Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.145/2017

The New India Assurance Co. Ltd, Panaji Divisional Office 7th Floor, Sanchar Bhavan, BSNL Building Patto, Panaji-Goa. … APPELLANT

Versus

1. M/s Conceicao S. Fernandes, Widow of late Eugenio Fernandes, Aged about 53 years, Housewife, R/o H.No. 745, Acsona Condant, Benaulim, Salcete, Goa, through her duly constituted attorney Miss. Veronica Fernandes, daughter of late Eugenio Fernandes, R/o H.No. 745, Acsona Condant, Benaulim, Salcete, Goa

2. Miss. Veronica Fernandes, daughter of late Eugenio Fernandes, Aged about 27 years, Unmarried, Unemployed, R/o H.No. 745, Acsona Condant, Benaulim, Salcete, Goa.

3. Shri. Paramasivan K. Pallar, Son of Shri. Kuttidural Pallar, major in age, Driver, R/o Box no. 28, Nehru Chawl, Anna Nagar, M.D. Road, Kandivali (E), Mumbai-400101.

4. M/s. Neeta Tours & Travels, Pushkar Mela Resort Padgha Vahuli,

Mumbai Nashik Highway, Kesari Petrol Pump, Bhiwandi Thane. ... RESPONDENTS

Mr. U. R. Timble and Ms. Yadika Mandrekar, Advocates *for the Appellant*.
Mr. A. D. Bhobe and Ms. S. Shaikh, Advocates *for the Respondents*.

CORAM.: M. S. SONAK, J.

DATED: July 08, 2022

ORAL JUDGMENT:

1. Heard Mr. Timble for the Appellant and Mr. Bhobe for the Respondents No.1 and 2 (claimants).

2. Mr. Timble states that for the contentions that are proposed to be advanced in this appeal, notice to respondent no.3 is not necessary.

3. The appellant-Insurance Company challenges the Judgment and Award dated 22.08.2017 in Claim Petition No.46/2014, by which the Motor Accident Claims Tribunal (Tribunal) has awarded the claimants compensation of ₹57,35,000/- for the death of their son Cyril Fernandes in a vehicular accident.

4. Mr. Timble states that the evidence on record does not justify the finding about Cyril's income being $ 815. He submits that the documents produced on record were not proved in accord with the law, and in any case, even the documents suggest an income of a maximum of $ 745.

5. Mr. Timble submits that the evidence also bears out that Cyril was not a permanent employee but worked for only eight months in a year. Based on this, he submitted that adding a maximum of 40% towards future prospects might have been justified but not 50% as assessed by the Tribunal.

6. Mr. Timble further submits that the compensation for funeral expenses, loss of love, and affection are contrary to the law in ***National Insurance Co. Ltd. vs. Pranay Sethi & Ors. – 2017 (16) SCC 680***.

7. Mr. Timble also submitted that the Tribunal erred in taking the dollar conversion rate at ₹60/- when contemporaneous records establish that the rate was ₹53.40 or the rate did not exceed ₹55/- in the year 2012. He also produced on record an extract from the internet supporting his submission.

8. Mr. Bhobe, learned counsel for the claimants, defends the impugned award based on the reasoning reflected therein. He submits that the documents were produced about Cyril's salary and were not even seriously contested during the cross-examination. He pointed out that the Tribunal has taken the income for only eight months, not twelve months because the claimants did not oppose this. He submitted that the dollar rate is a matter of common knowledge and the Tribunal correctly assessed the same. Finally, he submitted that Cyril was only 26 years old at the time of the accident, and the award made is at least some relief to his parents. He submitted that such award might not be disturbed.

9. The rival contentions now fall for my determination.

10. On the issue of Cyril's income, both oral and documentary evidence justifies the Tribunal's finding. The documents refer to Cyril's wages on most occasions being $ 745. However, at the same time, these same documents quite consistently refer to an overtime extra of $ 61. Besides, there are other amounts that Cyril used to earn. Considering the oral and documentary evidence on record, the finding of the Tribunal about Cyril earning $ 815 warrants no interference. In these matters, some amount of guesswork is permissible. The Tribunal has considered the oral and documentary evidence cumulatively to arrive at this finding.

11. On the exchange rate, however, the Tribunal has gone by "common knowledge" because none of the parties bothered to produce any evidence on record. If common knowledge is to form the base, then reference to rates reflected on the internet may not be out of place. From the extract now produced by Mr. Timble, it is evident that the average exchange rate in 2012 was 53.4018 INR. This extract, however, refers to the best exchange rate of ₹57.21 and the worst of ₹48.68. Considering this position, the exchange rate can be ₹55/-. Based on such an exchange rate, the compensation towards dependency would come to ₹45,72,150/- and not ₹49,87,800/- as determined by the Tribunal.

12. In terms of *Pranay Sethi (supra)*, the claimants would be entitled to ₹15,000/- for funeral expenses, ₹15,000/- for loss of estate, and ₹40,000/- each, i.e., a total of ₹80,000/- towards loss of consortium. The Tribunal has rightly awarded compensation of ₹5,96,865/- towards medicines and hospital charges and ₹25,000/- towards transport expenses.

13. The just compensation, in this case, will therefore work out to ₹53,04,015/- instead of ₹57,35,000/-.

14. Accordingly, this appeal is partly allowed and compensation amount is reduced from ₹57,35,000/- to ₹53,04,015/-. However, the directions for payment of interest, investment, etc. are maintained.

15. The appellant and the claimants are permitted to effect proportionate withdrawals and proportionate interest that shall have accrued on the amount deposited by the appellant. For this, they should exchange and submit proper calculations, identification documents, and bank details so that the Registry can do the needful in the matter.

16. The appeal is disposed of in the above terms without any order for costs.

M. S. SONAK, J.

SUCHITRA NANDAN SINGBAL

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