Niti

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.130/2016

National Insurance Co. Ltd.
Through its Authorised Officer,
Having office at Subraya Chambers,
F.L. Gomes Road, Vasco-da-Gama,
Goa – 403802. … Appellant

Versus

1. Mr. Tukaram Narayan Zikambade,
Son of late Mr. Narayan Fottu Zikambade,
aged 54 years, Married, Agriculturist,
and his wife;

2. Mrs. Girija Tukaram Zikambade,
Wife of Mr. Tukaram Narayan
Zikambade, Aged 52 years, Housewife,

3. Mr. Rupesh Tukaram Zikambade,
Son of Mr. Tukaram Narayan Zikambade,
Aged 29 years, Married, Agriculturist and
House,

4. Mr. Nilesh Tukaram Zikambade,
Son of Mr. Tukaram Narayan Zikambade,
Aged 25 years, Bachelor, student,

5. Mr. Mahesh Tukaram Zikambade,
Son of Mr. Tukaram Narayan Zikambade,
Aged 22 years, Student,

All R/o. H. No. 210, Kumbarwada,
Nirankal Ponda —Goa.

6. Mr. Anand Raghu Gaude,
Son of Mr. Raghu Gaude,
Major in age, Driver
R/o H. No. 35, Nanus,
Usgao, Ponda-Goa.

7. Mr. Devidas Laxmikant Ghate
Son of Mr. Laxmikant Ghate,
Major in age, business,
R/O H.No. 174, Gauthanwada,
Khandepar, PondaGoa. … Respondents

Mr. U.R. Timble and Ms. Yadika Mandrekar, Advocates *for the Appellant*.
Mr. Milton Marshal, Advocate *for the Respondent Nos*.1 to 5.

CORAM: M. S. SONAK, J.

DATED: 30th June 2022

ORAL JUDGMENT :

1. Heard Mr. Timble for the Appellant and Mr. Milton Marshal for the respondent nos.1 to 5.

2. The Insurance Company challenges the judgment and award dated 29.02.2016 made by the Motor Accident Claims Tribunal awarding respondents nos.1 & 2 compensation of ₹15,71,000/- exclusive of the amount of ₹50,000/- awarded towards no-fault liability.

3. Mr. Timble learned Counsel for the Appellant submitted that this was a case of contributory negligence. He submitted that the deceased's income was incorrectly taken at ₹8,000/- per month when there was no evidence to support the same. He proposes that his income could have been taken at a maximum of ₹ 5,000 on a notional basis. He submits that the award of ₹2,00,000/- towards love and affection and ₹1,00,000/- towards loss of estate contrary to the law in ***National Insurance Company Limited V/s. Pranay Sethi & Ors.***[1] and ***Magma General Insurance Co. Ltd V/s. Nanu Ram Alias Chuhru Ram***[2]. He submits that even the compensation of ₹25,000/- towards funeral expenses is contrary to the law in *Pranay Sethi* (supra). For these reasons, he submits that the impugned award may be set aside or suitably modified.

4. Mr. Milton Marshal defends the impugned award based on the reasoning reflected therein. He submits that the Tribunal correctly recorded the findings, and the compensation is just compensation.

5. The rival contentions now fall for my determination.

---

1 (2017) 16 SSC 680

2 2018 18 SCC 130

6. On the aspect of contributory negligence, no case has been made to sustain such contention. AW1-Rupesh, who was riding the motorcycle on which the deceased was riding pillion, has deposed to the genesis of the accident. He has deposed how the insured vehicle driver came on the wrong side and dashed his motorcycle. He has deposed to the fast speed of the driver of the insured vehicle, i.e., speed of 70 to 80 kmph.

7. AW2 – Joaquim Fernandes, ASI, who was working as a Head Constable at the Ponda police station at the relevant period, has deposed to filing the FIR, the panchanama, and the sketch annexed to the panchanama. He also deposed about how the insured vehicle's driver fled away from the spot without rendering any assistance to the deceased.

8. The insured vehicle's driver (Swaraj Mazda Tempo) did not even step into the witness box. Accordingly, the Tribunal has correctly drawn an adverse inference in the matter. For the above reasons, the contention about contributory negligence has to be negatived.

9. On the income question, there is evidence that the deceased was a professional driver driving a pickup bearing no.GA-01-W-6282. This pickup, though in his mother's name, was, in fact, purchased by him.

10. AW3 – Sandesh T. Naik, a Pickup Owner's Association member, has also deposed in this matter. He stated that the deceased's income was between ₹1,000/- to ₹1,500/- per day. The Tribunal has not entirely believed the testimony of AW3 on the aspect of income but held that this testimony is sufficient to establish that the deceased was indeed a professional pickup driver. Furthermore, the Tribunal has relied on the Notification under the Minimum Wages Act, which prescribes minimum wages of ₹311/- per day for the skilled worker. Based on all this, the Tribunal has determined the deceased's income at ₹8,000/-. Therefore, there is no error in the determination. The determination is backed by the evidence on record and warrants no interference.

11. Mr. Timble is, however, justified in submitting that an amount of ₹1,00,000/- each would not have been awarded to the deceased's parents for love and affection. Therefore, in terms of *Pranay Sethi* (supra), the parents would be entitled to ₹40,000/- each towards the loss of consortium.

12. The Tribunal has not awarded any amount to the three brothers of the deceased. However, ₹40,000/- each is due to Nilesh and Mahesh, who were bachelors and students at the time of the accident. They had lost their brother in the accident and were entitled to some compensation towards the consortium. Accordingly, ₹40,000/- each can be awarded to Nilesh and Mahesh. On the other hand, no compensation need be awarded to Rupesh because he was not dependent on the deceased.

13. Mr. Timble is also justified in complaining about the award of ₹1,00,000/- towards loss of estate and ₹25,000/- towards funeral expenses. However, in terms of *Pranay Sethi* (supra), an amount of only ₹15,000/- each can be awarded under these two heads.

14. Thus, the total compensation after excluding the amount of ₹50,000/- towards no-fault liability would come to ₹14,86,000/- and not ₹15,71,000/- as determined by the Tribunal

15. The appeal is, therefore, partly allowed, and the compensation amount is determined at ₹14,86,000/- instead of ₹15,71,000/-. However, the interest amount is maintained.

16. From the deposited amount, the Insurance Company and the claimants can appropriate their respective shares together with the proportionate interest that shall have accrued on this amount. The calculations can be exchanged and filed before the Registrar, who will permit withdrawals. The parties should furnish their bank details so that the Registry can transfer the amounts directly in the bank accounts.

17. The appeal is partly allowed in the above terms.

18. There shall be no orders for costs.

M. S. SONAK, J.

NITI K HALDANKAR

Digitally signed by NITI K HALDANKAR
Date: 2022.07.01 14:02:39 +05'30'