Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.66 OF 2017
WITH
FIRST APPEAL NO.68 OF 2017

National Insurance Co. Ltd.,
Through its Divisional Manager, Having Office at Subraya Chambers, F.L. Gomes Road, Vasco-da-Gama, Goa-403802. .... Appellant.

Versus

1) Master Junaid Admani,
Son of late Mohammad Siddik Admani, Aged about 3 years, being minor Represented herein by his grandfather and natural guardian Shri. Mohamed Yusuf Admani, Aged about 65 years, Resident of H.No. 1543, Yusuf Manzil, 2 Vidyanagar, Aquem, Margao-Goa, Now represented by Shri. Mohamed Iqbal as natural guardian in view of The death of Shri. Mohamed Yusuf Admani, As per order passed on exhibit D-26.

2) Shri. Sitaram Ganpat Kande,
Son of Ganpat Kande, Driver of truck no, MH-05-2294, Major in age, resident of Kerevade Sidache Shet, Kudal Taluk, Sindhudurg, Maharashtra,

3) Shri. Kiran Ravinder Samant,
Son of Ravinder Samant, Owner of truck no, MH-05-2294, Major in age,

resident of Sai Sadan, at & Post Pali, Taluk & Dist Ratnagiri, Maharashtra. (deleted vide order dated 1.2.2008 and substituted by

4) Shri. Rajkumar K. Gidhwani,
Son of K. Gidhwani, Major of age, Owner of truck no. MH-05-2294, Resident of Dwarkadas Raw Mills, Post: Murbao, Room no. (2), Manaka Society, Ulhasnagar-3, Dist: Thane, Maharastra 421003.

5) Shri. Suresh Shankar Shigar,
Son of Shankar Shigar,
Major in age, driver of Tata Truck no.MH-04-AL-593, Resident of Karad, Kule, Satara, Maharashtra.

6) Shri. Rajaram Yeshwant Gharal,
son of Yeshwant Gharal, major in age, Owner of Tata Truck no.MH-04-AL-593, Resident of Room no.7, A-12, Shiv Co-op. Housing Society Ltd., I Sector 18, Navi Mumbai, Dist. Thana, Maharashtra.
(Dropped vide order dated 28.11.2007 on Exh.D 22. Hence deleted

7) The New India Assurance Company Ltd., With its Branch Office at 468/1, Opp. Popatbhai Petrol Pump, Room No.7, Shaniwar Peth, Karad-415110, Maharashtra.

8) Shri. Kiran Ravinder Samant, Son of Ravinder Samant, Owner of truck no. MH-05-2294, Major in age, resident of Sai Sadan, at & Post Pali, Taluk & Dist Ratnagiri, Maharashtra.
(added As per order dated 6/1/2009 on exhibit D-46)

….. Respondents.

Mr. U. R. Timble with Ms. Yadika Mandrekar, Advocates *for the Appellant.*

Mr. Ajit R. Kantak, Advocate *for Respondent No.1-Claimant.*

WITH
CROSS OBJECTION NO.1 OF 2019
IN
FIRST APPEAL NO.66 OF 2017
WITH
CROSS OBJECTION NO.8 OF 2019
IN
FIRST APPEAL NO.68 OF 2017
WITH
STAMP NUMBER (APPLN.) NO.1663 OF 2020
IN
FIRST APPEAL NO.68 OF 2017

Master Junaid Admani, …. Cross Objector.

Versus

1) Sitaram Ganpat Kande & ors. …. Respondents.

CORAM : M. S. SONAK, J.

DATE : 15th July 2022

ORAL JUDGMENT: -

1. Heard Mr. U.R. Timble for the Appellant-Insurance Company and Mr. A.R. Kantak for the Respondent-Claimant

2. On 2nd April 2006, Mohammad and his wife Tahseen were involved in a vehicular accident. Mohammad died on the spot, and Tahseen died in the hospital on 7th April 2006. Their son Zaid, a minor aged 3-4 years, also died in the same accident. Surviving son Junaid, who was three years old at the time of the accident, and lost his parents and brother, instituted Claim Petition No.233/2006 (for the death of his mother) and Claim Petition No. 234/2006 (for the death of his father) before the Motor Accident Claims Tribunal at Margao (Tribunal).

3. The Tribunal made awards in both the Claim Petitions. However, such awards were set aside by this Court, and the matters were remanded to the Tribunal for recomputation of the compensation. In all other aspects, these awards were not interfered with. Accordingly, upon remand, the Tribunal has made the impugned Awards dated 29th February 2016. The Appellant-Insurance Company has questioned both these awards on the ground that the quantum of compensation awarded by the Tribunal is excessive. Accordingly, it is only appropriate that a common judgment and order dispose of both these Appeals. The learned Counsel agree that this will be the right course to adopt.

4. Mr. Timble, the learned Counsel for the Appellant-Insurance Company, pointed out that the deceased parents of Junaid had filed income tax returns that were produced in evidence. He referred to the returns on page 162 in First Appeal No.66/2017, in which Junaid's father had declared his total income as ₹1,73,874/-. The tax of ₹22,121/- was paid on this income. Thus, the net income was ₹1,51,753/-. He submits that Junaid's mother filed identical returns considering the special provisions for the couples in Goa.

5. Based on the above, Mr. Timble submitted that the compensation would not exceed ₹24,77,810/- for Junaid's mother and would be even lesser for Junaid's father. Accordingly, he submits that the Tribunal erred in awarding compensation above these amounts.

6. Mr. A.R. Kantak, learned Counsel for the Claimant, countered Mr. Timble's submissions by pointing out that Junaid's parents had filed the income tax returns for the year endings in 2004, 2005, and 2006. An Income Tax Officer and an income tax professional were examined. Their evidence shows that, on average, Junaid's parents' income was ₹1,96,800/- each.

7. Mr. Kantak submitted that in this case, the deduction towards personal expenses should have been 1/4th and not 1/3rd. Furthermore, he proposed that no award has been made for the pain and suffering that Junaid's mother suffered, who survived almost six days after the accident. Furthermore, he submitted that no award had been made for the Vrindavan Hospital expenses where Junaid's mother was admitted six days before she died. Based on all this, Mr. Kantak submitted that the two appeals should be dismissed, and those cross objections should be allowed.

8. Rival contentions now fall for my determination.

9. The income tax returns referred to by Mr. Timble, no doubt, supports the contentions raised by him. However, the said income tax returns cannot be read in isolation. This is more so because the Claimant has examined the Income Tax Officer (AW.4) and the Income Tax professional (AW. 5), who have produced the income tax returns and the balance sheets and profit and loss accounts with the accompanying returns.

10. From the oral and documentary evidence produced through AW.4 and AW.5, it is apparent that the declared income excludes the interest on the housing loan. Therefore, if this component is taken into consideration, then the contention of

Mr. Timble and the calculations based on such contentions will have to be rejected.

11. The oral and the documentary evidence bears out the following income position *qua* either the father or the mother of Junaid:-

(a) As of the year ending 31/3/2004 ₹1,91,693-50

(b) As of the year ending 31/3/2005 ₹2,00,823-50

(c) As of the year ending 31/3/2006 ₹1,97,895-50

12. As noted earlier, on account of the special provision made for couples in the State of Goa, the other spouse has filed almost identical returns. Based on the above figures, Mr. A.R. Kantak is justified in submitting that the average income of each of the parents will have to be taken at ₹1,96,800/- per annum. Mr. Kantak made it clear that the above figures represent the net income, *i.e.,* the income after deducting the tax component.

13. The next point for determination is appropriate deductions. Mr. Kantak submits that the deductions should not exceed 25 % in this case because Junaid's family comprised four members. Mr. Timble, however, offered that in terms of paragraph 37 of ***National Insurance Company Limited vs. Pranay Sethi & others*** – (2017) 16 SCC 680, the deductions in each case will have to be 1/3rd and not 1/4th as contended by Mr. Kantak.

14. Paragraph 37 of *Pranay Sethi (supra)* approves ***Sarla Verma vs. DTC*** - (2009) 6 SCC 121 on the issue of permissible deductions. *Sarla Verma (supra)* clearly states that where the deceased was married, the deduction towards personal and living expenses of the deceased should be one-third where the number of dependent family members is 2 to 3; one-fourth where the number of dependent family members is 4 to 6 and one fifths where the number of dependent family members exceeds 6. Thus, the number of dependent family members is crucial, not the number of family members in general.

15. In the present case, the number of dependent family members can be taken as two because each spouse has their own income. However, even if the number of dependent family members is 3, the deduction should be one-third and not one-fourth, as contended by Mr. Kantak.

16. There is no dispute about the age of the deceased parents; consequently, there is no dispute about the multiplier. Therefore, the multiplier for Junaid's mother will be 17, and for his father will be 16. Thus, in terms of *Pranay Sethi (supra)*, Junaid will be entitled to ₹40,000/- towards consortium, ₹15,000/- towards funeral expenses, and ₹ 15,000/- towards loss of estate. Thus, to the total compensation towards dependency in each case, the addition of ₹70,000/- is due.

17. Mr. Kantak is justified in submitting that some award was due to pain, suffering, and medical expenses because Junaid's mother died after six days in the hospital. However, Mr. Timble pointed out that there is evidence that at least for a year after the demise of Junaid's parents, his uncle, who took over the business, was giving ₹12,000/- to ₹15,000/- per month to Junaid. Therefore, this amount can be set off against the compensation for pain and suffering or medical expenses. Even otherwise, there is no evidence as such produced on the aspect of medical costs.

18. Based on the above, Junaid would be entitled to the compensation of ₹31,92,560/- due to the demise of his mother. Therefore, this amount can be rounded off to ₹32.00 lakhs.

19. Similarly, Junaid would be entitled to the compensation of ₹30,08,884/-for the demise of his father, which can be rounded off to ₹30.10 lakhs.

20. The Tribunal has awarded interest at the rate of 9% per annum, which calls for no interference, considering that the accident occurred on 2nd April 2006.

21. The two appeals are, therefore, dismissed. However, cross objections are partly allowed to the above extent.

22. The Appellant-Insurance Company to deposit the enhanced amount together with interest thereon at the rate of 9% per annum from the Petition date in this Court within eight weeks from today. Due intimation will have to be given to the learned Counsel for the Claimant. Once this additional amount is deposited, the Claimant will have the liberty to withdraw the same by furnishing identification documents and bank details.

23. The Appellant-Insurance Company has also deposited the awarded amount in terms of the impugned judgments and awards. Accordingly, Mr. Kantak submits that Junaid has now attained the majority. Therefore, the guardian appointed for Junaid is hereby discharged. Junaid is, however, permitted to withdraw 50% of the awarded amount by furnishing bank details.

24. For the balance of 50%, Junaid will have to apply to this Court to explain whether he requires this amount at this stage. As and when made, such an application will be considered on its own merits and in accord with the law. Meanwhile, the balance of 50% is to be invested in a nationalized bank as per the usual procedure for three years.

25. The Appeals and the Cross Objections are disposed of in the above terms. Accordingly, there shall be no order for costs.

26. Misc. Applications, if any, do not survive and also stand disposed of.

M. S. SONAK, J.

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