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IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.105 OF 2016

1. Shri Govindappa Hanumappa Biroji,
Son of late Mr. Hanumappa Biroji, aged
43 years, married, Labourer and his wife
(original claimant no.1)

2. Mrs. Kamala Govindappa Biroji,
wife of Mr. Govindappa Hanumappa
Biroji, aged 39 years, housewife,
(original claimant no.2)
Both residents of House No.112/37,
Bandora, Ponda – Goa. … Appellants

Versus

1. Mr. Shankar Hammappunawar
son of Mr. Mudukuppu Hammappunawar,
major, driver, resident of at Akkiuni Galli,
Saundatti, Belgaum – Karnataka,
(original respondent no.1)

2. Managing Director,
North West Karnataka Road Transport
Corporation (NWKRTC), Hubli
[Chikodi Division], Karnataka – State,
(original respondent no.2)

3. The New India Assurance Company
Ltd., Chikkodi Division, Karnataka –
State, (original respondent no.3) …. Respondents

Mr. Milton Marshal, Advocate *for the Appellants.*
Mr. Salil Saudagar, Advocate *for the Respondent No.2.*
Mr. U.R. Timble with Ms. Y. Mandrekar, Advocate *for Respondent No.3.*

CORAM: M. S. SONAK, J.

DATE : 18th AUGUST 2022

ORAL JUDGMENT :

1. Heard learned Counsel for the parties.

2. This appeal is directed against the judgment and award dated 24.08.2016 made by the Motor Accident Claims Tribunal (Tribunal), North Goa, in Claim Petition No.43/2015, awarding the appellants (claimants) compensation of ₹1,75,000/- with interest at the rate of 9% per annum for the death of their four-year-old son Master Saeel Govindappa Biroji in a vehicular accident on 13.07.2011.

3. Mr. Marshal, learned Counsel for the appellants, submits that the Claim Petition was filed under Section 163-A of the MV Act. He submits that the Tribunal erred in taking the annual income of the deceased at ₹15,000/- per annum when the Hon'ble Supreme Court, in ***R.K. Malik V/s. Kiran Pal***[1] had observed that the notional income fixed under Section 163-A of the MV Act should be enhanced since the same had continued without any amendment since 14.11.1994. He relied on ***Kurvan***

1 (2009) 14 SCC 1

Ansari alias Kurvan Ali & Anr. V/s. Shyam Kishore Murmu & Anr.[2] to submit that in similar circumstances, the Hon'ble Supreme Court took the annual income of a seven-year-old child who died in a vehicular accident at ₹25,000/- per annum. He pointed out that towards filial consortium and funeral expenses, additional compensation of ₹95,000/- was also awarded.

4. Mr. Marshal submits that in *Kurvan Ansari* (supra), the accident took place on 06.09.2004 and, therefore, in the present case, the annual income should be much higher than ₹25,000/- per annum. Based on all this, Mr. Marshal submitted that the compensation of ₹5,00,000/- claimed by the claimants was just compensation, and the Tribunal erred in not awarding the same.

5. Mr. Timble, learned Counsel for the respondent – Insurance Company, defended the impugned award based on the reasons. He submitted that until and unless the schedule to the MV Act is amended, there is no question of enhancing the amounts referred to therein. He submitted that an additional amount of only ₹25,000/- can be granted under Section 163-A towards consortium, loss of estate, funeral expenses, etc. He submitted that the Tribunal correctly distinguished children under five years and above. He submitted that the Tribunal has

2 2021 (4) TAC 673 (SC)

also relied on Supreme Court decisions; therefore, no case is made to warrant interference.

6. Mr. Timble, without prejudice, submitted that the interest of 9% per annum, in this case, was excessive because the accident occurred on 13.07.2011. He submits that the interest should have been a maximum of 6% per annum, not 9% per annum.

7. The rival contentions now fall for determination.

8. Admittedly, the claimants applied for compensation under Section163-A of the MV Act. However, the same was the position in *Kurvan Ansari* (supra), where the son of the appellants, Ibran Ali, a boy aged seven years, died in a vehicular accident on 06.09.2004.

9. The Tribunal in *Kurvan Ansari* (supra) went by the schedule. It took the notional income of the deceased at ₹15,000/- per annum and, by applying the multiplier of 15, awarded compensation of ₹2,25,000/- with interest at the rate of 6% per annum. The High Court dismissed the appeal of the Insurance Company and partly allowed the claimants' appeal by awarding a further sum of ₹15,000/- towards funeral expenses. The claimants were thus awarded total compensation of

₹2,40,000/- for the death of their seven-year-old son in a vehicular accident that took place on 06.09.2004.

1. The Hon'ble Supreme Court, however, referred to its decisions in ***Puttamma V/s. K.L. Narayana Reddy***[3], *R.K. Malik* (supra), ***Kishan Gopal V/s. Lala***[4] and ***Rajendra Singh V/s. National Insurance Company Limited***[5] held that the compensation awarded under Section 163-A of the MV Act was inadequate. The Hon'ble Supreme Court enhanced this amount to ₹4,70,000/-. An amount of ₹3,75,000/- was awarded towards loss of dependency after taking the notional income of the child at ₹25,000/- per annum. An amount of ₹80,000/- was awarded towards filial consortium (₹40,000/- x 2), and ₹15,000/- was awarded towards funeral expenses.

2. The Hon'ble Supreme Court reasoned that in *R.K. Malik* and *Kurvan Ansari* (supra), the Court had observed that the notional income fixed under Section 163-A of the MV Act 1988 is ₹15,000/- per annum, which should be enhanced and increased as the same is continued unamended since 14.11.1994. The Court also referred to its decision in *Kishan Gopal* (supra), where

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3 (2013) 15 SCC 45
4 (2014) 1 SCC 244
5 (2020) 7 SCC 256

the deceased was a 10-year-old child, and the Court took the notional income at ₹30,000/-in similar circumstances.

3. The Court, in *Kurvan Ansari* (supra), noted that though the accident took place on 06.09.2004, despite repeated directions, schedule to the MV Act was not yet amended. Therefore, fixing notional income at ₹15,000/- per annum for a non-earning member is not just and reasonable. By referring to its decisions in *Puttamma* (supra), *R.K. Maik* (supra), *Kishan Gopal* (supra), the Court held that this was a fit case to increase the notional income by taking into account the inflation, devaluation of the rupee, and cost of living.

4. Ultimately, the Hon'ble Supreme Court of India took the notional income of the seven-year-old deceased Ibran Ali at ₹25,000/- per annum and determined the overall compensation at ₹4,70,000/-. Interest at the rate of 6% per annum was awarded from the date of the claim petition till the date of realization.

5. In my judgment, a similar approach will have to be adopted in the present matter by following the law laid down in *Kurvan Ansari* (supra) and the other decisions referred to and relied on in *Kurnav* Ansari (supra).

6. In this case, no doubt deceased Saeel was only four years old at the time of the accident in which he lost his life. Mr. Timble is also justified in contending that the Hon'ble Supreme Court has distinguished between children below five years and above in matters of computation of compensation. But at the same time, it must be borne in mind that the accident occurred on 13.07.20011. In *Kurvan Ansari* (supra), the Hon'ble Supreme Court was concerned with the accident that occurred on 06.09.2004. Similarly, *Kishan Gopal* (supra) was a case where an accident occurred in 1992. In *Kurvan Ansari* (supra)*,* the Hon'ble Supreme Court took the notional income of seven-year-old Ibran Ali, who died on 06.09.2004, at ₹25,000/- per annum. In *Kishan Gopal* (supra), the Hon'ble Supreme Court took the notional income of the ten-year Tikaram, who died in a vehicular accident on 19.07.1992, at ₹30,000/- per annum. Therefore, considering this position, it will be appropriate if the notional income of deceased Saeel is taken at ₹30,000/- per annum.

7. There is no dispute about the multiplier of 15. Accordingly, compensation towards dependency, by taking Saeel's notional income at ₹30,000/- per annum, would come to ₹4,50,000/-. To this amount, we will have to add at least ₹25,000/- towards other

heads consistent with the provision of Section 163-A read with the second estate to the MV Act.

8. The accident, in this case, took place on 13.07.2011. Therefore, interest at the rate of 9% per annum is indeed excessive, and the same is consequently scaled down to 7% per annum.

9. Accordingly, this appeal is partly allowed, and the compensation is determined at ₹4,75,000/- with interest at the rate of 7% per annum from 04.06.2015 till actual payment. There shall be no order for costs.

10. The respondents, including in particular respondent no.3 – Insurance Company, should deposit the enhanced compensation amount after making suitable adjustments for the payments already made and the reduced interest rate within six weeks from today. The Insurance Company should give due intimation to the learned Counsel for the appellants before making such a deposit.

11. Upon the amount being deposited, the appellants shall be entitled to withdraw the same after furnishing proper identification documents and bank details. The Registry to ensure

that the amounts are directly transferred into the claimants' bank account.

12. 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: 2022.08.22 11:08:35 +05'30'