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IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.21/2022

UNITED INDIA INSURANCE CO. LTD., having its office at Panaji-Goa. (Policy No.120500/31/11/01/00003614) Valid till 07/07/2012. ... APPELLANT

Versus

1. MR. DILON @ BAPTIST FERNANDES, s/o Jack Rosario Fernandes, age 42 years, occupation service, r/o 11-Mahavir Ashish Co-op, housing society, Chandmal Nagar, Urran Road, Bhayinder, West Dist. Thane, Mumbai – 401101. (Presently working at Quatar)

2. SHRI VIJAY CHANDRAKANT NAIK, son of Chandrakant Naik, major of age, occupation Rickshaw Driver, r/o H.No.263/A, Sanvem, Pilerne, Bardez, Goa. (Driver and owner of the Rickshaw Vehicle bearing No.GA-01-V-3954) ... RESPONDENTS

Mr. A. R. S. Netravalkar, Advocate *for the Appellant*.
Mr. J. P. Mulgaonkar, Senior Advocate with Mr. Prasheen Lotlikar and Ms. Rupa Banaulikar, Advocates *for Respondents*.

CORAM: M. S. SONAK, J.

Reserved on: 23rd September 2022
Pronounced on: 27th September 2022

JUDGMENT:

1. Heard Mr. Netravalkar for the appellant-insurance company and Mr. Mulgaonkar learned Senior Advocate who appears along with Mr. Prasheen Lotlikar and Ms. Rupa Banaulikar for respondents-claimants.

2. The appellant-insurance company challenges the judgment and award dated 02.06.2021 in Claim Petition No.113/2013, by which the Motor Accident Claims Tribunal (Tribunal) at Panaji awarded compensation of ₹21,42,093/- with interest @ 9% p.a. To the claimant for the demise of his wife, Mrs. Estelina Fernandes, in a vehicular accident that occurred on 04.04.2012.

3. Mr. Netravalkar fairly submitted that the appellant was not questioning the finding on rashness and negligence. He, however, submits that the claimant's petition was not maintainable because the claimant Dilon was not dependent on his wife, Estelina. Therefore, no compensation for dependency was payable to Dilon. Besides, he submitted that the accident occurred on 04.04.2012, but Estelina expired only on 05.03.2013. Consequently, he submitted that there was no nexus between the accident and Estelina's death. Without such nexus, he submits that the claim petition was not maintainable, or in any case, no compensation could have been awarded to Dilon.

4. Mr. Netravalkar, without prejudice, submitted that the compensation awarded is excessive. He submits that since the

Tribunal has held that Estelina was a part-time teacher, no compensation could have been awarded based on Estelina allegedly being a homemaker. Consequently, he submits that there is duplication, and the Tribunal has failed to apply proper principles for determining compensation. For these reasons, he submits that the impugned award may be set aside.

5. Mr. Mulgaonkar learned Senior Advocate for the claimant defends the impugned award based on the reasoning therein. He submits that the medical evidence establishes the nexus between the accident and Estelina's demise. Accordingly, he submits that the Tribunal should have awarded at least ₹15 lakhs towards medical expenses incurred by the claimant over and above the compensation already awarded. Further, he submits that the correct principles have been applied. Since the claims and legal liabilities crystallize at the time of the accident, changes post thereto should not ordinarily affect pending proceedings. He relies on ***Kirti And Another v/s. Oriental Insurance Company Limited – (2021) 2 SCC 166*** and ***Bajaj Allianz General Insurance Company Ltd., Aurangabad v/s. Bhimrao s/o Vitthalrao Kotgire & Ors. - 2019 (3) Mh.L.J. 344***.

6. The rival contentions now fall for my determination.

7. Considering the rival contentions, the following points arise for determination in this appeal:

(a) Whether Estelina's death has any nexus with the accident that occurred on 04.04.2012?

(b) Whether the Tribunal properly determined the compensation after considering the issues of dependency and quantum?

8. On the first aspect, though it is true that the accident occurred on 04.04.2012 and Estelina expired on 05.03.2013, the evidence on record overwhelmingly establishes the nexus between the accident and Estelina's demise.

9. Soon after the accident, Estelina was rushed to the Asilo Hospital, the nearest hospital. However, looking at the seriousness of her injuries and her state of health post-accident, she was shifted to the Goa Medical College & Hospital at Bambolim (GMC). She was admitted to the GMC for almost a month but failed to regain consciousness. Therefore on 20.05.2012, by a special ambulance, Estelina was shifted to Umrao Hospital in Mumbai under the treatment of Dr. Mohnish Bhatiwale and Dr. Parvez Ali Khan.

10. The evidence shows that despite the treatment of the above two doctors at Umrao Hospital, Estelina did not respond and was shifted to K.E.M. Hospital, Mumbai, on 08.06.2012. Again, since there was no significant improvement, Estelina was shifted to Bombay Hospital and Medical Research Centre on 30.08.2012, where she continued in a coma. Ultimately, Estelina was shifted to Holy Family Hospital Bandra. Though there was no significant improvement in her health condition, given the stability of her condition, Estelina was discharged on 16.11.2012 and taken to her home in Goa. However, her condition worsened after eight days, and she had to be shifted to Dhanvantari Hospital on 26.11.2012. Though she was discharged after her condition stabilized, there was no significant improvement in Estelina's condition.

11. Nevertheless, she survived for three months and had to be re-admitted on 03.03.2013 to Holy Family Hospital Bandra. Estelina expired at this hospital on 05.03.2013. This chain of events, duly deposed to by several witnesses, including the doctors who treated Estelina, amply establishes the direct nexus between the accident and Estelina's demise. Therefore, it is quite unfortunate that the appellant-insurance company should even raise such a plea.

12. Dr. Mohnish Bhatjiiwale (AW4), the doctor at Umrao Hospital, Mumbai, Dr. Atul Goel, a Neurosurgeon at K.E.M. Hospital, Dr. Sunil Shah, Bombay Hospital, Dr. Anil Pinto, Holy Family Hospital Bandra and Dr. Prakash Jadhav, Dhanvantari Hospital, Bhayander (West) deposed in this matter.

13. Mr. Netravalkar, in the context of Dr. Anil Pinto's evidence, strenuously argued that initially, the hospital had recorded the cause of Estelina's death as "*natural*". However, later on, the same was changed to "*unnatural*". He pointed out to Dr. Pinto's admission that the B.M.C. Rules did not permit such changes. Furthermore, he pointed out that neither was any police report made nor any postmortem was conducted concerning the death of Estelina. Based on this material, Mr. Netravalkar submitted that Estelina died of natural causes and her death had no nexus with the accident.

14. As noted earlier, Mr. Netravalkar's submission contradicts the entire weight of the evidence on record. The doctors have deposed in great detail about Estelina's health condition since the accident till her unfortunate demise in the Holy Family Hospital at Bandra. The doctor's testimonies have withstood the cross-examination. Based on Dr. Pinto's answer about the hospitals not being permitted to amend the death in the cause title, no conclusion about Estelina's death being unnatural can be drawn. After all that Estelina had gone through since the accident, it is obvious that her death was due to the accident. The absence of any postmortem or police complaint does not detract from this fact established by the clear, convincing and voluminous evidence on record.

15. On the aspect of compensation, while it may be true that Dilon was not financially dependent on his wife Estelina's income, he was entitled to be compensated. The record evidence shows that in the same accident, Dilon also lost his minor daughter. Furthermore, Estelina was only a part-time teacher; therefore, there is nothing wrong with the Tribunal assessing the compensation based on Estelina being a homemaker.

16. The Tribunal has assessed Estelina's income at hardly ₹7,700/- per month after adding 40% towards future prospects. Besides, the Tribunal deducted 50% of personal expenses and held that Estelina would have contributed ₹3,850/- per month towards her family. Even if Estelina's income as a part-time teacher were to be excluded, her contribution of ₹3,850/- per month or ₹46,200/- per year, even as a homemaker, is extremely conservative. The assessment of compensation is consistent with the principles in *Kirti And Another v/s. Oriental Insurance Company Limited (supra).*

17. The Tribunal, in this case, despite the evidence of no less than five doctors from Bombay and Goa, has awarded compensation of only ₹5 lakhs towards medical expenses. The evidence on record establishes that for the eleven months between the accident date and Estelina's demise at Holy Family Hospital in Bandra, Estelina was practically in and out of various hospitals in Bombay and Goa. Bills have been produced, and doctors have deposed to the same. The compensation awarded towards transportation is also only ₹50,000/-. Moreover, there is evidence of travel between Mumbai and Goa on several occasions when Estelina had to be shifted to Mumbai or from hospital to hospital. Considering all this evidence, additional compensation of at least ₹2,50,000/- is due towards the hospital expenses and ₹50,000/- towards the transportation. Thus, the evidence on record justifies the award of further compensation of ₹3 lakhs. As noted earlier, there is oral and documentary evidence, in the form of hospital bills, medical bills, etc., justifying this award.

18. In ***Surekha and Ors. v. Santosh and Ors. - (2021) 201 PLR 795,*** the Hon'ble Supreme Court has held that it is well settled that in the matter of insurance claim compensation about motor accidents, the Court should not take a hyper-technical approach and ensure that just compensation is awarded to the affected persons or the claimants even though such claimants may not institute any cross-appeal or cross-objections. Even otherwise, it is well settled that the Tribunals and the Appellate Court have to determine just compensation irrespective of the computation by the claimants themselves.

19. In ***Jabbar v/s. The Maharashtra State Road Transport Corporation – Civil Appeal No.8556 of 2019*** and ***Mona Baghel & Ors. V/s. Sajjan Singh Yadav & Ors.*** the Hon'ble Supreme Court, while holding that in the matter of compensation, the amount due and payable is to be awarded despite the claimants having sought for a lesser amount and the claim petition being valued at a lesser value, referred to its earlier decision in ***Ramla & Ors. V/s. National Insurance Company Limited & Ors. - (2019) 2 SCC 192***, wherein it was held that there is no restriction that the Court cannot award compensation exceeding the claimed amount since the function of the Tribunal or Court under Section 168 of the Motor Vehicles Act, 1988 is to award "*just compensation*". A "*just compensation*" is reasonable based on evidence produced on record.

20. Thus, the insurance company's contentions are rejected for all the above reasons. However, the appeal is disposed of by awarding the claimant additional compensation of ₹3 lakhs. The interest is, however, scaled down to 8% p.a., considering that the accident occurred in 2012.

21. The appellant-insurance company must deposit the enhanced compensation in this Court within six weeks after due intimation to the learned counsel for the claimant. The claimant is permitted to withdraw the deposited amount with interest. The claimant can also withdraw the enhanced compensation amount with interest once the same is deposited. The claimant will have to furnish identification documents and bank details so that the Registry can directly transfer the compensation amount into his bank account.

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

23. The miscellaneous civil applications do not survive the disposal of this appeal and the same are also disposed of.

M. S. SONAK, J.