

Niti

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.50 OF 2022

HDFC ERGO General Insurance Co.
Ltd., First Floor, Magnum Centre,
M.G. Road, Panaji, Goa,
through its authorised signatory,
Mr. Aaditya Tambekar, Age 32 years old.Appellant

Versus

1. Smt. Vasanti Dilip Naik,
widow of late Dilip @ Deelip Naik @
Naique, Aged 51 years, Housewife.

2. Miss Deepa Dilip Naik,
Daughter of late Dilip @ Deelip Naik @
Naique, Daughter of late Mr. Arvind
Dasu Naik, Aged 22 years, student.

3. Mr. Sahil Dilip Naik
Son of late Dilip @ Deelip Naik @
Naique, Aged 21 years old, student
All residents of H.No.94,
Sarфона, Sancoale-Goa.

4. Mr. Zamir Mohammad Isak Kaliagar,
son of Mohammad Issak Kaliagar,
Resident of H.No.44, Santosh Ice
Cream, Factory, Sada, Mormugao,
South-Goa.

5. Shri Abdul Shaikh
S/o. Moula Shaikh,
Resident of H.No.19-145, Near Last
Water Tank, New Vaddem, Vasco-da-
Gama, South Goa.

....Respondents

Mr Vaman Kurtikar, Advocate for the Appellant.
Mr S.S. Kakodkar, Advocate for Respondent Nos.1 to 3.

CORAM: M. S. SONAK, J.

DATE : 12th JANUARY 2023

ORAL JUDGMENT :

1. Heard Mr Kurtikar for the appellant and Mr S.S. Kakodkar for respondents nos.1 to 3 (claimants).
2. The appellant – Insurance Company challenges the judgment and award dated 08.04.2022 in Claim Petition No.49/2019 on the ground that the quantum of compensation awarded is excessive.
3. Mr Kurtikar, at the time of admission of the appeal, had pointed out that the Insurance Company had been granted leave under Section 170 of the MV Act and, therefore, the Insurance Company was competent to question the quantum of compensation.
4. Mr Kurtikar first submitted that there was no documentary evidence that the deceased Dilip was earning ₹700/- per day as a welder. He submitted that Notification under minimum wages prescribed a wage of ₹465/- per day, which position was accepted

by the Tribunal. Yet the Tribunal, in the absence of evidence, held that Dilip's daily earnings were ₹700/-. Mr Kurtikar submits that this is an error that should be corrected in the appeal.

5. Mr Kurtikar submitted that the accident, in this case, occurred on 01.11.2018 and, therefore, the Tribunal erred in awarding interest at the rate of 9% per annum. He submitted that the interest could be a maximum of 7% per annum.

6. Mr Kakodkar defended the impugned award based on the reasonings reflected therein. However, he pointed out that in terms of *National Insurance Company Ltd. V/s. Pranay Sethi and Ors.*¹ and *Anjali & Ors. V/s. Lokendra Rathod & Ors.*², the compensation towards consortium, loss of estate and funeral expenses should have been enhanced by 10% over the rates prescribed in *Pranay Sethi* (supra).

7. The rival contentions now fall for determination.

8. The claimants had pleaded and even succeeded in proving that Dilip was a welder. There is no evidence that Dilip was employed in any Company or firm. However, Sahil Naik (AW1), Gautam Naik (AW2), Chaitan Naik (AW3) and finally, Sunny

1 (2017) 16 SCC 680

2 2022 SCC OnLine SC 1683

Munankar (AW4) have all deposed that Dilip was a welder and earning his livelihood.

9. Although Mr Kurtikar is correct that none of the witnesses have produced documentary evidence, Sahil (Dilip's son) (AW1) deposed that his father would earn around ₹25,000/- per month from his occupation as a welder. Chaitan Naik (AW3) deposed that he had engaged Dilip about four months before the accident as a welder for providing grills at his residence and had paid him ₹1,000/- per day. Similarly, Sunny Munankar (AW4) also deposed that he was a supervisor with Daniel Engineering Works and Ship Repairs, and they would engage the services of Dilip by paying him ₹1,000/- per day. In addition, he deposed that other firms, companies and persons hired Dilip's services as a welder.

10. The Notification under the Minimum Wages Act does speak of a daily wage of ₹465/- in the case of a welder. Mr Kurtikar relied upon *Neeta, w/o. Kallappa Kadolkar & Ors. V/s. Divisional Manager, Maharashtra State Road Transport Corporation, Kolhapur*³, where the Hon'ble Supreme Court held that in the absence of any evidence about income, the Tribunals must refer to the Notification under the Minimum Wages Act. However, in this case, there is evidence not only about

3 (2015) 3 SCC 590

Dilip being a welder but further about his earnings of ₹1,000/- per day on the dates when he would be engaged. At the same time, there is evidence that Dilip had no regular employment as such. Therefore, by balancing these two factors, the Tribunal has taken Dilip's income at ₹700/- per day and, based thereon, determined the compensation of ₹18,36,456/-.

11. Considering the law in *Pranay Sethi* (supra) and *Anjali* (supra), some increase is warranted in the compensation amount towards consortium, loss of estate and funeral expenses. Therefore, by allowing a 10% increase over the rate prescribed in *Pranay Sethi* (supra), the compensation would work out to ₹18,51,456/- instead of ₹18,36,456/-. Therefore, some additional amount would be due to the claimants. However, as pointed out by Mr Kurtikar, the Tribunal had failed to appreciate that Dilip, as a daily wage, would not have had employment every day of the month. Therefore, by setting off these two factors against each other, the compensation amount awarded by the Tribunal is maintained.

12. Mr Kurtikar is, however, justified in his contention about the interest rates. The accident, in this case, occurred on 01.11.2018. Therefore, interest at 7% per annum would be appropriate.

13. The appeal is partly allowed. The compensation amount awarded by the Tribunal is maintained. However, the interest rate is reduced from 9% per annum to 7% per annum.

14. The Insurance Company has already deposited the awarded amount in this Court. Accordingly, the parties are to furnish their calculations preferably by exchanging the same with each other and arriving at an agreed figure. Then, the claimants can withdraw the compensation as modified by this order. Finally, the appellant – Insurance Company can withdraw the balance amount. Both parties will be entitled to the proportionate interest accrued on the deposited amount.

15. The claimants must comply with usual formalities like identification and bank details. The Registry to ensure that the amounts are directly transferred into the bank accounts of the claimants.

16. The appeal is disposed of in the terms above without any order for costs.

M. S. SONAK, J.