

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.67/2022

1. SMT. SHARAD SHIVDAS
GAUDE, wife of late Mr. Shivdas
Gaude, aged 46 years, housewife,

2. KUM. RENUKA SHIVDAS
GAUDE, daughter of late Mr.
Shivdas Gaude, aged 18 years,

3. KUM. MALIKA SHIVDAS
GAUDE, daughter of late Mr.
Shivdas Gaude, 14 years of age,
represented by Natural Guardian
Appellant No.1,

All Indian Nationals, resident of
House No.669, Pal Wada Usgao,
Ponda-Goa, 403401.

... APPELLANTS

Versus

1. SHRI UDHAYABAN
UMAKANT RAM, son of Mr.
Umakant Ram, major of age,
resident of House No.358,
Carazal-Madkai, Ponda-Goa.

2. MR. OMPRAKASH M.
MAHARIA, major in age,
resident of House No.358,
Carazal-Madkai, Ponda-Goa.

3. NATIONAL INSURANCE
COMPANY LIMITED, through
its Manager, Ponda Branch,

office at 2nd Floor, Magjidada
Mansion, above Dena Bank,
Ponda-Goa.

... RESPONDENTS

Mr. Milton Marshal, Advocate for the Appellants.
Mr. Amey Kakodkar with Mr. Pankaj Shirodkar, Advocate for
the Respondent No.3.

CORAM: M. S. SONAK, J.

DATED: 12th January 2023

P.C.:

1. Heard Mr Milton Marshal for the appellants and Mr Amey Kakodkar, who appears along with Mr Pankaj Shirodkar for respondent no.3-insurance company.
2. The widow and two minor daughters of deceased Shivdas Gaude appeal the Judgment and Award dated 13.05.2022 in Claim Petition No.102/2018 by which they were awarded a paltry compensation of ₹9,90,000/- with interest @ 7% p.a.
3. Sharad, the widow, examined herself (AW1) and deposed to Shivdas, working as a skilled worker in the Goa State Co-operative Milk Producers Union Ltd. and earning a monthly salary of ₹30,9000/-. The Managing Director of this establishment, Shri Anil Fadte (AW2), was also examined in support of the salary certificate and pay slip. He deposed that

Shivdas had been working as a skilled worker since 1998 and, at the time of his death in a vehicular accident, was drawing a monthly salary of ₹30,900/-. This oral and documentary evidence was more than sufficient to prove Shivdas's income.

4. However, the Tribunal has discarded evidence of AW2 on the specious plea that he failed to produce any authority letter to depose in the matter. AW2 was the Managing Director of the establishment. Therefore, AW2 required no authority letter to depose to the employment and salary of one of his employees in the establishment. Besides, there is evidence that AW2 was himself a Government servant who was deputed to function as the Managing Director of this establishment. No serious dent was made in his evidence or his authority to depose during the cross-examination.

5. Mr Kakodkar, however, pointed out that questions were posed to AW2 about his authority, and AW2 claimed that he had authority but failed to produce the same. Moreover, once it was established that AW2 was indeed the Managing Director of the establishment, there was no question of insistence upon any further authority. The oral and documentary evidence on the aspect of Shivdas's employment and salary was, therefore, quite incorrectly discarded by the Tribunal.

6. The impugned award shows that the counsel for the insurance company before the Tribunal suggested that the notification under the Minimum Wages Act prescribing ₹307/- per day as the minimum wage in the year 2018 could be taken into consideration and Shivdas's monthly income taken at ₹9,210/-. The Tribunal, with respect, adopted a wrong and insensitive approach and declined to even take Shivdas's income as ₹9,210/- per month. The Tribunal reasoned that there was no clear evidence about Shivdas being a skilled worker, and no material was produced about the minimum wages of an unskilled worker.

7. The evidence on record clearly shows that Shivdas has been an employee of the establishment since 1998. The salary certificates produced on record are computerized pay slips that inspire complete confidence. The Managing Director of the establishment deposed to the employment and income of Shivdas, and the salary slips refer to several deductions towards festival advance, L.I.C. premia, loan recovery, etc. Moreover, the salary certificates and the computerized pay slips refer to several components like basic pay, dearness allowance, H.R.A., washing allowance, etc. Even the deductions have been set out in great details. Therefore, there was no good reason to discard the oral

and documentary evidence about Shivdas's employment and income. The Tribunal therefore erred in taking Shivdas's income at only ₹6,000/- per month on a notional basis.

8. The appellants have taken out a Misc. Civil Application No.2575/2022 (F) seeking to adduce additional evidence by resort to Order 41 Rule 27 of the Civil Procedure Code. The appellants seek to produce the very same salary certificate and pay slip. But in addition, the appellants also seek to place on record the account statement of the Goa State Co-operative Milk Producers Union Ltd. for the period 01.04.2018 to 24.11.2022. The accident, in this case, occurred on 20.07.2018. The bank statement refers to the salaries credited into Shivdas's bank account for March, April, May, June and July 2018. The amounts reflected in the bank accounts correspond precisely to the net payable salary to Shivdas.

9. Although, even without this additional evidence, there is sufficient evidence, both oral and documentary, to establish that Shivdas was an employee of the establishment drawing a salary as reflected in the salary certificate and the computerized pay slips. However, suppose the bank statement can be brought on record and read in evidence. In that case, the same entirely corresponds

to the oral and documentary evidence produced in the first instance.

10. Thus, irrespective of whether the additional evidence is considered or no, there is clear material on record to prove that Shivdas, at the time of his unfortunate demise in a vehicular accident was an employee of the Goa State Co-operative Milk Producers Union Ltd. and further, he was drawing an income of ₹30,990/- per month as a skilled worker. There is also evidence that Shivdas has worked for this establishment since 1998.

11. Mr Kakodkar, on a demurrer, pointed out that the pay slip, while computing the total payment of ₹30,990/- per month, included washing allowance, dusting allowance, transport allowance and dearness allowance on transport allowance. He submitted that these amounts could no longer be taken as the deceased's income since they were entirely personal to the deceased. Mr Marshal did not join the issue on this core. He submitted that even after deducting these amounts, Shivdas's salary comes to ₹28,993/- which could be rounded up to ₹29,000/- per month.

12. Mr Kakodkar then pointed out that there was no evidence about regular employment. Based on this he submitted that an

addition of only 25% is due towards future prospects and not 30%. Even though the position of whether Shivdas was permanent is not quite clear, the fact that he has been working since 1998 suggests some permanence. However, even after adding only 25% towards future prospects, Shivdas's yearly income would be ₹4,35,000/-.

13. Shivdas was 45 years old at the time of his demise in the vehicular accident. Therefore, the relevant multiplier would be 14. A deduction of 1/3rd is due considering the number of dependent claimants. Thus, the compensation towards dependency would come to ₹40,60,000/-.

14. To the above amount, an addition of ₹1,32,000/- towards consortium, ₹16,500/- towards loss of estate and ₹16,500/- towards funeral expenses would have to be added. Thus, the total compensation would come to ₹42,25,000/-. This would represent just compensation in the case.

15. The Tribunal has awarded interest @ 7% p.a., which can be regarded as appropriate because two claimants are Shivdas's minor daughters.

16. The appeal is accordingly allowed. The compensation amount is enhanced to ₹42,25,000/-. The award towards interest and costs is maintained.

17. The respondent no.3-insurance company, is now directed to deposit the enhanced compensation amount after making adjustments as per the amounts already paid within eight weeks from today, after due intimation to the learned counsel for the appellants.

18. 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.

19. The compensation amount is to be equally apportioned amongst the three appellants. However, insofar as appellants nos.2 and 3 are concerned (daughters), 50% of the amount due and payable to them should be invested in a nationalized bank in the joint names of the respective appellants and their mother Sharad for an initial period of three years. However, liberty is granted to appellants no.2 and 3 to apply to the Tribunal in case of any financial requirements like education, health, etc.

20. The appeal is disposed of in the above terms. Misc. Civil Applications, if any, do not survive the disposal of this appeal and are accordingly disposed of.

M. S. SONAK, J.

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