Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.76/2022

1. MRS. DURGA GOPI A.K., widow of late Mr. Gopi A.K., aged 64 years, housewife,

2. MISS. KAVITHA GOPI A. KRISHNA, daughter of late Gopi A.K., aged 45 years, spinster, unemployed,

3. MISS. SAVITA GOPI A. K., daughter of late Gopi A.K., aged 44 years, spinster, unemployed,

4. MR. RAJESH GOPI A. K., son of late Gopi A.K., aged 41 years, bachelor, unemployed,

All residents of House No.889, Devte Bhat, Shirfod, Curchorem, Goa.

5. MRS. KALPANA SUHAS DESSAI, daughter of late Gopi A.K., aged 42 years, married, unemployed, and her husband

6. MR. SUHAS ANANT DESSAI, son of Mr. Anant G. S. Dessai, age 46 years, married, service,

Both residents of House No.260, Colony no.3, Valkini, Sanguem-Goa. … APPELLANTS

Versus

1. MR. LUIS JOAQUIM ARAUJO, son of Mr. Joaquim Rusario Araujo, driver/owner, resident of House No.2464, Dongorwaddo, Fatorda, Margao-Goa.

2. BAJAJ ALLIANZ GENERAL INSURANCE COMPANY LTD., Office No.112 & 113, First Floor, Guru Sai Plaza, Near Adarsh High School, Pajifond, Margao-Goa. … RESPONDENTS

Mr. Milton Marshal, Advocate for the Appellants.

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

CORAM: M. S. SONAK, J.

DATED: 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 (claimants) appeal the Judgment and Award dated 05.03.2020 in Claim Petition No.1/2018. They were awarded compensation of ₹10 lakhs with interest @ 6% p.a. due to the death of Mr Gopi A.K. in a vehicular accident. Mr Gopi was the husband of the first appellant, the father of appellants no.2, 3, 4 and 5 and the father-in-law of appellant no.6. Appellants no.2 and 3 are spinsters, and the appellant no.4 is a bachelor. Appellants no.5 and 6 are the daughter and son-in-law of Mr Gopi.

3. Mr Marshal submitted that the Tribunal erred in deducting 50% towards personal expenses of the deceased. He submits that considering the law in ***Sarla Verma vs. Delhi Transport Corporation – (2009) 6 SCC 121*** and ***National Insurance Company Ltd. vs. Pranay Sethi & Ors. - (2017) 16 SCC 680,*** this deduction would have been only 1/3rd. Further, he submits that the Tribunal erred in awarding only ₹40,000/- towards the loss of consortium when the compensation of ₹44,000/- should have been awarded to appellants no.1 to 5 for the loss of their father, Mr Gopi.

4. Based upon the above, Mr Marshal handed in a calculation sheet determining compensation at ₹15,25,960/-. He pointed out that the Tribunal erred in taking Mr Gopi's pension at only

₹7,000/- when the documentary evidence shows that it was ₹7,164/- per month.

5. Mr Kakodkar submitted that only the appellant no.1 i.e. the widow of the deceased, was dependent. He pointed out that the remaining appellants were aged 43, 42, 39 and 40. He pointed out that there was no evidence about them being dependent upon Mr Gopi, who was 72 years old at the time of his demise. He pointed out that cogent reasons have been given for deducting 50%; therefore, this appeal may be dismissed.

6. The rival contentions now fall for my determination.

7. This claim petition was instituted by not only the widow but by two spinster daughters, one bachelor son, one married daughter and the son-in-law. The spinster daughters are aged 43 and 42 years, respectively. The bachelor son was aged 39 years. The married daughter was 40 years, and the son-in-law was aged 44 years. There is clear evidence that the bachelor son, married daughter and son-in-law were not dependent on the 72 years old Mr Gopi. Regarding the two spinster daughters, there is no clear evidence of their dependence on Mr Gopi.

8. Ordinarily, the deduction towards personal expenses would have been to the extent of 1/3rd. However, the Tribunal has detailed reasons for deducting 50%. The main reason is the evidence which shows that except for Mr Gopi's widow, the other claimants were not dependent upon the 72 years old Mr Gopi. Significantly, two spinster daughters failed to enter the witness box and face the cross-examination. Even the widow did not depose in the matter, but the widow's dependence can be presumed. The bachelor son also deposed to the widow's dependence in clear terms. Considering these peculiar circumstances, the Tribunal's deduction of 50% towards the expenses that Mr Gopi would have incurred upon himself calls for no interference.

9. However, there is merit in Mr Kakodkar's contention that Mr Gopi's pension amount was not ₹7,864/- but only ₹7,164/- per month. The documents on record support the latter figure. Accordingly, Mr Gopi's annual income should have been at ₹3,73,968/-. After a 50% deduction and applying the multiplier of 5, the compensation towards dependency would come to ₹9,34,920/-.

10. Mr Marshal is justified in contending that the compensation towards consortium is inadequate and contrary to the law in *Pranay Sethi (supra)* and ***Anjali vs. Lokendra Rathod – Civil Appeal No.009014 of 2022 decided by the Hon'ble Supreme Court on 06.12.2022***. In terms of both these decisions, the compensation towards the consortium is payable at least to appellant nos.1 to 5. The same would come to ₹2,20,000/-. Besides, the appellants are entitled to ₹16,500/- towards loss of estate and another ₹16,500/- towards funeral expenses. Thus, the total compensation would work out to ₹11,87,920/-. This can, in the peculiar facts of the present case, be rounded up to ₹12 lakhs.

11. The Tribunal in this case, has awarded interest of only 6% p.a. Considering that the accident took place on 06.02.2017, this interest rate is enhanced to 7% p.a.

12. Thus, this appeal is partly allowed by enhancing the compensation amount from ₹10 lakhs to ₹12 lakhs and by enhancing the interest rate from 6% p.a. to 7% p.a. The award towards costs by the Tribunal is maintained.

13. The respondent no.2-insurance company is now directed to deposit the enhanced component within two months from today, after giving necessary intimation to the learned counsel for the appellants. Upon deposit, the appellants will be entitled to withdraw the amount by furnishing identity and bank details. The Registry to ensure that the amounts are directly deposited into the bank accounts of the appellants.

14. The appeal is disposed of in the above terms.

M. S. SONAK, J.