

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA
FIRST APPEAL NO.106 OF 2015

The New India Assurance Company Ltd.,
Jagannath Building, Jose Inacio de Loyola
Road, Near Fly over, Margao Goa.
(Insurance Company of the Tata Tipper
Truck).

...Appellant

Versus

1. Mrs. Diya Deepak Narvekar,
Aged 28 years, married, housewife,
(for self and natural guardian of)

1a) Miss. Issheta Deepak Shet Narvekar,
Aged 07 years, unmarried, student,

1b) Master Raunak Deepak Shet Narvekar,
Aged 04 years, unmarried, All Indian
Nationals and residents of H.No.E-35,
Housing Board Colony, Gogal, Margao
Goa.
2. Marcus Inacio Gomes,
S/o Inacio Gomes, major of age,
R/o H.No.530, Agali Margao, Salcete Goa.
(Driver of the Tata Tipper Truck)
3. Mr. Beny Gomes,
S/o Jose Gomes, major of age,
R/o H.No.550, Agali Fatorda,
Salcete Goa (Owner of the Tata Tipper
Truck).
4. Ashok Mahadev Gawas,
S/o Mahadev Gawas, major of age,
R/o Ambeshiwada, Amona, Bicholim Goa.
(Driver of Swift Car).

5. Mr. Dinesh Datta Sawant,
S/o Datta Sawant, major of age,
R/o H.No.537, Khandola,
Marcela, Ponda Goa.

6. ICICI Lombard General Insurance Co.
Ltd. Mahalaxmi Branch, Mumbai
(Insurer of Swift Car).

...Respondents

Mr. U. R. Timble and Ms. Y. Mandrekar, Advocates for the appellant.

Mr. Pavithran A. V., Advocate for respondent Nos. 1, 1(a), and 1(b) –
Claimants.

Mr. A. D. Bhobe, Advocate for respondent No.3 – Owner.

CORAM: M. S. SONAK, J

DATE : 30th June 2022

ORAL JUDGMENT

1. Heard Mr. Timble, learned counsel for the Appellant.
Mr. Pavithran appears for respondent Nos.1, 1(a), and 1(b)-
Claimants, and Mr. Bhobe appears for respondent No.3-Owner.

2. In this case, there is some issue about service on respondent
No.2-driver of the insured vehicle involved in the accident. However,
Mr. Timble rightly points out that since the main issue involved in
this appeal is about the quantum of compensation, failure of service
on respondent No.2 will not be material.

3. The challenge in this appeal is to the judgment and award dated
30.06.2015 in Claim Petition No.3/2012 made by the Motor
Accident Claims Tribunal sitting at Ponda.

4. The tribunal has awarded total compensation of ₹23,62,872/- to the claimants with interest at the rate of 9% per annum from the date of the claim petition.

5. Mr. Timble submits that there was no evidence, in this case, to sustain the finding that the deceased Deepak Narvekar was drawing a monthly salary of KD-140 (Kuwait Dinar). He submits that in the absence of proper legal evidence, the tribunal erred in taking the income of the deceased at ₹16,000/- per month.

6. Mr. Timble submits that the award of ₹1,00,000/- each to the claimants towards loss of love and affection is contrary to the law laid down in *National Insurance Company Limited Vs. Pranay Sethi and others*¹. He submits that at the most an amount of ₹40,000/- each could have been awarded towards loss of consortium. Mr. Timble submits that the award of ₹50,000/- towards funeral expenses is also contrary to the law laid down in *Pranay Sethi* (supra) and the amount not exceeding ₹15,000/- could have been awarded.

7. Mr. Pavithran defends the impugned award based on the reasoning reflected therein. He submits that the tribunal has taken the income of the deceased at only KD-100 instead of KD-140. He submits that there is no award towards loss of estate. He, therefore, submits that this appeal should be dismissed.

¹ (2017) 16 SCC 680

8. The rival contentions now fall for determination.

9. On the aspect of the salary of the deceased, the claimants have examined Rupesh Palyekar (AW6). He was working for Kuwait Resources House from October 2008 till January 2014 as MWR/Coordinator in Kuwait. He has deposed that he knew the deceased Deepak Narvekar who was working for the same establishment for the period between October 2008 and May 2011. He has deposed that Deepak Narvekar was drawing a basic monthly salary of KD 140. No dent was made to this deposition in the course of the cross-examination.

10. The claimants have also examined Umesh Amerkar (AW7) who also deposed in the same terms as AW6.

11. The certificate and contract of employment has also been produced on record. The certificate was marked 'X' for identification because the author of such certificate could not be examined. However, the tribunal has held that AW1, AW6, and AW7 were cross-examined on the said certificate, and therefore, to a certain extent, this certificate stands proved.

12. The tribunal has, on evaluation of evidence on record taken the salary of the deceased at KD 100 per month even though the certificate and the testimony of two witnesses suggested that the same

was KD 140 per month. The tribunal has reasoned that some amount of exaggeration on the part of the witnesses cannot be ruled out.

13. Considering the evidence on record and its evaluation by the tribunal, no case is made out to reduce the deceased determined income. Therefore, the compensation of ₹20,37,872/- towards dependency determined by the tribunal by taking the deceased income at KD 100 is upheld.

14. Mr. Timble is however justified in submitting that an amount of ₹1,00,000/- could not have been awarded towards love and affection having regard to the law laid down in *Pranay Sethi* (supra). The amount of ₹40,000/- each could have been awarded and such amount is now substituted in the impugned award.

15. Similarly, the award of ₹50,000/- towards funeral expenses is also not consistent with the law laid down in *Pranay Sethi* (supra). This amount will have to be reduced to ₹15,000/-. However, Mr. Pavithran is justified in submitting that an additional amount of ₹15,000/- is due towards the loss of estate. This amount will have to be added. Thus, the total compensation would come to ₹21,87,872/- instead of ₹23,62,872/-. The amount awarded is modified to this extent only. The direction about interest and apportionment are maintained.

16. The parties are permitted to withdraw their respective shares after accounting for the amount already withdrawn. The learned counsel state that they will exchange the calculations and provide the bank details to the registry. The registry to accordingly permit withdrawals by depositing the amount together with the proportionate interest that shall accrue on such amount directly into the bank accounts of the insurance company and the claimants.

17. The appeal is partly allowed. There shall be no order for costs.

18. Misc. Civil Application No.158 of 2022 does not survive and the same is disposed of accordingly.

M. S. SONAK, J

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