

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 36 OF 2018

Bajaj Allianz General Insurance Co. Ltd. Sh.
No. 5/F1 No. 2, Garden Centre Phase II, Opp.
Police Station, Mapusa Goa, through Senior ... Appellant
Legal Executive Mr. Nilesh S. Gandhi.

Versus

1. Shri Yeshwant Dattaram Salgaonkar, s/o
Dattaram Salgaonkar, age 44
years, unemployed.

2. Smt. Yogita Yeshwant Salgaonkar, w/o
Yeshwant D. Salgaonkar, age 41 years,
labourer, Both resident of H. no. 323, Main
wada, Korgao, Pernem, Goa.

3. Shri Darshan Govind Naik, Major, r/o. H.
No. 85, Ugrem, Deulwaddo, Pernem, Goa.
(Rider cum owner) ... Respondents

Mr. Amey Kakodkar, Advocate with *Mr. P. Shirodkar, Advocate
for the Appellant.*

Mr. R. G. Ramani, Senior Advocate with *Mr. P. Kakodkar,
Advocate for the Respondents.*

CORAM: M. S. SONAK, J

DATED: 25th August 2022

ORAL JUDGMENT

1. Heard Mr Amey Kakodkar, learned Counsel appearing for the Appellant and Mr R. G. Ramani, learned Senior Counsel appearing for the Respondent nos. 1 and 2 (Claimants).
2. The challenge in this Appeal is to the Judgment and Award dated 16.09.2017, made by the Motor Accident Claims Tribunal at Mapusa, in Claim Petition no. 16 of 2016. By the impugned Award, the Tribunal has granted the claimants compensation of ₹ 4,61,000/- for the death of their mother/mother-in-law in a vehicular accident on 02.06.2012.
3. Mr Kakodkar, the learned Counsel, submits that the Tribunal has recorded a finding in paragraph 15 that the claimants were not dependent upon the deceased Saraswati. He pointed out the claimants' case about Saraswati being 65 years old vegetable vendor at the time of the accident. He submitted that in the absence of dependency, the amount of ₹3,36,000/- could not have been awarded by stating that the same is towards loss of estate.
4. Mr Kakodkar submits that towards funeral expenses, a maximum of ₹ 15,000/- could have been awarded. So also, towards

consortium, a compensation of a maximum of ₹45,000/- could have been awarded given the law in the case of *National Insurance Co. Ltd., vs. Pranay Sethi & ors.*¹.

5. Mr Kakodkar submits that the accident, in this case, took place on 02.06.2012 and therefore awarded interest at the rate of 9% per annum is also excessive.

6. Mr Ramani, learned Senior Advocate, defends the impugned Award based on the reasoning recorded therein. He points out that the evidence of Aw.1 bears out that claimant no.1 was unemployed, and T.B. Patient having an asthma problem. Mr Ramani pointed out that there is also evidence about claimant no.1 being addicted to alcohol. He submits that the claimants should have been held as dependent on Saraswati in such circumstances.

7. Mr Ramani submits that even otherwise, there is no error in the approach adopted by the Tribunal. He refers to the Judgment in the case of *Satdev Singh vs. Rajiv Sharma*², decided by the Delhi High Court. He submits that the approach of the Tribunal, in this case, is

¹ 2017 (16) SCC 680

² MAC APP 145/2004

consistent with the decision of the Delhi High Court, which, in turn, is based upon the decision of the Hon'ble Supreme Court.

8. Mr Ramani submits that this is a case of death of a poor vegetable vendor, and the parity compensation awarded by the Tribunal may not be interfered with.

9. Rival contentions fall for my determination.

10. Though the Tribunal has recorded that the claimants were not dependent on the deceased Saraswati, such a conclusion is not backed by proper evaluation of the evidence on record.

11. There was no reason to disbelieve the deposition of Aw.1, mainly because no serious dent was made in her testimony in the cross-examination. However, if claimant no.1, i.e. the son of deceased Saraswati, was a T.B. Patient, unemployed and suffering from asthma, then dependency could have been inferred.

12. In any case, the Tribunal has guided itself by the approach in *Satdev Singh vs. Rajiv Sharma* (supra), and ultimately compensation of one ₹3,36,000/- has been awarded by taking into account the said

decision, the age of the deceased and her income. Therefore, no case is made out to warrant any interference with this amount.

13. However, Mr Kakodkar is right in submitting that the amount towards funeral expenses should not have exceeded ₹15,000/- and the amount towards consortium could not have exceeded ₹ 80,000/- i.e. ₹ 40,000/- to each of the claimants. Similarly, even the interest awarded is excessive, considering that the accident occurred in 2012. Therefore, interest at the rate of 7% per annum could be appropriate in the present circumstances.

14. This Appeal is, therefore, partly allowed, and the compensation amount is now reduced to ₹ 4,31,000/-. The interest component is also reduced from 9% to 7% per annum.

15. Incidentally, even the claimants' claimed compensation of ₹3,00,000/-. Therefore, though there was no bar to the Tribunal awarding additional compensation, in the facts of the present case, the just compensation would come to ₹ 4,31,000/- and not ₹ 4,61,000/-.

16. The Appeal is disposed of in the above terms. Accordingly, there shall be no order as to costs.

17. The claimants will now be entitled to withdraw the compensation amount as determined in this order. However, the balance amount will have to be returned to the Appellant.

18. The Appellant and the claimants will be entitled to the proportionate interest accrued on the deposited amount. However, the claimants will have to furnish identity documents and bank details so that the Registry can remit the amount directly to their bank account.

M. S. SONAK, J

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