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IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.120 OF 2012

1. Shri Damodar Volvoikar,
Son of Gajanan Volvoikar,
Age 62 years, Retired.

2. Smt. Darshana Damodar Volvoikar,
Wife of Shri Damodar Volvoikar,
Age 56 years, Housewife.

Both residents of House No. 17/1,
Dhauji road, Ella, Old Goa, Goa.

...Appellants

Versus

1. West Coast Marketing,
Prop. Shri Sanjay Fondekar,
Shop no.1, Navelcar Bldg.,
Opp. Municipality, Ponda, Goa.

2. Mr. Joao F. Dias,
Son of Pedro Dias, major of age,
(Pick — up driver) (Pickup No. GA-01-W-
6766), r/o Karai, Shiroda, Ponda, Goa.

3. United India Insurance Co. Ltd.,
With office at Ashirwad Gaonkar Bldg.,
Tisk, Ponda, Goa.

4. Mr. Bento Dias,
Son of Anthony Dias, major of age,
(Minibus No. GA-08-U-2504)
House No. 149/B, Ward No. 2,
Ambaji, Fatorda, Goa.

5. United India Insurance Company Ltd.,
With office at Colaco Bldg., 1st floor,
Swatantra Path, Vasco-da-Gama, Goa.

...Respondents

Mr. Sudesh Usgaonkar and Ms. R. Pereira, Advocates *for the Appellant*.

Mr. A.R. S. Netravalkar, Advocate *for the Respondent Nos.1,3 & 5*.

CORAM: M. S. SONAK, J.

Reserved on : 4th January 2022

Pronounced on : 10th January 2022

JUDGMENT :

1. Heard learned Counsel for the parties.
2. The aged parents of Gajanan, who was crushed in a road accident on 09.09.2008, appeal against the judgment and award dated 19.05.2012, by which the tribunal has awarded them a meager compensation of only ₹1,10,000/-.
3. There is ample evidence on record that on 09.09.2008, the deceased Gajanan was riding his motorcycle and he had taken care to wear a helmet. Evidence also bears out that a pickup bearing no.GA-01-W-6766, traveling ahead of the motorcycle, suddenly stopped, thereby forcing the deceased to negotiate and avoid the dash. But despite efforts, he dashed and fell on the road. The minibus bearing no.GA-08-U-2504 coming from the opposite direction crushed him causing his death at the spot. The

driver of the minibus tried to flee but was stopped by the public. The evidence on record establishes this by the standard of preponderance of probabilities. The Appellants examined two eyewitnesses who deposed to the accident and the consequent negligence of the drivers of the pic up and the minibus.

4. The appellants have examined Faizal (AW2), who is an eyewitness to the incident. This witness has entirely supported the case of the appellants and there is no dent made to his evidence in the cross-examination. AW2 has clearly stated that the pickup was at a distance of about 8 to 10 meters from the motorcycle and it is the pickup that abruptly stopped or slowed down without any warning. AW2 has deposed that the deceased in an attempt to avoid dashing against the pickup changed his direction. As a result, the motorcycle gave a small dash to the pickup and the minibus coming from the opposite direction at a very fast speed ran over the body of the deceased. AW2 has deposed that the minibus dragged the body of the deceased for a distance of about 4 to 5 meters. AW2 has also deposed that the driver of the minibus tried to flee from the spot but was stopped by the members of the public. AW2 is an eyewitness to the accident and there is no case made out to disbelieve his testimony.

5. As if this was not sufficient, the appellants examined Gandhi (AW3), who is also an eyewitness to the incident. He has also deposed to the accident. He also stated that the accident took place due to the fault of the pickup driver, who suddenly stopped on the road without any signal, and the deceased was forced to avoid a collision and in the bargain was run over by the minibus, which came in the opposite direction. Again, there is nothing to disbelieve the evidence of Gandhi (AW3).

6. Based on the evidence of AW2 and AW3, the appellants, in this case, have proved on the test of preponderance of probabilities that the accident was caused on account of the negligence of the drivers of the pickup and the minibus, with no contribution whatsoever from the deceased. The evidence like the scene of the accident panchanama, etc. also corroborates the clear and cogent testimony of AW2 and AW3 in this case. The so-called contradictions pointed out by Mr. Netravalkar are too trivial to discard the testimonies of the two eyewitnesses. There are bound to be some minor variations in such matters but as long as there is consistency in material particulars, there is no question of discarding the evidence.

7. The tribunal, in this case, at paragraph 37 of the impugned award has recorded a finding that the accident took place mainly

due to the fault of the deceased and to some extent the fault of the pickup and minibus drivers. Mr. Usgaonkar, learned Counsel for the appellants is quite right that this is only a conclusion recorded by the tribunal without any reasoning to back the same. The evidence of AW2 and AW3 has not at all been assessed to record this conclusion. As noted earlier, the evidence on record establishes that the accident took place on account of the drivers of the pickup and the minibus. The minibus virtually crushed 26-year-old Gajanan on the spot and then tried to flee. Based on all this material, I am satisfied that the vague conclusion recorded by the tribunal in paragraph 37 of the impugned award warrants interference.

8. This is a case where the evidence on record establishes that the accident took place on account of rash and negligence on the part of the drivers of the pickup and the minibus, without there being any contribution from the deceased Gajanan. Significantly, the driver of the minibus was not examined in this matter. Though, the owner and driver of the pickup were examined. The owner of the pickup admittedly was not present at the spot and, therefore, his evidence cannot be taken into account for determining the issue of negligence. The evidence driver of the pick-up Joao Dias RW2 has been quite vague and did not explain why he stopped abruptly or swerved to the center of the road. He

denied the dash but this aspect stands amply established by the other evidence on record. Mr. Netravalkar's contention across the bar about potholes on the road cannot be accepted in the absence of any evidence whatsoever to even suggest the same.

9. Mr. Netravalkar, relied on Rule 23 of the Rules of the Road Regulations, 1949, to submit that the deceased was required to maintain sufficient distance from the other vehicle to avoid a collision if the vehicle in front should suddenly slow down or stop. He also relied on the decision of *Nishan Singh & Ors. V/s. Oriental Insurance Company Ltd., Through Regional Manager & Ors.*¹ to submit that the thumb rule of sufficient distance is at least a safe distance of two to three seconds gap in ideal conditions to avert collision and to allow the following driver time to respond. In the state of the evidence on record, there is no warrant to conclude that the deceased had not maintained any sufficient distance. There is no explanation forthcoming from the pick driver as to why he was required to stop abruptly or to come in the middle of the road. In the absence of such an explanation, there is no case made out to sustain the conclusion of contributory negligence, particularly, since such conclusion is not backed by assessment or analysis of the evidence on record.

10. Thus, in this case, the appellants have established that the accident in which their 26-year-old son Gajanan died took place on account of the negligence of the drivers of the pickup and the minibus. There is no evidence that the deceased contributed to this accident. The decision in *Nishan Singh* (supra), therefore, does not assist the Insurance Company.

11. Coming to the issue of compensation, there is evidence on record that the deceased was employed as a probationer at the Marriott hotel and had a gross salary of ₹4,750/-. No doubt, at annexure 3, there was a compensation breakup that suggests that the deceased, on his confirmation, would have drawn a monthly salary of at least ₹13,000/-. However, there is no dispute whatsoever that at the time of the accident, the deceased was drawing a salary of ₹4,750/-.

12. The deceased was admittedly 26 years old at the time of the accident. Therefore, applying the law laid down in *National Insurance Company V/s. Pranay Sethi*² 40% addition is due towards future prospects. This means that the monthly salary of deceased Gajanan can be safely taken as ₹6,659/-. The annual salary would then come to ₹79,908/-, which can be rounded off to ₹80,000/-.

13. The tribunal has committed an error apparent on the face of record by taking the multiplier as 5 when, in fact, the correct multiplier to be adopted in this case would be 17, having regard to the age of the deceased and the law laid down in *Pranay Sethi* (supra) and *Sarla Verma (Smt.) & Ors. V/s. Delhi Transport Corporation & Anr.*³. This means that the yearly dependency would come to ₹13.60 lakhs minus the amount that the deceased, who was a bachelor, would have spent for his personal expenses.

14. Normally, a deduction to the extent of 50% can be made. However, in *Magma General Insurance Company Limited V/s. Nanu Ram alias Chuhru Ram & Ors.*⁴, the Hon'ble Supreme Court has held that where both the parents were dependent on the deceased, a deduction to the extent of 1/3rd will also be appropriate. This means that the compensation towards dependency would come to ₹9,07,188/-.

15. In this case, the parents are entitled to the compensation of ₹15,000/- towards funeral expenses, ₹15,000/- towards loss of estate, and ₹40,000/- each towards loss of consortium in terms of the law laid down in *Pranay Sethi* (supra). Thus, to this figure of ₹9,07,188 further amount of ₹1,10,000/- will have to be added.

3 (2009) 6 SCC 121

4 (2018) 18 SCC 130

The total compensation would then come to ₹10,17,188/-. This, according to me, will represent just compensation.

16. Accordingly, this appeal is partly allowed and the compensation amount is enhanced to ₹10,17,188/- together with 9% interest per annum from the date of application till the date of payment. The respondents are jointly and severally directed to deposit the enhanced compensation amount in this Court within two months. In particular, the Insurance Companies are directed to deposit this amount within two months. If the appellants are forced to file execution then the executing Court to consider whether the Insurance Companies should be made to pay exemplary costs.

17. The appeal is partly allowed in the aforesaid terms. There shall be no order as to costs.

M. S. SONAK, J.

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