Niti

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.122 OF 2016

National Insurance Co. Ltd.
Through its Divisional Officer,
Subraya Chambers, 1st Floor,
Francisco Luis Gomes Road,
Vasco-Da-Gama, Goa. … Appellants

Versus

Mr. Narcinva Ananta Naik,
Son of late Mr. Ananta Bugi Naik,
Aged 55 years, married, driver,
R/o H. No.375, Malwada,
Marcaim, Ponda-Goa.
(since deceased through his legal heirs)
l-a) Mrs. Shali Narshiv Naik
Alias Shali Manguesh Naik,
Widow of late Mr. Narcinv Anant Naik,
Aged 47 years, Housewife,

1-b) Miss. Nikita Narsinv Naik, Daughter of late Mr. Narsinv Anant Naik, Aged 21 years, Student,

1-c) Miss. Pratiksha Narshi Naik, Daughter of late Mr. Narshiv Anant Naik, Aged 20 years, Student,

1-d) Miss. Suvidha Narsinv Naik, Daughter of late Mr. Narsinv Anant Naik, Aged 18 years, Student,

1-e) Miss. Sampada Narcinva Naik, Daughter of late Mr. Narshiv Anant

Naik, Aged 15 years, Student,
All resident of H. No. 375, Malwada,
Marcaim, Ponda-Goa.

2. Mr. Murutijasa Nadaf,
Son of Mr. Yamanurasa Nadaf,
Aged 28years, Driver, Bachelor, Resident
of H. No. 160, Alto Dabolim, Vasco-Da-
Gama, Goa.

3. Mr. Bhukant Venkatesh Prabhu, Son of
Mr. Venkatesh Prabhu,
Major in age, owner,
Resident of Rajangan A-2, Rao House,
Near Saraswati Hall, Shantinagar,
Ponda-Goa. … Respondents

Mr. U.R. Timble with Ms. Y. Mandrekar, Advocate *for the Appellant.*
Mr. Milton Marshal, Advocate *for Respondent Nos.1(a) to 1(e).*

CORAM: M. S. SONAK, J.

DATE: 23rd September 2022

ORAL JUDGMENT:

1. Heard Mr U.R. Timble for the appellant and Mr Milton Marshal for respondents nos.1(a) to 1(e) - claimants.

2. This appeal challenges the judgment and award dated 27.08.2015 in Claim Petition No.87/2010.

3. Mr Timble points out that the appellant – the Insurance Company, had filed an application under Section 170 of the MV Act. However, the same was never disposed of by the Tribunal.

4. Mr Timble submits that the compensation awarded by the Tribunal is not just compensation. Firstly, he submits that Mr Narcinva Anant Naik died almost three years after the accident for reasons unconnected with the accident. Therefore, no Claim Petition based on the death of Mr Narcinva Naik was maintainable. At the highest, some claims could have been made for the injuries sustained by Mr Narcinva Naik.

5. Mr Timble, in the alternate, submits that the compensation awarded by the Tribunal is contrary to the law in ***National Insurance Company Ltd. V/s. Pranay Sethi***[1]. Mr Timble also submitted that the interest awarded by the Tribunal is excessive.

6. Mr Marshal submits that there is no error in the view taken by the Tribunal. He submits that doctors were examined to establish the nexus between the accident and the death of Narcinva Naik. Further, he presents that no case was made to interfere with the impugned award.

1 (2017) 16 SCC 680

7. The rival contentions now fall for determination.

8. Since the Tribunal failed to dispose of the application under Section 170 of the MV Act, a remand was in order to decide the said application. However, learned Counsel for the parties submitted that in the peculiar facts of the present case, such application may be allowed by this Court, and the appellant – Insurance Company, may be permitted to question the quantum of compensation awarded by the Tribunal.

9. Thus, with the consent of learned Counsel for the claimant, the application under Section 170 of the MV Act was considered and even allowed. Admittedly, the driver and the insured vehicle owner failed to contest the proceedings. Therefore, even upon remand, the Tribunal would have granted leave. Accordingly, it will be appropriate that leave is granted.

10. Though Narcinva Naik died almost three years after the accident, there is medical evidence which has been considered in some detail by the Tribunal that establishes the nexus between the accident and the eventual death of Narcinva Naik. Therefore, Mr Timble is not justified in submitting that Narcinva Naik's death has no nexus with the accident.

11. Narcinva Naik initially filed the claim petition to claim compensation for his injuries in the accident. Narcinva Naik also deposed in this matter. Unfortunately, before the Claim Petition could be decided, Narcinva Naik expired. Therefore, his legal representatives pursued the claim petition alleging *inter alia* that the death was due to the accident. The right to claim compensation crystallized on the date of the accident.

12. Dr Rajan Priolkar (AW4) has deposed in the matter. He deposed about how Narcinva Naik had cervical spondylitis, which he contracted due to the injuries he sustained in the accident. In the cross-examination, this Doctor was questioned as to whether a patient who had suffered an accident and consequent cervical spondylitis could further suffer a heart attack. This Doctor deposed that a heart attack preceded by spondylitis could have been caused due to the injuries sustained in the accident. The nexus between the accident and the eventual death was duly established.

13. Thus, the Tribunal's approach of awarding compensation based upon dependency due to the death of Narcinva Naik in the accident need not be faulted. However, the Tribunal has erred in determining the actual quantum of compensation. Such determination conflicts with the law in *Pranay Sethi* (supra).

14. The Tribunal, in paragraphs 30 & 31 of the impugned award, has determined the compensation under the following heads:

> *"30. The claimants are thus entitled to the following compensation under the said head: -*
>
> *1. Loss of dependency .... ₹9,10,800/-*
> *2. Loss of consortium .... ₹1,00,000/-*
> *3. Loss of Love and Affection to claimant no.1 .... ₹1,00,000/-*
> *4. Loss of Love and Affection to claimant no.2 .... ₹1,00,000/-*
> *5. Loss of Love and Affection to claimant no.3 .... ₹1,00,000/-*
> *6. Loss of Love and Affection to claimant no.4 .... ₹1,00,000/-*
> *7. Loss of Love and Affection to claimant no.5 .... ₹1,00,000/-*
> *8. Funeral expenses .... ₹25,000/-*
> *9. Loss of estate .... ₹50,000/-*
>
> *31. The claimant is thus entitled total compensation of ₹9,10,800/-+₹1,00,000/-+₹1,00,000/-+₹1,00,000/-+₹1,00,000/-+₹1,00,000/-+₹1,00,000/-+₹25,000/-+₹50,000/-=₹15,85,200/-."*

15. The compensation towards loss of dependency amounting to ₹9,10,800/- is correctly determined. However, towards loss of consortium, five claimants were entitled to compensation of ₹40,000/- each. Therefore, the compensation for loss of consortium will have to be consolidated at ₹2,00,000/- (₹40,000/- X 5 = ₹2,00,000/-).

16. In terms of *Pranay Sethi* (supra), after awarding compensation towards the consortium, there arises no question of making a further award of ₹1,00,000/- each towards loss of love and affection. Accordingly, compensation of ₹1,00,000/- each awarded under the head "loss of love and affection" will have to be deleted or excluded from the computation.

17. Towards funeral expenses, the claimants would be entitled to compensation of ₹15,000/-. Similarly, towards loss of estate, the claimants would be entitled to ₹15,000/-.

18. In addition, Mr Milton Marshal points out that there is evidence about the claimant incurring an expenditure of ₹2,700/- towards transportation and ₹1234/- towards medical expenses. Therefore, this amount will also have to be awarded to the claimants.

19. Thus, the total compensation will have to be determined at ₹11,44,735/- instead of ₹15,85,200/- determined by the Tribunal.

20. This appeal is, therefore, partly allowed. Accordingly, the compensation is determined at ₹11,44,735/- instead of ₹15,85,200/-. This compensation amount will carry interest at the rate of 9% per annum from the date of filing of the petition till the actual payment.

21. If the appellant – Insurance Company, has deposited the awarded amount in this Court, then liberty is granted to the claimants to withdraw proportionate amounts consistent with this judgment and order. The balance amount can be withdrawn by the appellant – Insurance Company. The appellant and the claimants will be entitled to proportionate interest.

22. The claimants will have to furnish identification and bank details so that the Registry can directly transfer their share into their bank accounts.

23. The appeal is partly allowed in the above terms.

24. There shall be no order for costs.

M.S. SONAK, J.

NITI K HALDANKAR Digitally signed by NITI K HALDANKAR Date: 2022.09.26 14:54:41 +05'30'