Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.120 OF 2016

IFFCO – TOKIO General Insurance,
Co-op. Ltd., having its office at B S/3,
2nd floor, Campal Trade Center,
behind Military Hospital,
Panjim Goa. … APPELLANT

Versus

1. Shri Sandeep Mondkar,
s/o Shri Laxman Mondkar, major of age,
driver, r/o H.No.52, near Hari Mandir,
Bhatwadi, Headland Sada, Mormugao.

2. M/s Aakaash Manufacturing Company
Pvt. Ltd., Having its office at 1st floor,
Sukerkar Mansion, M. G. Road, Panjim,
Tiswadi Goa.

3. Shri Hanumanta Kumbhar,
s/o late Pundlik Kumbhar, major of age,
s/o c/o Ramesh Raul, H.No.204,
Near Chowgule Society,
Jetty, Mormugao, 403 804.

4. Smt. Vishranti Kumbhar,
w/o Shri Hanumanta Kumbhar,
housewife, major of age,
s/o c/o Ramesh Raul, H.No.204,
Near Chowgule Society,
Jetty, Mormugao, 403 804.

5. Shri Govind Kumbhar,
s/o late Pundlik Kumbhar, major of age,

s/o c/o Ramesh Raul, H.No.204,
Near Chowgule Society,
Jetty, Mormugao, 403804. … RESPONDENTS

Mr. C. Fonseca and Ms. V. Veluskar, Advocates for the Appellant.
Mr. S. N. Joshi and Ms. C. Velingkar, Advocates for respondent No.1.
Mr. Jatin Ramaiya and Mr. Omkar Thakur, Advocates for respondent Nos. 3 to 5.

CORAM: M. S. SONAK, J.

DATED: 15th July 2022

ORAL JUDGMENT

1. Heard Ms. V. Veluskar and Mr. C. Fonseca, learned counsel for the appellant, Mr. S. N. Joshi with Ms. C. Velingkar, learned counsel for respondent No.1 and Mr. Omkar Thakur and Mr. Jatin Ramaiya, learned counsel for respondent Nos. 3 to 5.

2. The appellant-insurance company appeals the judgment and award dated 12.04.2016 in Claim Petition No.169/2014, by which the tribunal has awarded compensation of ₹9,64,800/-with interest at the rate of 9% per annum from the date of filing of the petition to respondent Nos. 3 to5 (claimants) for the death of their father/father-in-law Pundalik Kumbhar in a vehicular accident on 02.01.2014.

3. Ms. Veluskar, learned counsel for the appellant at the outset, pointed out that leave had been granted to the appellant-insurance company under Section 170 of the M. V. Act, and therefore, the appellant was entitled to question the quantum of compensation awarded by the tribunal.

4. Ms. Veluskar submits that in this case, there is no dispute that Pundalik was 66-67 years old at the time of the accident. Moreover, he was retired and drawing a pension of ₹9,945/- per month. There is no evidence, however, about his service as a watchman and the income of ₹8,000/- per month post-retirement.

5. Ms. Veluskar, without prejudice, submits that the deduction, in this case, should be 50% and not merely one-third as held by the tribunal. Furthermore, she submits that Pundalik was a widower/bachelor; in any case, it is inconceivable that the claimants who are major in age depended on Pundalik.

6. Ms. Veluskar submits that award for loss of love and affection and funeral expenses is contrary to ***National Insurance Company Limited Vs Pranay Sethi and others.***[1.]

7. Ms. Veluskar finally submitted that there is no evidence of dependency; therefore, the claim petition should have been dismissed. However, without prejudice, she submitted that the compensation amount could not exceed ₹4,48,350/-.

8. Mr. Thakur, learned counsel for the claimants, defended the impugned award based on the reasoning reflected therein. He submitted that award towards loss of love and affection and funeral

1 (2017) 16 SCC 680

expenses were made relying on the Hon'ble Supreme Court's decision in ***Rajesh and others Vs Rajbir Singh and others***[2] , and ₹1,00,000/- was ordered to be paid towards loss of estate in terms of the law laid down in ***Kalpanaraj and others Vs Tamil Nadu State Transport Corporation***[3]***.*** He, therefore, submits that this amount may not be interfered with.

9. Mr. Thakur submits that there was evidence of dependency and a total absence of cross-examination by the present appellant or other respondents before the tribunal. He submits that the present appellant had conceded in its written statement that the deduction for personal expenses of Pundalik could be taken as one-third. Finally, he proposes that there was convincing evidence about Pundalik's post-retiral service as a watchman.

10. Based on the above contentions, Mr. Thakur submitted that this appeal be dismissed.

11. Mr. Joshi, learned counsel for respondent No.1 – driver, left the matter for determination of this Court.

12. The rival contentions now fall for determination.

13. The first aspect to be considered in this matter is whether the claimants were indeed dependents on deceased Pundalik.

2 (2013) 9 SCC 54

3 2014(3) T.A.C. 707 (S.C.)

14. Mr. Govind Kumbhar (AW1) – claimant No.3, has deposed in this matter. He has stated that his family's financial position was not good; therefore, Pundalik worked for Koushal Security and Maintenance as a watchman even after his retirement. He has deposed that due to Pundalik's death, the family suffered a financial loss that has affected their lives. This witness has also deposed to Pundalik's earning of ₹8,000/- per month as a watchman.

15. This witness was cross-examined on behalf of the appellant. The cross-examination was mainly restricted to the issue of rashness and negligence. There was a bald suggestion that the contents of paras 1 to 6 of Govind's affidavit were false. Govind promptly denied this suggestion. In the absence of any serious challenge to the dependency issue, the tribunal cannot be faulted for answering this issue in favor of the claimants.

16. There is no evidence of the claimants having any substantial source of income. Possibly this is a reason why the deceased Pundalik had to take a job as a watchman even after he retired from the postal service. Therefore, the inferences drawn by the tribunal are not unreasonable in the circumstances.

17. On the aspect of Pundalik's income, there is no dispute about his earning monthly pension of ₹9,945/-. Moreover, the employer was examined on the aspect of additional earning as a watchman, and no dent was made to his testimony in the cross-examination. So also, Govind deposed on this aspect, and as noted earlier, no dent was made to his testimony in the cross-examination. Therefore, the amount of ₹8,000/- in the circumstances appears reasonable and can be held as proved by the claimants.

18. The next issue concerns the deduction due to Pundalik's expenditure on himself. No doubt, Mr. Thakur pointed out that the insurance company, in its written statement, without prejudice, had accepted the position that the deduction could be to the extent of one-third. However, there is evidence that Pundalik was a bachelor. Moreover, the claimants are his two major sons. Therefore, it is reasonable to proceed on the basis that Pundalik's contribution to his two sons and one daughter-in-law would not have exceeded 50% of his earnings. Accordingly, out of Pundalik's monthly earning of ₹17,945/-, an amount of ₹8,972.50 can be considered as his contribution to the claimants.

19. There is no dispute about Pundalik's age; consequently, the tribunal adopted a multiplier of 5. Based on all this, the compensation for dependency can be assessed at ₹5,38,350/-.

20. Ms. Veluskar is justified in contending that the award towards consortium, loss of estate, and funeral expenses is over and above the prescription in *Pranay Sethi* (supra). Accordingly, the claimants would be entitled to the compensation of ₹40,000/- each towards consortium, ₹15,000/- towards funeral expenses, and ₹15,000/- towards loss of estate. Thus, an addition of ₹1,50,000/- can be made to the above-assessed compensation of ₹5,38,350/-.

21. Thus, in this case, the total compensation payable to the claimants can be assessed at ₹6,88,350/-.

22. In the peculiar facts of the present case, the interest awarded by the tribunal is maintained. Normally, such interest would have to be reduced, considering that the accident occurred in 2014. However, the facts, in this case, are quite peculiar, due to which a deduction of 50% has already been made even though there were three claimants. Therefore, the award of interest is not disturbed.

23. This appeal is partly allowed. As a result, the compensation amount is reduced from ₹9,64,800/- to ₹6,88,350/-. The interest rate is, however, maintained.

24. The appellant and the claimants are now permitted to withdraw their respective shares out of the amount deposited by the appellant in this Court. For this, the claimants will have to furnish identity documents and give bank details so the registry can transfer such an amount directly into their bank accounts.

25. The appellant and the claimants should exchange their calculations to facilitate the registry to transfer the amount due to them. As a result, the parties would be entitled to proportionately the interest accrued on their respective shares.

26. This appeal is disposed of. Accordingly, there shall be no order for costs. Misc. Civil Application No.1435 of 2022 (F) does not survive with the disposal of the appeal, and the same is disposed of accordingly.

M. S. SONAK, J.

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