Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 32 OF 2022
WITH
MISC. CIVIL APPLICATION NO. 2778 OF 2022(F)

1. Smt. Alpa A. Kumarjuvekar
Wife of late Shri. Anand Kumarjuvekar,
aged 61 years, housewife, & her son,

2. Mr. Saiel Anand Kumarjuvekar,
Son of late Shri. Anand Kumarjuvekar,
aged 28 years, Student,

Both resident of House No. 1820/4,
Alto-Porvorim, Bardez-Goa, …. Appellants.

Versus

1. Mr. Karan Krishna Mayekar
Son of Mr. Krishna Mayekar,
aged 28 years, resident of House No. 873, Karbhat Mayem, Bicholim-Goa,

2. M/S Bajaj Alllianz General Insurance Company,
registered office at GE Plaza, Airport Road, Yerwada Pune 411006 and regional Office at 3C & D, Sesa Ghor 20, Patto Plaza, EDC Complex,
Panaji-Goa

3. Mr. Dharmendra C. Nipanikar,
Son of Mr. Chintu Nipanikar,
Major of age,
resident of House No. 64,
Sonarpeth, Bicholim-Goa,

4. ICICI Lombard General Insurance Co. Ltd, Office at 414, Veer Savarkar Marg, near Shree Siddhivinayak Temple, Prabhadevi, Mumbai-400025,

(5. United India Insurance Company Ltd.,
Near Bicholim Municipal Council (dropped))

....Respondents.

Mr. Milton Marshal, Advocate *for the Appellants.*

Mr. Amey Kakodkar, with Mr. Pankaj Shirodkar, Advocate *for Respondent No.2.*

CORAM : M. S. SONAK, J.

DATE : 12th January 2023

ORAL JUDGMENT: -

1. Heard Mr Milton Marshal for the Appellants and Mr Amey Kakodkar, who appears along with Mr Pankaj Shirodkar for Respondent No.2-Insurance Company.

2. The Appellants challenge the impugned judgment and Award dated 3rd January 2022 made by the Motor Accident Claims Tribunal, at Mapusa (Tribunal) in Claim Petition No.99/2016, mainly on the ground that the Tribunal has failed to consider the recommendations of the Seventh Pay Commission, which the Government accepted with effect from 1st January

2016. Mr Marshal pointed out that the Appellants' husband/father died in a vehicular accident on 13/01/2016. Mr Marshal further pointed out that the Tribunal erred in making a deduction of ₹8,000/- per month towards Tax Deducted at Source (TDS). He submitted that the TDS deductions for the relevant financial year were ₹49,800/-. However, the amount of ₹8,000/- was deducted for December 2015, possibly to adjust some shortfall. Mr Marshal relied upon ***Rajesh and ors. vs. Rajbir Singh and ors.***[1] and ***Vimal Kanwar and ors. vs. Kishore Dan and ors.***[2] in support of the above contentions.

3. Mr Marshal also handed in a calculation sheet based on the above contentions and submitted that the just compensation, in this case, would work out to ₹66,48,565/- and not ₹53,07,404/- as awarded by the Tribunal.

4. Mr Kakodkar, learned Counsel for Respondent No.2-Insurance Company, submitted that the pay commission recommendations made after the accident in which the victim died are not relevant. He relied upon ***Smt. Sarla Verma vs. Delhi Transport Corporation and anr.***[3] in support of this submission. Besides, he pointed out that the Constitution Bench

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1. (2013) 9 SCC 54

2. (2013) 7 SCC 476

3. (2009) 6 SCC 121

in ***National Insurance Co. Ltd. vs. Pranay Sethi and ors.,***[4] has already held that *Rajesh vs. Rajbir Singh* (supra) was technically *per incuriam.* Mr Kakodkar submitted that even otherwise, *Rajesh vs. Rajbir Singh* (supra), does not discuss the principles in *Sarla Verma* (supra). He submits that even ***Santosh Devi vs. National Insurance Co. Ltd. and ors.***[5], does not discuss the aspect of pay commission revision. He, therefore, submits that this Court should follow the Constitution Bench decision in *Pranay Sethi* (supra) and maintain the addition of 15% towards future prospects based upon the last drawn salary of the deceased.

5. Mr Kakodkar also pointed out that the Claimants were not dependants upon the deceased and, in any case, the Award of interest at the rate of 9% per annum for the accident which took place in the year 2916, was excessive.

6. Rival contentions now fall for my determination.

7. The Tribunal, in this case, has gone by the evidence of the last drawn salary of the deceased. This was in terms of the Sixth Pay Commission recommendations that the appropriate Government had already accepted. The order accepting recommendations of the Seventh Pay Commission was issued

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4. (2017) 16 SCC 680

5. (2012) 6 SCC 421

after the demise of Anand Kumarjuvekar in a vehicular accident on 13/1/2016. Merely because the recommendations were accepted with effect from 1st January 2016, that would make no difference given the law in *Sarla Verma* (supra) and *Pranay Sethi* (supra).

8. On the precise consideration of the pay revisions in determining compensation, the Hon'ble Supreme Court in *Sarla Verma* (supra) has held the following in paragraphs 45, 46, and 47 :

> *"45. The assumption of the appellants that the actual future pay revisions should be taken into account for the purpose of calculating the income is not sound. As against the contention of the appellants that if the deceased had been alive, he would have earned the benefit of revised pay scales, it is equally possible that if he had not died in the accident, he might have died on account of ill health or other accident, or lost the employment or met some other calamity or disadvantage. The imponderables in life are too many. Another significant aspect is the non-existence of such evidence at the time of accident.*
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> *46. In this case, the accident and death occurred in the year 1988. The Award was made by the Tribunal in the year 1993. The High Court decided the Appeal in 2007. The pendency of the claim proceedings and Appeal for nearly two decades is a fortuitous circumstance and that will not entitle the appellants to rely upon the two pay revisions which took place in the course of the said two decades. If the claim petition filed in 1988 had been*

disposed of in the year 1988-89 itself and if the Appeal had been decided by the High Court in the year 1989-90, then obviously the compensation would have been decided only with reference to the scale of pay applicable at the time of death and not with reference to any future revision in pay scales.

47. If the contention urged by the claimants is accepted, it would lead to the following situation: the claimants only could rely upon the pay scales in force at the time of the accident, if they are prompt in conducting the case. But if they delay the proceedings, they can rely upon the revised higher pay scales that may come into effect during such pendency. Surely, promptness cannot be punished in this manner. We therefore reject the contention that the revisions in pay scale subsequent to the death and before the final hearing should be taken note of for the purpose of determining the income for calculating the compensation."

9. The Constitution Bench in *Pranay Sethi* (supra) has standardized the rate at which future prospects must be considered. In terms of *Pranay Sethi* (supra), a 15% addition must be made towards future prospects where the deceased was in the age group of 55-60. The Tribunal has, therefore, gone by the law in *Sarla Verma* (supra) and *Pranay Sethi* (supra).

10. From paragraph 19 of *Rajesh vs. Rajbir Singh* (supra), it does appear that the Hon'ble Supreme Court considered the pay revision in terms of the Sixth Pay Commission, which had entered force from 1st January 2006. However, the Hon'ble

Supreme Court relied upon *Sarla Verma* (supra), as explained in *Santosh Devi* (supra). *Santosh Devi* (supra) holds that the principle of addition towards future prospects would not be restricted only to salaried employees but also to self-employed persons. In any case, the Constitution Bench in *Pranay Sethi* (supra) holds that *Rajesh vs Rajbir Singh* (supra) and *Santosh Devi* (supra) were technically *per incuriam*. Therefore, Mr Marshal's first contention concerning the income determination based on the pay revision under the Seventh Pay Commission cannot be accepted.

11. However, Mr Marshal is on a solid wicket regards the computation of deductions towards TDS. The Tribunal has gone by the salary certificate for December 2015 because the deceased died on 13th January 2016, possibly without even receiving the salary for January 2016. In this salary certificate, no doubt, the tax deduction is shown as ₹8,000/-. However, the Appellants have applied under Order 41, Rule 27 of CPC to produce additional evidence showing the total Tax deducted for the relevant financial year. Therefore, in the interest of justice, the Application under Order 41, Rule 27 of CPC will have to be allowed, and the total tax deduction for the financial year of ₹49,800/- will have to be considered. Only after the impugned Award was made, the

Appellants must have realized that TDS for December 2015 was taken as the basis for the determination. The evidence now produced is above board and refers to the TDS for the relevant financial year. Since that would be the correct basis, it is only proper that leave is granted to produce the additional evidence.

12. In *Vimal Kanwar* (supra), in the context of determining the annual income after deducting the Tax, the Hon'ble Supreme Court has made the following observations in paragraphs 22 and 23 :

> *"22. The third issue is "whether the income tax is liable to be deducted for determination of compensation under the Motor Vehicles Act".*
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> *23. In the case of Sarla Verma & Anr.(Supra), this Court held (SCC p.133. para 20)*
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> > *"20. Generally the actual income of the deceased less income tax should be the starting point for calculating the compensation."*
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> *This Court further observed that : (SCC p.134. Para 24).*
>
> > *"24. … where the annual income is in taxable range, the word 'actual salary' should be read as 'actual salary less tax'."*
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> *Therefore, it is clear that if the annual income comes within the taxable range income tax is required to be deducted for determination of the actual salary. But while deducting income-tax from salary, it is necessary to notice the nature of the income of the victim. If the victim is*

receiving income chargeable under the head "salaries" one should keep in mind that under Section 192(1) of the Income-tax Act, 1961 any person responsible for paying any income chargeable under the head "salaries" shall at the time of payment, deduct income-tax on estimated income of the employee from "salaries" for that financial year. Such deduction is commonly known as Tax deducted at source ('TDS' for short). When the employer fails in default to deduct the TDS from employee's salary, as it is his duty to deduct the TDS, then the penalty for non-deduction of TDS is prescribed under Section 201(1A)of the Income-tax Act, 1961. Therefore, in case the income of the victim is only from "salary", the presumption would be that the employer under Section 192(1) of the Income-tax Act, 1961 has deducted the Tax at source from the employee's salary. In case if an objection is raised by any party, the objector is required to prove by producing evidence such as LPC to suggest that the employer failed to deduct the TDS from the salary of the employee. However, there can be cases where the victim is not a salaried person i.e. his income is from sources other than salary, and the annual income falls within taxable range, in such cases, if any objection as to deduction of Tax is made by a party then the claimant is required to prove that the victim has already paid income tax and no further tax has to be deducted from the income."

13. The observations in paragraph 23 refer to the deduction of income tax on the estimated income of the employee from the salary for the financial year and not for any particular month.

Therefore, the compensation amount will have to be reworked by considering the additional evidence and the principle in *Vimal Kanwar* (supra). Upon such reworking, the just compensation would come to ₹56,52,040/- instead of ₹53,07,404/- determined by the Tribunal in the impugned Award.

14. Although it is difficult to accept Mr Kakodkar's contention about the dependency, considering that the accident took place on 13th January 2016, interest at the rate of 9% per annum appears excessive. Accordingly, this rate is reduced to 7% per annum.

15. The Appeal is partly allowed. The compensation amount is enhanced to ₹56,52,040/-, with interest at the rate of 7% per annum from filing the petition till full and final payment. The Award is modified to that extent. At the request of Mr Marshal, it is clarified that the order for costs is maintained. The Insurance Company will now have to rework the compensation amount and, if necessary, deposit the difference in this Court within 2 (two) months from today.

16. The Appellants will be entitled to withdraw the amount deposited by the Insurance Company in terms of this Award by furnishing appropriate identity documents and bank details. Registry to ensure that the amounts are directly transferred to the

Claimants' bank accounts. Misc. Civil Application does not survive the disposal of the Appeal. Accordingly, the same is disposed of.

M. S. SONAK, J.