

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.63 OF 2022

1 Mr Devidas Anant Borker,
Son of late Mr. Anant R. N. Borker,
49 years, daily wages worker, married,

2 Mrs Dipa Devidas Borker,
Wife of Mr Devidas Borker,
aged 43 years, housewife.
Both residents of House No.71,
Tishem-Borim, Ponda Goa.

... Appellants

Versus

1 Mr Ajay Bhagwant Pednekar,
Son of Mr Bhagwant Pednekar,
major in age, resident of
House No.555/32,
Karai-Moll, Shiroda, Ponda Goa
(Driver of Vehicle)

2 Mr John Anthony D'Costa,
Son of Mr Silvador D'Costa,
major in age, resident of
House No.963, Cruz Waddo,
Saleigao Mapusa Goa.
(Owner of Vehicle)

3 Bajaj Allianz General Insurance
Company Ltd., 3C-D, Sesa Ghor,
20 Patto Plaza, Panaji Goa.
(Insurance Company)

... Respondents

Mr. Clayton Fonseca, Advocate for the Appellants.
Mr. Amey Kakodkar and Mr. P. Shirodkar, Advocates for
Respondent No.3.

CORAM: M. S. SONAK, J.

DATED : 12th JANUARY 2023

ORAL JUDGMENT

1. Heard Mr. C. Fonseca, learned counsel for the Appellants, and Mr. A. Kakodkar, learned counsel for Respondent No.3-Insurance Company.

2. The Appellants are the parents of the deceased (Sonia). Sonia, aged 17 years and a student of Standard XIIth (Commerce stream), met with a road accident on 17.01.2008 at Borim. She died five days later, i.e. on 22.01.2008.

3. The Tribunal, by the impugned judgment and award dated 01.09.2010, disposed of the Claim Petition No.23/2008 instituted by the Appellants by awarding them the compensation of ₹1,34,500/- with interest at the rate of 9% per annum from the date of the application till effective payment. The Tribunal reasoned that Sonia was a "*non-earning member*". Despite the evidence, no significant award was made towards the medical expenses incurred by the claimants between 17.01.2008 and 22.01.2008. Hence, this appeal seeks enhancement of compensation.

4. Upon hearing the learned counsel for the parties and evaluating the evidence on record, a case is made out for enhancement. However,

at the same time, some orders will have to be made regards the interest because the record discloses that this appeal was dismissed for non-prosecution on 29.07.2011, and even an application for restoration was filed only on 31.07.2018, i.e. during this period, the Appellants, cannot claim the benefit of interest awarded by the Tribunal.

5. The Tribunal's finding about Sonia being a non-earning member cannot be sustained. The paltry compensation amount awarded on such a basis is also vulnerable. In *V. Mekala vs M. Malathi & Anr¹*, the Hon'ble Supreme Court, after detailed consideration of the legal position, held that the notional income of a 16-year-old student who suffered permanent disability in a vehicular accident could be taken at ₹10,000/- per month concerning an accident that occurred in the year 2005. Of course, in the said case, there was evidence about the victim being a brilliant student holding the first rank in the school. Here no such evidence was produced. However, applying the principles in *V. Mekala* (supra), Sonia's notional income, in the facts and circumstances of the present case, can be taken at ₹8000/- per month.

6. Further, *V. Mekala* (supra) is an authority for the proposition that some addition will have to be made towards future prospects even based on notional income. Even otherwise, the legal position about such an addition to notional income is well settled.

¹ (2014) 11 SCC 178

7. Sonia was 17 years old at the time of her unfortunate demise in a vehicular accident. Therefore, the multiplier would be 18. Further, an addition of 40% would be due to the notional income. A deduction of 50% will have to be made towards the expenses she would have incurred herself. Considering all these factors and applying the principles in *National Insurance Company Limited Vs. Pranay Sethi and others*², and *Anjali and others Vs Lokendra Rathod and others*³, the compensation towards dependency would work out to ₹13,30,600/-.

8. There is evidence of medical expenses incurred by the Appellants between 17.01.2008 and 22.01.2008. AW4 Chandrika Shaha deposed on behalf of Vintage hospital, where Sonia was admitted soon after the accident. She deposed to the receipt of ₹40,000/- towards the medical treatment by the said hospital. A receipt was also placed on record. The medical/pharmacy bills are also placed on record. Considering the documentary and oral evidence on record and also making some reasonable award for transportation, diet, etc., the compensation of ₹50,000/- is awarded.

9. Thus, the just compensation, in this case, is determined at ₹13,80,600/-. This amount should carry interest at the rate of 9% per annum from the date of the claim petition till the actual payment. However, as noted at the outset, this appeal was instituted on 26.11.2010. However, on 29.07.2011, the same was dismissed for

² (2017) 16 SCC 680

³ 2022 SCC OnLine SC 1683

non-prosecution. The application for restoration was filed on 31.07.2018, i.e. after seven years. The appeal was ultimately restored on 27.02.2020. In such circumstances, Mr Kakodkar is partially justified in contending that the Insurance Company should not be made to pay the interest for the period between the dismissal of the appeal and its restoration. Though the interest for this entire period need not be deprived, the Appellants should not be awarded interest from the date of dismissal of the appeal until they apply for restoration, i.e. approximately seven years. The award of interest during this period for no fault on the part of the Insurance Company would not be appropriate.

10. Thus, this appeal is allowed. The compensation amount is enhanced to ₹13,80,600/-. The interest rate of 9% per annum awarded by the Tribunal is maintained. The award towards costs is also maintained. However, for seven years between 2011 and 2018, the Appellants would not be entitled to any interest on the amount now awarded. Thus, the interest will have to be computed on the awarded amount of ₹13,80,600/- from the date of the claim petition till the dismissal of the appeal on 29.07.2011. After that, the interest will have to be computed from 31.07.2018 till the date of effective payment.

11. Since the compensation earlier awarded by the impugned award has already been paid, the necessary adjustment will have to be made, including, while computing the interest component.

12. The Respondent No.3-Insurance Company should now deposit the enhanced component with interest as observed above within two months after giving due intimation to Mr Fonseca, learned counsel for the Appellants. Upon deposit, the Appellants would be entitled to withdraw this amount by providing identification and bank details. The registry to ensure that the amounts are transferred directly into the bank accounts of the Appellants.

M. S. SONAK, J.

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