Niti

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.115 OF 2017

National Insurance Co. Ltd., Through
its authorized officer, Having Office at
"Subraya Chambers, F.L. Gomes
Road, Vasco-da-Gama,
Goa - 403802.

… Appellant

Versus

Shri Shashikant Tamse,
(since deceased through legal heirs)
1a) Supriya Shashikant Tamse
Daughter of Shashikant Saulo Tamse,
Resident of H.No. E-32,
Khareband, Pedda, Margao,
Salcete Goa. 403601

2. Smt. Sulaxa Shashikant Tamse,
Daughter of Hiru Naik,
Aged National,
Both Resident of House No. E-32,
Khareband, Pedda, Margao,
Salcete - Goa. 403 601
Adv. M. 8796951201

3. Shri Clayton Savio Vaz,
Son of Thomas Mario Vaz,
Aged above 20 years,
Resident of No. T-2,
B-Block, Arrora-Estate,
Opposite St. Joaquim Chapel, Boarda,
Margao-Goa,
(Rider of the Bajaj Pulsar Motor Cycle).

4. Shri Vishwas Shirodkar,
Son of Sharad Shirodkar,
Aged major in age, occupation, Pilot,
resident of H. No. 185-A, Behind Raviraj
Hotel, Chinchal, Margao, Salcet-Goa,
(Registered owner of Bajaj Pulsar Motor
cycle). … Respondents

Mr. U.R. Timble with Ms. Y. Mandrekar, Advocate *for the Appellant.*

Ms. Rosette Pereira, Advocate *for Respondent Nos.1(a) & 2.*

CORAM: M. S. SONAK, J.

DATE : 23rd September 2022

ORAL JUDGMENT:

1. Heard Mr Timble for the Appellant and Ms R. Pereira for the respondents – claimants.

2. The challenge in this appeal is to the judgment and award dated 05.03.2016 in Claim Petition no.116/2013.

3. Mr Timble States that the negligence of the motorcycle rider was not established. The evidence on record points out to the motorcycle rider applying brakes upon realizing they had reached the end of the road. Without any finding of rashness and negligence, the claim petition should have been dismissed.

4. Mr Timble also points out that there was no evidence about the deceased earning a salary of ₹8,599/- per month. The document produced was only an offer of appointment, and there was no further evidence about actual employment or earnings. Mr Timble, by reference to paragraph 23 of the impugned award, submits that the Tribunal was not justified in awarding ₹1,00,000/- each towards loss of love and affection or ₹25,000/- towards funeral expenses. He submits that this award is contrary to the law in ***National Insurance Company Ltd. V/s. Pranay Sethi***[1].

5. Finally, Mr Timble submits that accident, in this case, occurred in the year 2015; therefore, the award at the rate of 9%per annum is excessive.

6. Ms Pereira counters Mr Timble's contentions. She points out that there is ample evidence of rashness and negligence, as well as the monthly salary drawn by the deceased. She submits that there was no serious challenge to the document produced or that the deceased was employed and earning ₹8,599/- per month. She points out that no award has been made for estate loss.

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1 (2017) 16 SCC 680

Finally, she submits that the claimants are the parents; therefore, the interest rate may not be reduced since the father has also died.

7. The rival contentions now fall for determination.

8. As regards the first two contentions of Mr Timble, the same cannot be accepted given the material on record. Accordingly, a case of rashness and negligence is made out. Further, there is oral and documentary evidence about the employment and earnings of ₹8,599/- per month. There was no serious challenge to these aspects during the trial. Therefore, the Tribunal has adequately evaluated the evidence.

9. Mr Timble is, however, justified in submitting that the award of ₹1,00,000/- each towards loss of love and affection or the award of ₹25,000/- towards funeral expenses is more than what is prescribed in *Pranay Sethi* (supra). The compensation of ₹40,000/- each was due towards loss of consortium, ₹15,000/- towards funeral expenses and further ₹15,000/- towards loss of estate. Thus, in this case, the just compensation would work out to ₹15,03,038/-.

10. The accident took place on 14.10.2012. Typically, interest at 7% per annum would be appropriate. However, in the peculiar facts of this case, the interest of justice would require the award of interest at the rate of 8% per annum. The deceased, in this case, was 23 years old. His parents were the claimants. Unfortunately, even the father has died, leaving behind the deceased's widowed mother. Therefore, in these peculiar facts, interest is reduced from 9% per annum to 8% per annum.

11. Accordingly, this appeal is partly allowed. Thus, the just compensation is determined at ₹15,03,038/- with interest at the rate of 8% per annum from the filing date of the petition till realization.

12. The Insurance Company has deposited the compensation amount in this Court. Accordingly, the parties will be entitled to withdraw the same in the above proportions together with the interest that shall have accrued on the deposited amount.

13. The claimants will have to furnish identification documents and bank details so that the Registry can directly transfer the amount into their accounts.

14. The appeal is disposed of in the above terms without any order for costs.

M.S. SONAK, J.

NITI K HALDANKAR Digitally signed by NITI K HALDANKAR Date: 2022.09.26 14:55:35 +05'30'