

Suchitra

**IN THE HIGH COURT OF BOMBAY AT GOA**

**FIRST APPEAL NO.81/2019**

1. MR PRABHAKAR GAONKAR,  
son of late Mr Vishwanath Gaonkar,  
52 aged years, married,  
unemployed, and, his wife,

2. MRS PRAJYOTI GAONKAR,  
wife of Mr Prabhakar Gaonkar, aged  
50 years, housewife,

3. MR PRATIKSHA PRABHAKAR  
GAONKAR, daughter of Mr  
Prabhakar Gaonkar, aged 20 years,  
student, spinster,

4. MR VISHWARJ PRABHAKAR  
GAONKAR, son of Mr Prabhakar  
Gaonkar, aged 23 years, bachelor,  
unemployed,

all residents of House No.143,  
Ducorgonn, Kalem, Sanguem,  
Sanguem-Goa.

... APPELLANTS

***Versus***

1. MR PRAVIN P. GAONKAR, son of  
Mr Pandurang Gaonkar, aged 26 years,  
Driver, resident of House No. 283-C,  
Naiguinim, Moulinguem-Curchorem,  
Bicholim-Goa.

2. STATE BANK OF INDIA,  
Bandora-Branch, Bandora, Ponda-  
Goa.

3. NATIONAL INSURANCE  
COMPANY LTD., First floor, Town  
Centre, Bicholim-Goa.

4. MR ABHAY ANAND VAZE, son  
of Mr Anand Bhiku Vaze, aged 40  
years, married, service, resident of  
House No.59-C, Vathadev-Sarvan,  
Bicholim Industrial Estate, Bicholim-  
Goa.

... RESPONDENTS

Mr. Milton Marshal, Advocate for the Appellants.

Mr. A. Kakodkar with Mr. P. Shirodkar, Advocates for  
Respondent No.3.

Mr. Hrishikesh Vaze, Advocate for Respondent No.4.

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

**DATED: 20<sup>th</sup> October 2022**

**ORAL JUDGMENT:**

**1.** Heard Mr Milton Marshal for the appellant and Mr Amey  
Kakodkar for respondent no.3.

**2.** The appellants seek enhancement in the compensation  
amount awarded by the Motor Accident Claims Tribunal, North  
Goa (Tribunal), by its Judgment and Award dated 22.03.2019 in  
Claim Petition No.106/2016.

**3.** The Tribunal, in this case, has taken the income of the  
deceased Ritiksha notionally at Rs.3,000/- only because no  
documentary evidence was produced by her employer Arun

Kakodkar (AW2). This witness had deposed that Ritiksha was working as a sales girl in his shop, functioning under the name and style of M/s. Apsara Cloth House and drawing a monthly salary of Rs.6,250/- per month, i.e. Rs.5,000/- per month as salary and Rs.50/- per day as Bhatta charges. There was no serious cross-examination on this aspect. The Tribunal has also not disbelieved AW2. However, only because the employer stated that he had not issued any joining letter to Ritiksha, the Tribunal has held that there was no proof of income.

4. Incidentally, the employer had issued a certificate at Exh.45 giving Ritiksha's employment details, salary and Bhatta charges. He was called to the Court to depose on this aspect. He identified his signature and accepted that he had issued this certificate. Further, he deposed in clear terms the employment and earnings of Ritiksha. Despite all this, the Tribunal has taken Ritiksha's income notionally at Rs.3,000/- per month and determined the compensation based on this notional income.

5. Mr Milton Marshal, the learned counsel for the appellants, submitted that there was no justification for the Tribunal to take Ritiksha's income only on a notional basis when there was evidence about her income being Rs.6,250/-. Mr Kakodkar contests this contention. He points out that the employer

produced no documentary evidence to justify his statement about Ritiksha's income. Accordingly, he submits that the Court was justified in going by the notional income in such circumstances.

6. In my judgment, the approach of the Tribunal was not proper. Ritiksha was employed in a cloth shop as a salesgirl. Merely because there was no formal joining letter or appointment order, the version of the claimants or the testimony of AW2 i.e. her employer, should not have been discarded. The Tribunal has not discarded the testimony of AW2 but still held that in the absence of documentary evidence to show the payment, only notional income could have been taken into account. Even the claim about the monthly earnings being Rs.6,250/- is within the bounds of reasonability.

7. Accordingly, the impugned award warrants interference. The compensation will have to be worked out by taking the salary at Rs.6,250/-. 40% addition is due towards future prospects, taking the monthly salary at Rs.8,750/-. A deduction of 50% is warranted because Ritiksha was a spinster.

8. There is no dispute about the multiplier, in this case being 18. Therefore, the compensation towards dependency would come to Rs.9,45,000/- ( $\text{Rs.4,375/-} \times 12 \times 18 = \text{Rs.9,45,000/-}$ ).

**9.** The claimants would be entitled to filial consortium @ Rs.40,000/- and compensation of Rs.30,000/- towards loss of estate and funeral expenses as per the law laid down in *National Insurance Company Ltd. vs. Pranay Sethi & Ors. - (2017) 16 SCC 680*.

**10.** Accordingly, the just compensation, in this case, would come to Rs.11,35,000/- and not Rs.6,01,000/- as determined by the Tribunal. Moreover, in this case, the accident took place in the year 2016; therefore, the Tribunal was not justified in awarding interest @ 9% p.a. Interest @ 7% p.a. would be appropriate.

**11.** Therefore, this appeal is allowed. Accordingly, the compensation amount is determined at Rs.11,35,000/- with interest @ 7% p.a. from the date of the petition till realization.

**12.** Respondents 1 to 3 are held jointly and severally liable to pay the above-determined compensation amount. Accordingly, respondent No.3 is directed to deposit the enhanced compensation component in this Court within eight weeks from today after due intimation to the learned counsel for the appellants. Upon deposit, the appellants are entitled to withdraw the compensation amount by furnishing identification and bank

details so that the Registry can transfer the compensation amount directly into their respective bank accounts.

**13.** The Tribunal, in this case, has not apportioned the compensation between the various claimants/appellants. Therefore, it is directed that each of the appellants will get a consortium of Rs.40,000/-. From the remaining amount, 25% should be paid to the father, Prabhakar and 25% to the mother, Prajyoti. From the balance compensation, 40% should go to appellant no.3 Pratiksha, who, the learned counsel for the appellants' states, is still a spinster, and the balance 10% be paid to Vishwraj, i.e. Ritiksha's brother, who is working. This apportionment shall apply to the enhanced compensation because, at this stage, there is no point in disturbing the apportionment made by the appellants amongst themselves with the amount initially awarded by the Tribunal.

**14.** The appeal is disposed of in the above terms. Accordingly, there shall be no order for costs.

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

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