per month at the time of death, as per the certificates issued by the employer (produced before High Court), on the basis of pay revisions and increases, his salary would have been Rs.32,678/- in the year 2005 and there is no reason why the said amount should not be considered as the income at the time of retirement. It was contended that the income which is to form the basis for calculation should not therefore be the average of Rs.4004/- and Rs.8008/-, but the average of Rs.4004/- and Rs.32,678/-.*

*45. The assumption of the appellants that the actual future pay revisions should be taken into account for the purpose of calculating the income is not sound. As against the contention of the appellants that if the deceased had been alive, he would have earned the benefit of revised pay scales, it is equally possible that if he had not died in the accident, he might have died on account of ill health or other accident, or lost the* *employment or met some other calamity or disadvantage. The imponderables in life are too many. Another significant aspect is the non-existence of such evidence at the time of accident.*

*46. In this case, the accident and death occurred in the year 1988. The award was made by the Tribunal in the year 1993. The High Court decided the Appeal in 2007. The pendency of the claim proceedings and Appeal for nearly two decades is a fortuitous circumstance and that will not entitle the appellants to rely upon the two pay revisions which took place in the course of the said two decades. If the claim petition filed in 1988 had been disposed of in the year 1988-89 itself and if the Appeal had been decided by the High Court in the year 1989-90, then obviously the compensation would have been decided only with reference to the scale of pay applicable at the time of death and not with reference to any future revision in pay scales.*

*47. If the contention urged by the claimants is accepted, it would lead to the following situation: The claimants could only rely upon the pay scales in force at the time of the accident, if they are prompt in conducting the case. But if they delay the proceedings, they can rely upon the revised higher pay scales that may come into effect during such pendency. Surely, promptness cannot be punished in this manner. We therefore reject the contention that the revisions in pay scale subsequent to the death and before the final hearing should be taken note of for the purpose of determining the income for calculating the compensation."*

**11.** The above reasoning provides the complete answer to Mr. Marshal's contention about the consideration of pay revisions. Besides, in the calculations submitted by Mr. Marshal, he has added 50% towards future prospects and claimed benefit for pay revisions. This would amount to overlap and duplication, which, in any case, is impermissible.

**12.** Therefore, the following calculations submitted by Mr Marshal deserve acceptance:

| S.No. | Heads | Calculations |
|---|---|---|
| a. | Salary (Exhibit-39) | ₹ 16,942 |
| b. | 50% of (a) above to be added as future prospects | ₹ 8471 |
| | Total: | ₹ 25413 |
| c. | 1/3rd of (b) above to be deducted | ₹ 8471 |
| | Total: | ₹ 16,942 |
| d. | Compensation after multiplier of 15 is applied i.e. ₹16,942 x 12 x 15 | ₹ 30,49,560 |
| e. | Loss of Consortium filial [₹40,000 x 2] | ₹ 80,000 |
| f. | Loss of Estate | ₹ 15,000 |
| g. | Funeral Expenses | ₹ 15,000 |
| | **TOTAL:** | **₹ 31,59,560** |

**13.** Based on those above, this Appeal is partly allowed, and the compensation is determined at ₹31,59,560/-. However, since the accident took place in the year 2015, the interest component is reduced from 9% to 7% per annum.

**14.** The order for apportionment of compensation in equal measures between the two appellants is also confirmed. Therefore, the Registry to act accordingly.

**15.** The respondents, including, in particular, the Insurance Company, are directed to deposit the entire awarded amount together with interest and costs, in this Court, within eight weeks from today. The Insurance Company should give due intimation to the learned Counsel for the appellants before such deposit. If any amount is already paid, the same can be adjusted.

**16.** Once such amount is deposited, the appellants will be entitled to withdraw the same by furnishing identity documents and Bank details. The Registry to ensure that the amounts are deposited directly into the appellants' Bank Accounts.

**M.S. SONAK, J.**

NITI K HALDANKAR
Digitally signed by NITI K HALDANKAR
Date: 2022.08.29 15:49:09 +05'30'