Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.82 OF 2019

Shri Govindguru Vithal Sahakari
Son of late Mr. Vithal Sahakari
aged 57 years, married, Priest,
resident of House No.229,
Dattawadi, Sanvordem
Sanguem Goa.
[Original respondent No.1] …Appellant

Versus

1.Mr. Mahesh Ramnath Naik,
Son of Mr. Ramnath Naik
aged 46 years, married,
business,

2.Miss. Santoshi Mahesh Naik
daughter of Mr. Mahesh Ramnath Naik,
aged 20 years, spinster,

3.Mr. Santosh Mahesh Naik
Son of Mr. Mahesh Ramnath Naik,
18 years, bachelor,
All residents of 2288/FF-4,
Bldg. C, Venkatesh Chamber,
Marutigad Road, near Shivaji
Chowk, Bepquegal, Curchorem,
Quepem Goa.

4.The Manager,
Bajaj Allianz General Insurance
Company Ltd., GE Plaza, Airport Road,
Yerwada, Pune 411 006. ...Respondents

Mr. Milton Marshal, Advocate for the Appellant.

Mr. H. D. Naik and Mr. A. D. Naik, Advocates for respondent Nos. 1

to 3.

Mr. Amey Kakodkar and Mr. P. Shirodkar, Advocates for respondent No.4.

WITH

FIRST APPEAL NO.121 OF 2019

Bajaj Allianz General Insurance Co. Ltd.,
a company incorporated under the Companies
Act, 1956
Having its office at GE Plaza, Airport Road,
Yerwada, Pune 411 006.
Through its authorized signatory
Mr. Irfan Shaikh ...Appellant

Versus

1.Mahesh Ramnath Naik,
Aged 46 years, Business

2.Santoshi Mahesh Naik,
Aged 20 years,

3.Santosh Mahesh Naik,
Aged 17 years,
Through his natural guardian,
His father, Mahesh Ramnath Naik
All residing at 2288/FF-4, Bldg. C,
Venkatesh Chamber,
Marutigad Road,
Nr. Shivaji Chowk, Bepquegal,
Curchorem of Quepem Taluka.

4.Govindguru Vithal Sahakari,
Aged 54 years,
Residing at H.No.229,
Dattawadi, Sanvordem,
Sanguem Goa. ...Respondents

Mr. Amey Kakodkar and Mr. P. Shirodkar, Advocates for the Appellant.

Mr. H. D. Naik and Mr. A. D. Naik, Advocates for respondent Nos. 1 to 3.

Mr. Milton Marshal, Advocate for respondent No.4.

CORAM: M. S. SONAK, J

Reserved on : 8th July 2022
Pronounced on 11th July 2022

JUDGMENT:

1. Heard the learned counsel for the parties.

2. The learned counsel for the parties agree that a common judgment and order can dispose of both these appeals since they involve a challenge to the judgment and award dated 30.03.2019 in Claim Petition No.79/2016. First Appeal No.82 of 2019 has been instituted by the insured vehicle driver, and First Appeal No.121 of 2019 has been instituted by the Insurance Company. Therefore, it is only appropriate that a common judgment and order dispose of both these appeals.

3. Mr. M. Marshal, learned counsel for the Appellant in First Appeal No.82 of 2019, raised the following two grounds:-

(a) That the tribunal erred in accepting the income of the deceased at ₹10,000/- per month in the absence of legal evidence. He submitted that the income could have been notionally taken at ₹3000/- per month;

(b) The evidence on record establishes that the Appellant possessed a valid driving license on the accident date. Therefore, the tribunal erred in making an order of "pay and recover."

4. Mr. A. Kakodkar, learned counsel for the Appellant in First Appeal No.121 of 2019, submitted that there was no evidence to sustain the finding that the deceased was drawing ₹10,000/- per month. He submitted that no income tax returns were produced on record though the husband of the deceased AW1 admitted that joint IT returns had been filed. He submits that adverse inference should have been drawn in the matter.

5. Mr. Kakodkar submitted that the tribunal was justified in making pay and recover order because Sandeep Dessai (RW1)- Assistant Director of Transport, had clearly deposed that as of 09.01.2016, the Appellant in First Appeal No.82 of 2019 was not holding a valid driving license. He submits that RW1 was not even cross-examined on this issue.

6. Mr. H. D. Naik, learned counsel for the claimants, submitted that he is not concerned with pay and recovery. He submitted that there is legal evidence to sustain the finding about monthly income. He pointed out that the deceased was earning ₹30,000/- per month, but the tribunal has restricted this to only ₹10,000/-. Mr. Naik, therefore, submitted that both these appeals be dismissed at least qua the claimants.

7. The rival contentions now fall for determination.

8. On the issue of the deceased's income, there is evidence that she had completed her diploma in the Hair Dressing Beautician course. She also participated in makeup and hairstyle competitions. Moreover, the claimants had produced on record a license issued by Curchorem-Kakoda Municipal Council in the year 2006-2007 in the deceased name showing that she was running a ladies' beauty parlor known as '*Mansi Beauty Care*.' A registration certificate is also issued under the Shops and Establishment Act for '*Mansi Beauty Care.'*

9. Based on the above documents and the oral evidence of the deceased's husband AW1, the tribunal concluded that the deceased was earning ₹10,000/- per month. The claimant's contention that the deceased was earning ₹30,000/- per month was rejected because no income tax returns or bank statements were produced on record.

10. In such matters, some element of guesswork is permissible. However, the documentary evidence produced on record substantially corroborates the oral evidence that the deceased was indeed a beautician operating a beauty parlor under the name and style of '*Mansi Beauty Care*. Therefore, the inference that the deceased was earning ₹10,000/- per month in the circumstances was quite legitimate, and no case is made out to interfere with this finding.

11. Regarding the Appellant in First Appeal No.82 of 2019 possessing a valid driving license, reference must first be made to the deposition of Sandeep Dessai, Assistant Director of Transport (RW1). His entire deposition reads thus:-

> "***Examination-in-chief by Advocate Lopes for the respondent no.2:***
>
> *At present I am working as Assistant Director of Transport, Quepem. I received the summons in the present matter and accordingly I brought the extract of driving licence No.GA-0920110002237. As per my record above licence was issued in the name of Govindguru V. Sahakari r/o of House No.229 Dattawadi, Sanvordem, Goa. Said licence was issued in the year 1986 and valid for twenty years.*
>
> ***As per the record, it was noticed that as on 9.01.2016 he was not holding valid and effective driving licence to drive LMV however, such licence was renewed on 14.01.2016. Our record show that fine was paid for renewal as said licence was not renewed within the time provided. The extract/details of driving licence is now admitted in evidence and marked as Exhibit 57.***
>
> ***Cross examination by Adv. V. Naik for respondent no.1:***
> *Cross nil.*
>
> ***Cross examination by Adv. For the claimant:***
> *It is not true to suggest that once the licence is renewed even after the penalty is paid, such renewal operates from the date of expiry. Respondent no.1 was earlier holding a valid driving licence."*

(Emphasis supplied)

12. Mr. Milton Marshal, however, submitted that the details produced in Exhibit 57 by RW1 referred to a Motor Cycle with Gear license, which was issued on 03.10.1986, and for Light Motor Vehicle (LMV-NT), which was issued on 22.05.2003. He submits that what was renewed on 14.01.2016, about five days after the accident, was the Motor Cycle with Gear license that had expired after 20 years. He submitted that the LMV-NT license was valid for 20 years from its issue on 22.05.2003. Based on this, Mr. Marshal presented that as of 09.01.2016, the license to drive LMV was very much valid. The accident was caused by LMV and not Motor Cycle with Gear.

13. The submission, though ingenious, cannot be accepted in the present case. Mr. Sandeep Dessai, Assistant Director of Transport, was quite specific when he deposed that as of 09.01.2016, Govindguru Sahakari was not operating an effective driving license to drive LMV. The same was renewed five days after the accident on 14.01.2016. Full opportunity was given to Govindguru Sahakari to cross-examine the Assistant Director of Transport (RW1). However, there was no cross-examination. The ambiguity or confusion that Mr. Marshal now seeks to create is not sufficient to overturn the tribunal's finding in the absence of any cross-examination of RW1.

14. Mr. Marshal also referred to a photocopy of the driving license, which is valid till 13.01.2021. However, even this license was not shown to RW1. Mr. Kakodkar submitted that if Mr. Marshal's case about the LMV license issued on 22.05.2003 being valid for 20 years is to be accepted, there is no explanation about its validity date being 13.01.2021. Mr. Kakodar submits that from this, it is quite clear that the license issued on 22.03.2003 was not valid as of 09.01.2016; therefore, the same was renewed on 14.01.2016 for a period of five years which expired on 13.01.2021. This is a very probable explanation.

15. For the above reasons, both appeals fail and are liable to be dismissed. Accordingly, both appeals are hereby dismissed. However, there shall be no order for costs.

16. The respondents/claimants will be entitled to withdraw the amounts deposited in this Court by furnishing identification papers and bank details. Registry to transfer the amounts together with the interest that shall accrue directly into the claimants' bank accounts.

M. S. SONAK, J