Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 106 OF 2019
AND
FIRST APPEAL NO.107 OF 2019

1 Shanelly Salmone Mergulhao,
aged 14,
2 Shirley Stesha Mergulhao,
aged 12,
3 Sweeney Serena Mergulhao,
aged 3,
All minors,
Represented by their guardian
Mr. Samuel Filipe Palha,
Aged 33 years,
Son of late Natividade F.A.L. Palha,
resident of H.No.284,
behind P.O. St. Lawrence,
Agassaim-Goa, 403 204. … Appellants

Versus

1 Shri Santosh Kumbhar,
Son of Nana Kumbhar,
Age 26 years,
Resident of Yevli Sangli,
Maharashtra – 416 416
2 ABCN Logistics Pvt. Ltd.,
S.O.162/2, Village Pimpalner,
Tal Bhiwandi, District Thane,
Bhiwandi – 421 302.
3 Reliance General Insurance Company
Ltd.
570 Naigaum, Cross Road,
Next to Royal Ind. Estate,
Vadala (W), Mumbai 400 031. … Respondents

Mr Sudesh Usgaonkar and Ms R. Pereira, Advocates for the Appellants.
Mr Saumen Vidyarthi, Mr Rushabh Vidyarthi, and Mr Vibhav Amonkar, Advocates for Respondent No.2.
Mr James Lopes, Advocate for Respondent No.3-Insurance Company.

CORAM: M. S. SONAK, J.

DATED : 13th JANUARY 2023

ORAL JUDGMENT

1. Heard Mr Sudesh Usgaonkar with Ms R. Pereira, learned counsel for the Appellants, Mr Saumen Vidyarthi with Mr Rushabh Vidyarthi, and Mr Vibhav Amonkar, learned counsel for Respondent No.2 and Mr James Lopes, learned counsel for Respondent No.3-Insurance Company.

2. The learned counsel for the parties agree that a common judgment and order can dispose of both these appeals since they arise out of the claim petitions instituted by the Appellants (three minor daughters) due to the death of their parents in a vehicular accident that occurred on 30.04.2015.

3. Claim Petition No.119/2015 was instituted by the Appellants (Claimants) to seek compensation for the death of their father, Roque Estevam Mergulhao. The Tribunal, by the impugned award dated 16.02.2019, awarded the Appellants the total compensation of

₹11,90,000/- with interest at the rate of 6% per annum. However, the Appellants contend that this amount does not represent just compensation. Hence, the First Appeal No.106 of 2019.

4. Claim Petition No.120/2015 was instituted by the Appellants seeking compensation for the death of their mother, Maria Sharmila Elvina Palha. The Tribunal, by the impugned award dated 16.02.2019, has awarded the compensation of ₹12,70,000/- with interest at the rate of 6% per annum. However, claiming that this amount does not represent just compensation, the Appellants have instituted First Appeal No.107 of 2019.

5. In First Appeal No.106 of 2019, Mr Usgaonkar submitted that the evidence on record about the income of the deceased Roque was virtually unchallenged. Based thereon, he submitted that the deceased's income should have been taken at least ₹30,000/- per month instead of ₹10,000/- per month. He submits that no addition was made towards future prospects, and even the consortium amount was not awarded to each Appellant. He submitted that even the interest awarded is inadequate. Based on all this, he prayed for suitable enhancement. Mr Usgaonkar relied on ***Kirti and Another Vs Oriental Insurance Company Limited***[1] and ***National Insurance Company Limited Vs. Pranay Sethi and others***[2], in support of his contentions.

1 (2021) 2 SCC 166

2 (2017) 16 SCC 680

6. Mr Lopes, learned counsel for the Insurance Company, submitted that there was no proper evidence about Roque's income. He pointed out that the employer disclosed no details and admitted that he had maintained no employment records or the amount he would have allegedly paid to Roque. Furthermore, he submitted that no income tax returns of either the employer or Roque were produced. He submitted that in such circumstances, the Tribunal was justified in taking the notional income at ₹10,000/- per month. Mr Lopes, therefore, submitted that the First Appeal No.106 of 2019 be dismissed.

7. In First Appeal No.107 of 2019, Mr Usgaonkar submitted that there was evidence that the mother, Sharmila, earned ₹30,000/- per month from her cold storage business. He submitted that at least a 25% increase was warranted due to her being a homemaker, consistent with the decision in *Kirti* (supra). He submitted that no addition was made towards future prospects, and even each of the Appellants was not given compensation towards the consortium. He submitted that the interest rate awarded is also inadequate. Based on all this, he submitted that the compensation amount should be suitably enhanced.

8. Mr Lopes submitted that there was no evidence whatsoever of Sharmila's income. Moreover, he pointed out that FSSAI registration was obtained hardly 15 days before the accident. He, therefore, submitted that the Tribunal was rather generous in determining her income at ₹10,000/- per month. For all these reasons, he submitted that even the First Appeal No.107 of 2019 warrants dismissal.

9. Mr Vidyarthi learned counsel for Respondent No.2 adopted Mr Lopes's contention on the quantum of compensation and submitted that in the absence of any convincing evidence about income, both these appeals ought to be dismissed.

10. The rival contentions now fall for determination.

11. In First Appeal No.106 of 2019, the Appellants, through their maternal uncle and their guardian, produced on record the certificate dated 05.08.2015 issued by the Baptista Fisheries certifying that Roque was employed as sales in charge. The certificate states that Roque used to supervise the fishing and sales of the catch. His monthly earnings were about ₹30,000/- to ₹45,000/- depending upon the catch. He was employed with Baptista Fisheries from the year 2008 till his death in April 2015.

12. Piedade Baptista (AW5), employer of Roque, also deposed in this matter. In his chief, he admitted having issued a certificate dated 05.08.2015 and deposed to its contents. The certificate was admitted in evidence and marked Exhibit 37. In the cross-examination, this witness admitted that he had not issued any appointment letter or maintained any attendance register. He clarified that he used to pay the deceased on a commission basis in cash, and therefore, no record was maintained. He also admitted that he would not show such payment in his income tax returns. He also admitted that his workers including Roque were not registered with the Labour Department. However, he denied the suggestion that Roque had never worked as a Supervisor or that he had never paid a salary as disclosed in the certificate.

13. Apart from the above oral and documentary evidence, there is no other evidence about Roque's income. In his chief, Piedade Baptista had stated that the fish catch was lower in June, July, and mid-August. Therefore, upon cumulative consideration and evaluation of the evidence on record, the Appellants' case about Roque's income being at least ₹30,000/- per month cannot be accepted. At the same time, the Tribunal's determination of Roque's income of ₹10,000/- per month also appears inadequate.

14. The evidence bears out that Roque was indeed employed with Baptista Fisheries as a supervisor. The evidence also shows that Roque was employed from 2008 until his unfortunate demise in April 2015. Except for a bare suggestion that Roque was not employed, no dent has been made on the aspect of Roque's employment with Baptista Fisheries.

15. The evidence about the income of ₹30,000/- to ₹45,000/- per month appears slightly exaggerated. In any case, there is not much evidence to back that figure or even a figure of ₹30,000/- per month as proposed by Mr Usgaonkar. Instead the evidence on record, which would justify the determination of Roque's income of ₹20,000/- per month.

16. The accident occurred on 30.04.2015, so the earnings in or around 2015 would be relevant. An income of ₹20,000/- per month translates roughly to an income of ₹600/- to ₹700/- per day. Some allowances will have to be made because the fishing activity is deficient in June, July, and August due to monsoons and some statutory restrictions. Considering all these factors, an income of ₹20,000/- per month would be appropriate.

17. The Tribunal, in this case, after concluding Roque's income was ₹10,000/- per month, forgot to make an addition of 30% towards future prospects as warranted by the Constitution Bench in *Pranay Sethi* (supra). Moreover, Roque was 45 years old at the time of his unfortunate demise; therefore, the applicable multiplier would be 14. Therefore, a deduction of one-third is warranted towards Roque's personal expenses. Considering all these factors, the compensation of ₹29,12,000/- would have to be determined towards dependency.

18. To the above amount, each of the Appellants would be entitled to the consortium of ₹40,000/- each. In addition, the Appellants would be allowed to ₹15,000/- towards funeral expenses and ₹15,000/- towards loss of estate. The interest rate of 6% per annum for an accident that occurred in 2015 is also slightly low, and the same will have to be enhanced to 7% per annum.

19. Thus, in First Appeal No.106 of 2019, the just compensation would be ₹30,62,000/- with interest at the rate of 7% per annum from the date of the claim petition till the actual payment of compensation amount to the Appellants. Accordingly, the First Appeal No.106 of 2019 is partly allowed to this extent.

20. In First Appeal No.107 of 2019, the Appellants have produced a registration certificate under Food Safety and Standards Act, 2006, dated 17.04.2015 showing that Sharmila registered herself as a retailer for storage (cold/refrigerated). Unfortunately, this registration was hardly a fortnight before an unfortunate accident in which Sharmila had expired.

21. Sharmila's brother and Appellants guardian Samuel Palha deposed in this matter. He stated that Sharmila was a businesswoman who owned storage (cold/refrigerated) by the name M/s Sansam Store situated at H.No. 284, Baixo De Igreja, Agassaim, Tiswadi Goa. He deposed that Sharmila's monthly earnings were in the range of ₹35,000/- to ₹40,000/-. However, he gave no particulars whatsoever.

22. In his cross-examination, Samuel Palha deposed that his sister told him she used to maintain books of accounts and prepared a balance sheet of her business activities. However, he could not produce any such evidence. He admitted that his statements were based upon what his sister had told him, but he denied that his statements were not correct.

23. Considering the evidence or, more particularly, lack of it, Mr Usgaonkar's contention that Sharmila was earning ₹30,000/- per month cannot be accepted. Based on the evidence on record, Sharmila's income was correctly taken at ₹10,000/- by the Tribunal. On a notional basis, perhaps, Sharmila's income might have been slightly lower. However, because the registration certificate was produced, the Tribunal was perhaps justified in taking her income at ₹10,000/-. However, the Tribunal should have appreciated that Sharmila, in addition to her cold storage business, was also a homemaker taking care of minor Appellants. Therefore, considering the law laid down in *Kirti* (supra), an addition of at least 25% was due on this course. Therefore, Sharmila's income should be at ₹12,500/- per month.

24. Considering Sharmila's age, multiplier applicable, and deduction towards her personal expenses, the compensation towards the dependency would come to ₹21,00,000/-. This is after making an addition towards future prospects. In addition to the above amount, the Appellants would be entitled to compensation towards consortium, loss of estate, and funeral expenses of ₹1,50,000/-. Therefore, the just compensation in First Appeal No.107 of 2019 can be worked out to ₹22,50,000/- with interest at the rate of 7% per annum.

25. Accordingly, both appeals are partly allowed in the above terms. However, the impugned award's directions for investment and costs are maintained.

26. The issue of pay and recovery will be considered separately in First Appeal Nos. 891 of 2021 (F) and 894 of 2021 (F) instituted by the owner of the alleged offending vehicle. In any case, since the pay and recover order has not been challenged by the Insurance Company, the Insurance Company is directed to deposit the enhanced compensation amount in this Court within eight weeks from today after giving due intimation to the learned counsel for the Appellants. The Insurance Company will be entitled to adjust the amount it has already paid/deposited.

27. The deposit amount to abide by the directions in the impugned award made by the Tribunal regarding investments, etc. Mr Usgaonkar submits that one of the Appellants had attained the majority. If so, such Appellant will be entitled to withdraw her share on usual terms like furnishing identity details, bank details, etc. The registry to ensure that the amounts are directly deposited in the bank account of such Appellant.

28. In so far as the balance amount is concerned, the Appellants are granted liberty to apply for a withdrawal on attaining the age of majority. Besides, liberty is also granted to the Appellants to apply for withdrawal in case of grave financial necessity due to health, education, etc. Both the appeals are disposed of in the above terms by keeping open the issue of pay and recovery.

M. S. SONAK, J.

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