

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA
FIRST APPEAL NO.2 OF 2013

1. Shri Jayant K. Naroji,
son of Shri Kashinath Naroji,
aged 53 years, married, service,
driver & owner of the vehicle
No. GA-06-A-3152.
R/o MPT/M/213/1/4, MPT Colony,
Headland, Sada,
Vasco Da Gama Goa. ... Appellant

Versus

1. Smt. Shubhangi Santosh Naik,
w/o late Santosh Shiva Naik,
major, aged about 46 years,
housewife,
2(a) Miss Savani S. Naik,
d/o late Santosh S. Naik,
major, aged 18 years, student,

2(b) Mast. Shivdatt S. Naik,
s/o late Santosh S. Naik,
minor, aged 16 years, student
through his natural guardian
-mother Smt. Shubhangi S. Naik
All residents of "B" type Quarter
No.202/11/2, M.P.T. Colony
Headland, Sada, Mormugao Goa.
3. The New India Assurance Co. Ltd.,
2nd Floor, Jeewan Deep Building,
Parliament Street,
New Delhi – 110 001. ... Respondents

Mr. S. S. Kakodkar, Advocate for the appellant.
Mr. Arjun F. Naik, Advocate for respondent Nos. 1 and 2(a).

Mr. Amey Kakodkar, Advocate for respondent No.3.

WITH
FIRST APPEAL NO.3 OF 2013

1. Shri Jayant K. Naroji,
son of Shri Kashinath Naroji,
aged 53 years, married, service,
driver & owner of the vehicle
No. GA-06-A-3152.
R/o MPT/M/213/1/4, MPT Colony,
Headland, Sada,
Vasco Da Gama, Goa.

... Appellant

Versus

1. Smt. Anisha Ankush Naik,
wife of late Ankush K. Naik, major,
aged about 50 years, housewife,
2. (a) Miss. Radhika A. Naik,
d/o late Ankush K. Naik, major,
aged about 22 years, student,

2(b) Miss. Ruchita A. Naik,
d/o late Ankush K. Naik, major,
aged about 18 years, student,

2(c) Mast. Krishna @ Bhupendra A. Naik
S/o late Ankush K. Naik,
minor, aged about 15 years,
student, through his natural
guardian – mother
Smt. Anisha Ankush Naik,
All r/o near Destero Chapel,
MPT Colony, Vasco da Gama, Goa.

3. The New India Assurance Co. Ltd.,

2nd Floor, Jeewan Deep Building,
Parliament Street,
New Delhi – 110 001.

...Respondents

Mr. S. S. Kakodkar, Advocate for the appellant.
Mr. Manoj Jalmi, Advocate for the respondents.

CORAM: M. S. SONAK, J

Reserved on : 17th January 2022

Pronounced on: 19th January 2022

JUDGMENT :

1. Heard the learned counsel for the parties.
2. The learned counsel for the parties agree that both these appeals can be disposed of by a common judgment and order since the main issue involved in both these appeals is common.
3. In both these appeals, the appellant (owner of the vehicle) questions the judgments and awards dated 23.08.2012 made by the Motor Accident Claims Tribunal, Margao, (Tribunal) holding *inter alia* that the respondents – Insurance Company is not liable to pay the compensation amount determined, *inter alia* on the ground that there was a breach of essential terms of the insurance policy or that the policy did not cover any liability towards occupants/passengers in the vehicle.
4. Initially the tribunal vide its judgment and award dated 29.08.2008 had exonerated the insurance company. However,

these awards were challenged by the present appellants by instituting First Appeal Nos.115 and 117 of 2010. These First Appeals were partly allowed by this Court by making the following order :

“In view of the above, I pass the following order :

ORDER

(i) Both the appeals are partly allowed.

(ii) The impugned judgments in both the above appeals dated 29.08.2008 are quashed and set aside. The claim petition nos. 173/2006 and 231/2006 are restored to the files of the learned Presiding Officer, Motor Accident Claims Tribunal, South Goa, Margao.

(iii) The Tribunal is directed to decide the claim petitions afresh in the light of the observations made herein above after hearing both the parties in accordance with law.

(iv) The parties are directed to appear before the Tribunal on 21.11.2011 at 10.00 a.m.

(v) Both the appeals stand disposed of accordingly with no order as to costs.”

5. The insurance company applied for review vide Civil Application (Review) No.32 of 2011 and the same was disposed of by order dated 23.11.2011, granting the insurance company liberty to amend its written statement and to take specific plea about the offending vehicle being used for hire as a taxi.

6. It is in pursuance to the remand as aforesaid the tribunal vide impugned awards dated 23.08.2012 has once again exonerated the insurance company from liability to pay any compensation.

7. Mr. S. S. Kakodkar, learned counsel for the appellant submits that the tribunal on remand ought to have decided the matter afresh even the issue of compensation and since this is not done the matter should be once again remanded to the tribunal for deciding all the issues together and afresh. He relied on *Bimlesh & others vs New India Assurance Company Limited*¹ in support of this contention.

8. Mr. S. S. Kakodkar without prejudice to the aforesaid then submitted that the tribunal has addressed the issue of liability of the insurance company in a very cursory manner without even bothering to ascertain whether the insurance policy, in this case, was an "act policy" or whether the same was "comprehensive/package policy". He referred to the insurance policy which is on record and submitted that the same was a comprehensive/package policy. He submitted that this policy covers the liability in respect of occupants of the vehicle. He submitted that there were neither any pleadings nor any legal

¹ (2010) 8 SCC 591

evidence about the occupants being charged any amount for their transportation. He, therefore, submits that there is no evidence that the vehicle was used for hire or reward. Based on this, he submitted that the insurance company could never have been exonerated in the matter of this nature. He relied on *National Insurance Company Ltd. Vs Balakrishnan & Anr*², *Jagtar Singh alias Jagdev Singh Vs Sanjeev Kumar and others*³, in support of his contention.

9. Mr. S. S. Kakodkar submitted that the compensation amount determined in this case is excessive. He submitted that there is no proper evidence about the salary of the deceased or their ages. In the absence of crucial evidence on both these aspects, the tribunal erred in determining the compensation which it has in the present matters.

10. Mr. Kakodkar submits that for all the aforesaid reasons, the impugned awards may be set aside or in any case, the matters may be remanded to the tribunal for fresh decision on all issues which arise in the matters.

11. Mr. Amey Kakodkar, learned counsel for the insurance company submits that there was no clear defense raised by the

² 2013 ALL SCR 104

³ (2018) 15 SCC 189

appellants that the deceased persons were not charged any amounts or that the vehicle was not used for hire or reward. He submits that the claimants have clearly deposed that the deceased were made to pay some amounts for their transportation by the appellants. He referred to the insurance policy to submit that the liability of the insurance company was limited particularly since the additional premium cover in terms of IMT- 16 was never paid by the appellants in this case. He, therefore, submits that there is no error whatsoever in exonerating the insurance company.

12. Mr. Arjun Naik and Mr. Manoj Jalmi, learned counsel appearing for the claimants in both the appeals submitted that the insurance company was unnecessarily absolved of its liability to pay the compensation. They submitted that in any case the tribunal should have made an order for 'pay and recover' because the claimants or for that matter the deceased persons were not at all responsible for the disputes between the insurance company and the appellants. They rely on the decision of the Hon'ble Supreme Court in the case of *Manuara Khatun & Ors vs Rajesh Kr. Singh & Ors.*⁴

13. Mr. A. Naik and Mr. M. Jalmi submit that the compensation amount determined by the tribunal is too meager

4 AIR 2017 SC 1204

and does not represent just compensation in terms of the law laid down by the Hon'ble Supreme Court in the case of *National Insurance Company Limited vs Pranay Sethi and others*,⁵ and *Sarla Verma & Ors vs Delhi Transport Corporation & Anr*⁶. They submit that proper evidence was available on record but the same has not been correctly assessed by the tribunal when it comes to the determination of just compensation. They submit that this Court must determine just compensation even though claimants may have claimed less compensation or may not have filed any cross-appeal or cross-objections. They rely on the decision of this Court in *Bajaj Allianz General Insurance Vs Miss. Kavita Kashinath Shetye and others, (First Appeal No.55 of 2012 decided on 03.01.2022)* and *Reliance General Insurance Company Vs Manju Vikram Choudhary and others*⁷, in support of this contention.

14. The rival contentions now fall for my determination.

15. In this case, this Court, vide judgment and order dated 14.10.2011 disposing of First Appeal Nos. 115 and 117 of 2010 had set aside the earlier awards made by the tribunal and directed the tribunal to decide the claim petitions afresh “*in the light of*

⁵ (2017) 16 SCC 680

⁶ 2009(4) ALL MR 429

⁷ 2021 (6) ALL MR 171

the observations made herein above after hearing both the parties in accordance with law”.

16. Therefore, even though the word “*afresh*” was used, the same ought to be construed in the light of the observations made in the judgment and order dated 14.10.2011. From the perusal of the judgment and order dated 14.10.2011, it is clear that the main issue pressed before this Court was the extent of liability of the insurance company. There were no serious arguments on the issue of liability to pay compensation or for that matter even the quantum of compensation. Therefore, though it would have been proper for the tribunal to have once again looked into or even assess the issue of compensation, the fact that this has not been done is not quite enough ground for setting aside the impugned awards in their entirety and thereby prolonging the agony of the claimants who have received no compensation in respect of the death of their husband/father in an accident which took place on 31.01.2006.

17. In *Bimlesh and others* (supra), the Hon'ble Supreme Court has held that the tribunal should not dispose of the claim petitions only based on preliminary objections relating to maintainability but the tribunal was expected to decide all issues together. This decision does not support the case of the appellants

having regard to the peculiar facts. Here the tribunal has already determined the compensation and in the first round of the appeal, there was no serious challenge on that aspect. The only serious challenge was on the aspect of liability of the insurance company. Therefore, by observing as such, this Court remanded the matter to the tribunal to determine the issue of liability of the insurance company. As the records stand, all the issues stand decided by the tribunal, and therefore the decision in the case of *Bimlesh and others* (supra) can be of no assistance to the appellants in these two appeals.

18. On the aspect of liability of the insurance company, once again I find that the tribunal has dealt with this subject in an extremely cursory manner without even advertng to terms of the insurance policy, pleadings of the parties, and the evidence on record. The tribunal, in this case, has simply noted some conflicting decisions in *United India Insurance Company Ltd., Simla Vs Tilak Singh, and others, AIR 2006 SC. 1578* and *Bhagyalakshmi and others Vs United Insurance Company Ltd., and another, (2009) 7 SCC 148* and thereafter disposed of the matters by making only the following observations:

“However, since the terms of the policy speak the other way and also on account of the fact that contrary decisions were passed thereafter, the Hon'ble

Supreme Court Apex Court referred the said matter to a larger Bench. I have not come across any further judgments passed by the larger Bench on the above issue. Since the ratio laid down in Tilak Singh's case have been followed by the Court, I am inclined in accepting the ratio laid down in Tilak Singh's case to be applicable to the facts of the present case."

19. The tribunal has not bothered to find out whether the insurance policy, in this case, was a comprehensive/package policy or whether it was an "act policy". The tribunal has not even adverted to the terms of the insurance policy even though the insurance policy is produced on record. The tribunal has not adverted to the pleadings of the parties as well as the evidence to determine whether in this case the vehicle in question was used for hire or reward and consequently there was a breach of the terms of the insurance policy. On remand, this is the exercise which the tribunal was expected to carry out but the tribunal has failed to carry out this exercise despite clear and specific direction from this Court.

20. The insurance policy, in this case, indicates that no additional PA cover premium was paid in terms of IMT-16. IMT-16 refers to the personal accident to unnamed passengers other than insured and the paid driver and cleaner. The tribunal was required to determine whether the deceased persons in the present

case were unnamed passengers in the offending vehicle and the consequence of failure on the part of the appellants to pay additional PA cover premium in terms of IMT-16. This tribunal has failed to do.

21. Similarly, the insurance policy has been titled "*Private Car Package Policy*". In Section-II concerning liability to third parties, it is stated that subject to the limits of liability as laid down in the schedule hereto, the company will indemnify the insured in the event of an accident caused by or arising out of the use of the vehicle against all sums which the insured shall become legally liable to pay in respect of the death of or bodily injury to any person including occupants carried in the vehicle (provided such occupants are not carried for hire or reward) but except so far as it is necessary to meet the requirements of Motor Vehicles Act, the Company shall not be liable where such death or injury arises out of and in the course of the employment of such person by the insured.

22. The tribunal was expected to find out whether this clause was sufficient to foist the liability on the insurance company as contended by Mr. S. S. Kakodkar, learned counsel for the appellants. The tribunal was also expected to look to the pleadings as well as the evidence on record and determine

whether the deceased persons were carried in the offending vehicle for reward or hire. All this exercise has not been undertaken by the tribunal despite clear and cogent directions while remanding the matters to the tribunal.

23. Having regard to the aforesaid submission of Mr. S. S. Kakodkar about remand to the tribunal will have to be reluctantly but partially accepted. The remand will now be restricted to determine whether the insurance policy which in the present case is simply an "*act policy*" or whether the same is a comprehensive/package policy. Further, on remand, the tribunal will also have to determine whether there is any breach of the terms and conditions of the insurance policy particularly having regard to the controversy that the deceased persons were occupants carried in the vehicle for hire or reward. The tribunal also will have to determine whether the insurance policy, in this case, excludes liability since the additional PA cover in terms of IMT-16 was never paid by the appellants. All these matters will have to be decided by the tribunal by specifically adverting to the insurance policy, pleadings of the parties, and the evidence on record.

24. Though the remand is necessary for the aforesaid purpose, the claimants need not be deprived of the just compensation i.e.

due and payable to them. This is because the claimants are in no way concerned with the disputes between the appellants – owners and the insurance company. The claimants or for that matter the deceased persons have not contributed to any breach of terms of the insurance policy and therefore, there is no good ground to prolong their receipt of just compensation. In *Manuara Khatun* (supra) the Hon'ble Supreme Court found that the deceased were found traveling as “*gratuitous passengers*” in the offending vehicle and it was for this reason, the insurance companies were exonerated. The Hon'ble Supreme Court held that merely because the compensation has not yet been paid to the claimants though the case is quite old (16 years) that cannot be a ground to deny the compensation to the claimants. The insurance company of the offending vehicle was directed to first pay the awarded sum to the claimants and then to recover the paid awarded sum from the owner of the offending vehicle in execution proceedings arising in a very case. Necessary discussion and reasoning on this aspect are to be found in paragraphs 19 to 22 of this decision.

25. Applying the aforesaid principle to the facts of the present case, Mr. A. Naik and Mr. M. Jalmi are justified in contending that whatever may be the disputes between the appellants – owners and the insurance company, a direction must go to the insurance company to first pay just compensation to the

claimants and thereafter if necessary to recover the same from the appellants – owners.

26. In First Appeal No. 2 of 2013, the tribunal has determined the compensation at Rs.3,99,420/- along with interest at the rate of 9% per annum from the date of filing of the claim petition i.e. 13.09.2006 till the final payment. This compensation according to me, does not represent just compensation. Having regard to the law laid down by the Hon'ble Supreme Court in *Pranay Sethi* (supra) and *Sarla Verma* (supra), Mr. S. S. Kakodkar contended that the compensation in the case of *Pranay Sethi* (supra) had not been delivered on the date when the tribunal made its award. According to me, this cannot be a ground to deny the claimants the just compensation in terms of the law declared by the Hon'ble Supreme Court in *Pranay Sethi* (supra). Ultimately, in such matters, it is necessary to remember the Hon'ble Supreme Court declares the law and does not enact the law for the parties to contend that it should have only prospective application. The decision in *Pranay Sethi* (supra) does not lay down that it has to have only some prospective application.

27. There is evidence in First Appeal No.2 of 2013 that the deceased was 46 years old at the time of his demise. Apart from the oral evidence and the statement in the medical record, Mr. A.

Naik also pointed out to the income tax returns filed on 20.06.2005, in which the date of birth of the deceased was indicated as 08.01.1960. The accident took place on 31.01.2006 which means that at the time of the demise, Santosh S. Naik was 46 years old.

28. In First Appeal No.2 of 2013, there is credible evidence on record that establishes that the deceased was working as a Yard Foreman at the Mormugao Port Trust (MPT) and earning a monthly income of Rs.20,642/-. There is both documentary as well as oral evidence which establishes this aspect. In particular, Keshav Burade (AW3), Sr. Asst. Secretary of MPT has deposed in this matter on this aspect.

29. Since the deceased Santosh Naik was 46 years old at the time of his demise in the accident, a 30% increase is warranted towards future prospects. Similarly, the multiplier, in this case, will be 13. A deduction of 1/3rd is called for towards the personal expenses of the deceased. Based on all these aspects, the compensation towards dependency would come to Rs.27,90,798/-. To this, an amount of Rs.1,20,000/- is to be added towards consortium both spousal as well as filial, the compensation of Rs.15,000/- towards loss of estate, and Rs.15,000/- towards funeral expenses. This means that the

total compensation to be regarded as just compensation would come to Rs.29,40,798/-.

30. In *Bajaj Allianz General Insurance* (supra) and *Reliance General Insurance Co.* (supra), this Court has held that even in the absence of any cross objections or cross-appeal by the claimants, it is the statutory duty of the tribunal to award just compensation. Accordingly, in First Appeal No.2 of 2013, the compensation is determined at Rs.29,40,798/-. The insurance company will have to pay this compensation to the claimants within two months from today. The issue as to whether the insurance company will be liable to recover this amount from the appellant-owner will have to be decided on remand by the tribunal.

31. In First Appeal No.3 of 2013, again there is evidence that the deceased was 54 years old at the time of his unfortunate demise in the accident. There is evidence that he was drawing a monthly salary of Rs.34,376/- on account of his service at MPT. There is oral as well as documentary evidence to establish this aspect. In particular the evidence of Murlidhar Bansodde (AW3) who was deputed by Captain Anil Panjwani, Dy. Conservator, MPT to depose in this matter is sufficient to establish this fact. There are salary certificates produced on record. From the perusal

of the material on record, it is seen that there was no serious challenge to all these aspects which even otherwise stand proved.

32. Since the deceased was 54 years old at the time of his demise, 10% addition is due towards future prospects. The multiplier, in this case, will be 11 and a deduction of 25% is due towards personal expenses. This means that the compensation towards dependency would come to Rs.37,43,487/-. An amount of Rs.1,60,000/- is due towards the consortium and the amount of Rs.15,000/- is due towards loss of estate and Rs.15,000/- towards funeral expenses. This means that total compensation will have to be determined at Rs.39,33,487/-. This will represent just compensation in First Appeal No.3 of 2013.

33. In this case, the tribunal has awarded interest at the rate of 9% per annum. In the peculiar facts of the present case, it appears to be excessive particularly now that the claimants are found to be entitled to compensation much more than what was claimed by them and further in lumpsum. Therefore, it is only appropriate that the interest amount is reduced from 9% per annum to 6% per annum having regard to these peculiar circumstances. This will assist in the determination of just compensation in terms of the Motor Vehicles Act.

34. Again this is a fit case where a direction is liable to issue to the insurance company to first pay the compensation amount to the claimants and depending upon the result of the remand to recover the same from the appellants – owners.

35. For all the aforesaid reasons, both these appeals are disposed of by making the following order:-

(a) the impugned judgments and awards to the extent it exonerates the insurance company are hereby set aside and the matters are remanded to the tribunal for determining the issue of liability, if any, of the insurance company;

(b) On remand amongst other issues, the tribunal is directed to address the issues and observations referred to in paragraphs 19 to 23 of this judgment and order;

(c) The tribunal on remand will have to decide this issue of liability of the insurance company as expeditiously as possible and in any case within four months from the date the parties file certified copy of this judgment and order before it;

(d) The just compensation in First Appeal No.2 of 2013 is determined at Rs.29,40,798/- and in First Appeal No.3 of 2013 at Rs.39,33,487/-. The interest payable shall however be 6% per annum instead of 9% per annum. To this extent, the

impugned awards on the issue of determination of compensation stand modified;

(e) The insurance company will have to pay the aforesaid compensation to the claimants within two months from today. The compensation amount will have to be deposited into the bank accounts of the claimants directly or the amount can be deposited in this Court and thereafter this Court to transmit the said amount into the bank accounts of the claimants;

(f) Under no circumstances the compensation amount should be disbursed in any other manner since this Court is anxious to ensure that the compensation amount reaches directly in the bank accounts of the claimants;

(g) The parties to appear before the tribunal on 7th February 2022 at 10.30 a.m., and file a certified copy of this judgment and order;

(h) The tribunal is directed to dispose of the issue now remanded to it within four months from 7th February 2022 by affording opportunity of hearing to all parties including in particular the appellants-owners and the insurance company;

(i) If the tribunal concludes that the insurance company is not liable to pay compensation then the tribunal should make an order directing the appellants-owners to pay such compensation amount to the insurance company by applying the principle of pay and recover. If however, the

tribunal concludes that the insurance company is liable to pay, then, there is no question of making any pay and recover order;

(j) Appeals are partly allowed to the aforesaid extent. There shall be no order for costs.

M. S. SONAK, J

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