Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.78/2022

1. Mrs Remedina Vaz wife of late Mr. Alex Vaz, aged 42 years, fisher woman,

2. Miss Reema Vaz, Daughter of late Mr. Alex Vaz, aged 20 years, student,

3. Miss Janisha Vaz, Daughter of Mr. Alex Vaz, aged 22 years, student,

All resident of House No. 893/1, Savorgal, Shiroda, Ponda-Goa. … APPELLANTS

Versus

1. Shri Adivappa Basappa Harijan, Son of Mr. Basappa Harijan, Aged 30 years, resident of House No, 261/15, Old Bambolim Tiswadi-Goa, and native of Andhra Pradesh, Akhal [ja] Gokak, Driver of Qualis jeep bearing No. GA-08, F-4542.

2. Mr Rayappa Harian, Son of Mr. Basappa Harijan, aged 35 years, resident of House No.261/15, Old Bambolim Tiswadi-Goa, Owner of Qualis jeep bearing No. GA-08, F-4542

3. The Manager, United India Insurance Company Limited, Salgaonkar Chambers, Margao-Goa, Insurance Company of Qualis jeep bearing No. GA-08, F-4542. ... RESPONDENTS

Mr Milton Marshal, Advocate *for the Appellants*.

Mr Rohit Pednekar, Advocate *for Respondents No.1 & 2*.

Mr A. R. S. Netravalkar, Advocate *for Respondent No.3*.

CORAM: M. S. SONAK, J.

DATED: 19th January 2023

JUDGMENT:

1. Heard Mr Milton Marshal for the appellants, Mr Rohit Pednekar for respondents no.1 and 2 and Mr A.R.S. Netravalkar for respondent no.3.

2. The appellants, widow and daughters of late Alex Vaz, who died in a vehicular accident on 30.03.2014, appeal the Judgment and Award dated 14.01.2020 by which the Tribunal has awarded them compensation of only ₹3,07,600/- with interest @ 6% p.a.

3. Mr Marshal, the learned counsel for the appellants/ claimants, submits that the evidence on record established the deceased's income of at least ₹15,000/- per month. Besides, he pointed out that no award was made towards the consortium regarding each claimant at the rates prescribed in ***National Insurance Company Ltd. vs. Pranay Sethi & Ors. - (2017) 16 SCC 680*** and ***Anjali vs. Lokendra Rathod – Civil Appeal No.009014 of 2022 decided by the Hon'ble Supreme Court on 06.12.2022***. Even compensation towards loss of estate and funeral expenditure is not in terms of these two decisions. He, therefore, submitted that the compensation should be determined as at least ₹13,53,000/- based on the deceased's monthly income being ₹15,000/-. Mr Marshal relied on ***Shivakumar M. vs. Managing Director, Bengaluru Metropolitan Transport Corporation – (2017) 5 S.C.C. 79*** and ***Janabai wd/o Dinkarrao Ghorpade & Ors. vs. M/s. I.C.I.C.I. Lambord Insurance Company Ltd. - decided on 10.08.2022 in S.L.P. (CIVIL) No.21077/2019)*** to support his contentions.

4. Mr Marshal submitted that interest @ 6% p.a. was inadequate, and the Tribunal should have considered awarding interest @ 9% p.a.

5. Mr Rohit Pednekar, learned counsel for respondents no.1 and 2 and Mr Netravalkar, learned counsel for respondent no.3, submitted that there was no evidence about the deceased's income. They pointed out that the widow deposed to her own income but said nothing about her husband's income. They submitted that the evidence establishes that the deceased was dependent on the widow's income. Accordingly, they submitted that the Tribunal was justified in computing the deceased's income notionally @ ₹3,000/- per month.

6. Mr Marshal pointed out that respondent no.3-insurance company, had never sought for or obtained leave under Section 170(b) of the Motor Vehicles Act. Therefore he submitted that the insurance company should not be allowed to argue on the issue of the quantum of compensation.

7. The rival contentions now fall for my determination.

8. Although there is some merit in Mr Marshal's contention about the insurance company not being entitled to argue on the quantum of compensation in the absence of any leave under Section 170(b) of the Motor Vehicles Act, such issue need not be decided in this matter. Mr Pednekar, on behalf of respondents no.1 and 2 (owner and driver), was entitled to argue on the quantum of compensation. There was no difference in the contentions raised by Mr Pednekar and Mr Netravalkar on the issue of the quantum of compensation. Therefore, the contentions in defence of the quantum of compensation awarded by the Tribunal will have to be considered and are being considered.

9. The Tribunal, in this case, has held that deceased's notional income can be taken at ₹3,000/- per month. However, the Tribunal failed to appreciate the evidence about the deceased being a fisherman providing fish for sale to his wife, i.e. the appellant no.1. The accident occurred in 2014. Appellant no.1, deposed in the matter, has also produced her bank passbook. She has deposed to being a fisherwoman selling fish in the Ponda market for the last twenty years or thereabouts. Accordingly, she has deposed to her income being ₹800/- per day.

10. Thus, the evidence on record shows that the deceased was a fisherman who used to catch fish and supply the same to his wife, who used to sell the same at the Ponda market. Therefore, appellant no.1's statement about earning ₹800/- per day is within a reasonable range and not exaggerated. Moreover, this statement is backed by her passbook, which shows cash deposits she would make in her bank account.

11. Mr Netravalkar and Mr Pednekar submitted that the widow's passbook is irrelevant. In the peculiar facts of the present case, this contention cannot be accepted. The deceased fisherman would catch and supply fish to appellant no.1. appellant no.1 used to sell such fish and earn ₹800/- or thereabouts per day. She would likely deposit a portion of her earnings or a part of the joint earnings in her bank account. Based on this, the Tribunal should have at least taken the deceased's daily income at ₹300/- to ₹400/-, particularly because the deceased died in 2014. The evidence on record justifies the finding that the deceased's income was in the range of ₹10,000/- per month. In *Shivakumar M. (supra)* the Hon'ble Supreme Court was concerned with a painter doing daily work/piece-rated work who had suffered 81% disability to the limb. The Hon'ble Supreme Court held that this 45-year-old house painter could have easily earned ₹15,000/- per month. The painter, in this case, was 45 years old.

12. The deceased was 56 years old at the time of his unfortunate demise in the vehicular accident. Therefore, even applying the reasoning in *Shivakumar M. (supra)* and considering the deceased's employment in an unorganized sector (fisherman), his income can be safely taken at ₹10,000/- per month and not merely ₹3000/- per month as taken by the Tribunal.

13. Based on the monthly income of ₹10,000/-, the compensation towards dependency comes to ₹7,92,000/-. For determining this amount, a 10% addition is made towards the future prospects and a deduction of 1/3rd towards the expenses the deceased would have incurred on himself. Therefore, the multiplier, in this case, is 9. Thus, the compensation towards dependency comes to ₹7,92,000/-.

14. In addition, considering the law in *Pranay Sethi (supra)* and *Anjali (supra),* the claimants would be entitled to a compensation of ₹44,000/- each towards consortium, ₹16,500/- towards funeral expenses and ₹16,500/- towards the loss of estate. Thus the total compensation would come to ₹9,57,000/-. The interest @ 6% p.a. is low and the same is also enhanced to 7% p.a. because the accident occurred in 2014. Therefore, the award towards the costs is maintained.

15. The appeal is partly allowed. Accordingly, the compensation amount is enhanced to ₹9,57,000/- with interest @ 7% p.a. from the date of the claim petition till the effective payment.

16. The respondents, including respondent no.3-insurance company, are directed to deposit the enhanced compensation amount with interest within two months from today after due intimation to the learned counsel for the appellants.

17. Upon deposit, the appellants will be entitled to withdraw the deposited amount in the proportions determined in the impugned award. For this, the appellants will have to furnish their identity and bank details so that the Registry can transfer the amounts directly into their bank accounts.

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

M. S. SONAK, J.