Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.70/2017

National Insurance Co. Ltd.
Through its Branch Manager,
Ponda Branch, Ponda-Goa ... APPELLANT

Versus

1. Smt. Shobha Vassant Gaude Nee (alias)
Smt. Shobha Vassant Bhomkar nee (alias)
Smt. Shobha Narayan Kerkar,
Widow of Vassant Manguesh Bhomkar @
Gaude, major in age, widow,
Indian National, Housewife

2. Vicky Vassant Bhomkar nee (alias)
Vicky Vassant Gaude nee (alias)
S/o Vassant Manguesh Bhomkar alias
Gaude, 22 years of age, student,
Indian National,

3. Viraj Vassant Bhomkar nee (alias)
Mast. Viraj Vassant Gaude nee (alias) s/o
Vassant Manguesh Bhomkar alias Gaude,
18 years of age, student, Indian National

4. Miss Neha Vassant Bhomkar nee (alias)
Miss Neha Vassant Gaude nee (alias)
D/o Vassant Manguesh Bhomkar alias
Gaude, 17 years of age, student,
Indian National, Represented through
Natural guardian her mother
Smt. Shobha Vassant Gaude nee

Smt. Shobha Vassant Bhomkar nee
Smt. Shobha Narayan Kerkar,
Widow of Vassant Manguesh Bhomkar @
Gude, All are R/o H. No. 168/1,
Naggar Wadda, Bhoma, Ponda Goa.

5. Abdul M. Khan , S/o Rehman Khan,
Major in age, Indian National,
R/o H. no.207, Muslim Wada,
Bhoma, Ponda Goa.
Driver and owner of minibus
bearing no. GA-05-T-9984. ...RESPONDENTS

Mr. U. R. Timble, Advocate *for the Appellant.*

CORAM: M. S. SONAK J.

DATED: 17th March 2022

ORAL JUDGMENT:-

1. Heard Mr. Timble for the Appellant-Insurance Company.

2. On 4th March, 2022, this Court made the following Order:

> *1.After this matter was argued for some time, the learned counsel for the parties agree that this matter could be sent to the ensuing Lok Adalat scheduled on 12.03.2022.*
>
> *2. One of the issues involved in this appeal is whether such appeal is at all maintainable in the absence of any*

leave under Section 170 of the Motor Vehicle Act obtained by the appellant – Insurance Company.

3. At the same time, if the compensation determined by the Tribunal at paragraph 23 is analysed, then, at least prima facie it is apparent that no compensation could have been awarded towards loss of love and affection in an amount of ₹3 lakhs. At the highest towards loss of consortium to each of the four claimants an amount of ₹40,000/- could have been awarded i.e. a total of ₹1,60,000/-. Further, the compensation towards loss of estate, at least prima facie will have to be reduced from ₹1 lakh to ₹15,000/- and towards funeral expenses from ₹20,000/- to ₹15,000/-. This means that in the terms of the law laid down by the Hon'ble Supreme Court in ***National Insurance Company Ltd. v. Pranay Sethi & Ors. - 2017 (16) SCC 680*** *the just compensation would come to ₹5.76 lakhs. At least prima facie even the interest amount need not be disturbed considering that this was a case of death.*

4. The learned counsel for the claimants, without prejudice to his contention about the maintainability stated that the claimants would be satisfied with the compensation of ₹5.76 lakhs. However, Mr. Timble desired to seek some instructions from the Insurance Company in this matter.

5. Learned counsel however submitted that the matter can go to the Lok Adalat where a settlement will be attempted.

6. Even according to me it is best if the matter is settled before the Lok Adalat rather than go into the issue of maintainability of the appeal.

7. Place the matter in the ensuing Lok Adalat scheduled on 12.03.2022. Learned counsel for the parties state that they will appear before the Lok Adalat on 12.03.2022.

8. If for any reason the matter is not settled before the Lok Adalat then place it for final hearing on 17.03.2022 under the caption "part heard".

3. Today, Mr. Timble submits that the matter could not be settled before the Lok Adalat because the Divisional Manager could not remain present. He, however, submits that he has instructions to settle the matter at Rs.5.76 lakhs.

4. Mr. V. Kurtikar, learned Counsel for the Claimants had already made a statement before this Court that the Claimants, without prejudice to their contentions about the maintainability of the Appeal, would be satisfied with the compensation of ₹ 5.76 lakhs.

5. Therefore, in this case, without going into the issue of maintainability and based on the consent of the parties, articulated through their learned Counsel, this Appeal can be disposed of by modifying the impugned Award dated 21st July, 2016 in Claim Petition No.104/2015. In terms of the modification, the awarded compensation of ₹ 9,06,100/- will stand reduced to ₹ 5,76,000/-. Save and except this modification, rest of the directions in the impugned award are maintained.

6. From the amount deposited by the Insurance Company in this Court, the Claimants, as well as the Insurance Company, will be entitled to now withdraw their proportionate shares in terms of the impugned Award as now modified. Both the parties will also be entitled to proportionate interest that shall have accrued on the said amount.

7. The Appeal is disposed of with the aforesaid terms. There shall be no order for costs.

M. S. SONAK, J.

SANTOSH S MHAMAL Digitally signed by SANTOSH S MHAMAL Date: 2022.03.17 17:27:15 +05'30'