Niti

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.55 OF 2012

Bajaj Allianz General Insurance
Having its Branch office at
G.E. Plaza, Airport Road
Yerwada Pune, 411 006. ...Appellant

Versus

1. Miss Kavita Kashinath Shetye,
Wife of Kashinath Parshuram Shetye
Housewife, 37 years of age.

2. Master Amey Kashinath Shetye,
Son of Kashinath Parshuram Shetye
Student, 14 years of Age.

3. Master Nihal Kashinath Shetye,
Son of Kashinath Parshuram Shetye
Student, 9 years of Age.

Respondent No: 2 and 3 being minors are
represented by Respondent No.1 being
mother and Natural Guardian.

All the above are residing at
H.No: 1025, Near Welcome Society,
Torda, Salvador Do Mundo,
Torda, Bardez-Goa.

4. Smt. Taramati Parshuram Shetye,
Wife of late Parshuram Shamba Shetye,
76 years of age, Resident of Torshem,
Pernem, Goa. House No. not known.

5. Shri. Santosh Basavraj Vasumani

Major, residing at House No. 546,
near Petrol Pump,
Caranzalem, Taleigao, Ilhas Goa
(Driver of Tavera Jeep No. GA-01-S-9106)
(Native of Bailhongal Village Amtur,
Belgaum Karnataka)

6. Mrs. Lizette Gonsalves e Menezes
Major, w/o Joaquim E. E. Menezes
r/o H. No. A/8, Chamunda Apartments,
Cujira Kalapur, Tiswadi Goa.
(owner of Tavera Jeep No. GA-01-S-9106)

7. Manager
HDFC General Insurance Co. Ltd.
6th Floor Leela Business Park,
Andheri Kurla Road, Andheri East,
Mumbai – 400 059.
House No. not known
(Insurer of Tavera Jeep No.GA-01-S-9106)

8. Shri Raghunath Atmaram Naibagkar,
Major, R/o. Deulwada,
Mandrem, Pernem Goa.
House No. - not known
(Driver of Bus No.GA-01/T-4087)

9. Shri Hanumant Shetgaonkar,
Major, R/o. H.No.222/1,
Gawdewada, Korgao, Pernem, Goa.
(Owner of Bus No.GA-01/T-4087) …Respondents

Mr. Amey Kakodkar and Ms. Amanda Godinho, Advocates *for the Appellant.*

Mr. A.R.S. Netravalkar, Advocate *for the Respondent Nos.1 to 4.*
Mr. J. Godinho and Mr. Manoj Jalmi, Advocates *for the Respondent Nos.5 & 6.*

CORAM: M. S. SONAK, J.
DATED: 3rd January 2022

ORAL JUDGMENT :

1. Heard Mr. Amey Kakodkar, learned Counsel for the appellant, Mr. A.R.S. Netravalkar learned Counsel for respondents nos.1 to 4 and Mr. J. Godinho, learned Counsel for respondents nos.5 & 6. Other respondents, though served, are neither present nor represented through their Counsel.

2. The challenge in this appeal is to the judgment and award dated 22.07.2011 made by the Motor Accidents Claims Tribunal (Tribunal) disposing of Claim Petition No.8 of 2009 awarding compensation of ₹17,76,800/- together with interest at the rate of 8% per annum from 29.01.2009, i.e. the date of application till actual payment. The apportionment has been clarified in the operative portion of the award itself.

3. Mr. Kakodkar, learned Counsel for the appellant, at the outset, pointed out that in this appeal the appellant had challenged the findings of the Tribunal on the aspect of negligence. He, however, fairly placed on record judgment and order dated 14.10.2021 passed in First Appeal No.57 of 2012 for consideration of this Court.

4. First Appeal No.57 of 2012 was concerned with the very same accident, which is the subject matter of the present First Appeal. In the said judgment and order dated 14.10.2021, the contention on the aspect of negligence was considered but decided against the appellant Insurance Company. Therefore, following the reasoning in the judgment and order dated 14.10.2021, the first contention raised by Mr. Kakodkar will have to be negatived.

5. Mr. Kakodkar, then pointed out that the compensation awarded by the Tribunal, in this case, is also quite excessive and not in accord with the settled principles. However, on perusal of the impugned award, I find that the compensation awarded by the Tribunal is inadequate and not commensurate to the just compensation that the claimants in the present case were entitled to.

6. There is evidence in this case, that the deceased was employed in the Forest Department, Government of Goa and was earning a salary of ₹16,291/-. There is evidence that the deceased was 50 years old at the time of the accident and his demise. Having regard to the law laid down by the Hon'ble Supreme Court in the case of ***National Insurance Company V/s. Pranay***

Sethi[1], an addition of 15% was necessary towards future prospects. The Tribunal has not made this addition and this has impacted the overall determination of the compensation. Upon addition of 15% towards future prospects, the monthly salary of the deceased will have to be taken as ₹18,734/-. There is no dispute that the multiplier in the present case would be 13. This means that the total amount towards dependency would come to ₹29,22,504/- minus the 1/4th deduction towards the personal expenses of the deceased. The total dependency compensation would therefore come to ₹21,91,878/-. The Tribunal has made a deduction towards income tax and Mr. Netravalkar, the learned Counsel for the claimants agreed that such a deduction is required to be made. Thus, on making a deduction of 10% the total dependency compensation comes to ₹19,72,690/-.

7. In this case, the deceased left behind his widow and his two children. Towards consortium, each of them is entitled to compensation of ₹40,000/-. Besides, compensation towards funeral expenses and loss of estate to the extent of ₹15,000/- on both the heads is also due and payable. Therefore, to the dependency compensation an amount of ₹19,7,690/- a further addition of ₹1,50,000/- is due.

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1 (2017) 16 SCC 680

8. Thus, the total compensation, in this case, works out to ₹21,22,690/-. In a matter of this nature, this Court has to determine the just compensation, even though no cross-appeal or cross objection may have been filed by the claimants. This was clarified in ***New India Assurance Co. Ltd. V/s. Seema Sudam Auti***[2]. This position has been recently reiterated by the Hon'ble Supreme Court as well.

9. Therefore, having cumulative regard to all the aforesaid facts and circumstances, this appeal is disposed of by making the following order :

O R D E R

(a) The challenge of the appellant - Insurance Company to the impugned judgment and award is hereby rejected;

(b) The just compensation, in this case, is determined at ₹21,22,690/-;

(c) The directions concerning payment of interest and apportionment, as provided in the impugned judgment and award, are not disturbed;

(d) The claimant nos.2 & 3, who were earlier minors but have now become major, are given liberty to deal with their portion of the compensation. To that

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extent, the directions for investment, etc. stand modified;

(e) From out of the compensation now determined, a deduction can be made towards no-fault liability only to the extent such amount has been actually paid to the claimants;

(f) The claimants are entitled to withdraw the compensation amount deposited in this Registry by indicating their bank details so that the Registry can directly transfer the amount into their bank accounts;

(g) The additional compensation now awarded will have to be deposited by the appellant Insurance Company in this Court within six weeks from today. Once the same is deposited, the claimants will have similar liberty in respect of the enhanced compensation amount as well;

(h) The claimants will have to pay a proportionate additional court fee now that the compensation amount has been enhanced. This shall be a precondition for withdrawal of the enhanced compensation amount;

(i) The impugned judgment and award is modified to the aforesaid extent;

(j) There shall be no order for costs.

M. S. SONAK, J.

NITI K HALDANKAR
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