Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.73/2022

1. Mr. Anand Atmaram Barde, Son of Mr. Atmaram Barde, Age 52 years, Married, Business, (Father of the Deceased)

2. Mrs. Anjita Anand Barde, Wife of Anand Barde, Age 48 years, Housewife, Both r/o H. No. 529, Junaswada, Mandrem, Pernem, Goa. (Mother of the Deceased) … APPELLANTS

Versus

1. Mrs. Rashmi Mathkar, Wife of Amit Mathkar, Major of age, Housewife, r/o H. No. G-42, Junaswada, Mandrem, Pernem, Goa (Owner of the vehicle)

2. Mr. Amit Mathkar, Son of Ashok Mathkar, Age 29 years, Married, Business, r/o H. No. G-42, Junaswada, Mandrem, Pernem, Goa. (Driver of the vehicle) … RESPONDENTS

Mr. J. J. Mulgaonkar with Ms. Rupa Banaulikar, Advocates for the Appellants.

Mr. Shivan Desai with Ms. M. Viegas, Advocates for the Respondents.

CORAM: M. S. SONAK, J.

DATED: 18th February 2023

ORAL JUDGMENT:

1. Heard Mr J. J. Mulgaonkar, who appears along with Ms Rupa Banaulikar for the Appellants and Mr Shivan Desai, who appears along with Ms M. Viegas for the Respondents.

2. The appellants challenge the Judgment and Award dated 26.08.2022 made by the Motor Accident Claims Tribunal (Tribunal) at Mapusa in Claim Petition No.126/2017 to the extent they were awarded compensation of only ₹3,00,000/- with interest @ 7% p.a. for the death of their son Anush Barde in a vehicular accident.

3. The evidence on record shows that Anush had studied up to Std. Xth from Mandre High School. After he failed in Std. Xth, Anush did a course in open school and passed Std. Xth. There are some certificates confirming the participation of Anush in sports activities. Anush was 18 years old at the time of his demise in a vehicular accident.

4. Based upon the above material, the Tribunal went by the Schedule to the Motor Vehicles Act (M.V. Act) in terms of Section 163 of the M.V. Act and computed Anush's annual income at ₹15,000/-. Based on this and applying a multiplier of

17, the Tribunal determined the compensation at ₹3,00,000/- including compensation of ₹80,000/- for the consortium, ₹15,000/- for loss of estate and ₹15,000/- for funeral expenses.

5. Mr Shivan Desai, learned counsel for the respondents, submits that the evidence of Amit Mathkar (driver and husband of the owner of the offending vehicle) has deposed how Anush had also consumed alcohol and, despite instructions, jumped out of the vehicle and sustained fatal injuries. Mr Desai pointed out that this was a case where the youngsters had gone for a picnic, and Amit's version is most probable. He submitted that there was no serious cross-examination on this portion of Amit's evidence. Based upon this, Mr Desai submitted that no negligence could be attributed to Amit. In any case, this was a case where the deceased Anush also contributed to the unfortunate accident to a substantial extent.

6. Mr Desai submitted that the mark-list of Anush showed that he was not a good student. Further, even the certificates only showed that Anush had participated in some sports activities but not that he was very proficient in sports. Considering all this, Mr Desai submitted that the Tribunal was justified in computing Anush's income at ₹15,000/- p.a. He submitted that this computation was in terms of the statutory Schedule under Section 163-A of the M.V. Act.

7. Mr Mulgaonkar relied upon certain decisions to show that even a student's income could not be taken at only ₹15,000/- p.a., which corresponds to ₹1,250/- per month for an accident which occurred in the year 2017. He relied on ***Kurvan Ansari alias Kurvan Ali & Anr. v/s. Shyam Kishore Murmu & Anr. - (2022) 1 SCC 317,*** in which the Hon'ble Supreme Court has considered its earlier decisions precisely in the context of the notional income limit of ₹15,000/- p.a. in the Schedule in Section 163-A of the M.V. Act. He relied on ***Andrez Sonya Vangad & Anr. v/s. Sumit Gaonkar & Ors. - First Appeal No.65/2019 decided on 14.07.2022*** and ***Sahana Khatoon & Ors. v/s. New India Assurance Co. Ltd. & Ors. - 2021 SCC OnLine Bom 3695*** to submit that Anush's income should be notionally taken at least ₹10,000/- per month.

8. Mr Mulgaonkar also relied on ***Janabai Dinkarrao Ghorpade & Ors. v/s. ICICI Lombard Insurance Company Limited – (2022) 10 SCC 512*** and ***S. Vasanthi & Anr. v/s. M/s. Adhiparasakthi Engg. College & Anr. - Civil Appeal No.7180/2022 decided on 11.10.2022*** in support of his contention that Anush's notional income should have been taken at ₹10,000/- per month.

9. Mr Mulgaonkar further pointed out that the multiplier adopted by the Tribunal was incorrect, the correct multiplier being 18 in terms of ***Sarla Verma & Ors. v/s. Delhi Transport Corporation & Anr. - 2009 (2) T.A.C. 677 (S.C.)*** and ***National Insurance Company Ltd. v/s. Pranay Sethi & Ors. - (2017) 16 SCC 680***. He also relied on ***Magma General Insurance Co. Ltd. v/s. Nanu Ram alias Chuhru Ram & Ors. - 2018 (18) SCC 130*** to submit that the compensation paid towards consortium, loss of estate and funeral expenses is lower than prescribed. Based on all this, Mr Mulgaonkar submitted that the compensation amount should be enhanced to approximately ₹32,00,000/-.

10. Based on the submissions made, the following points arise for determination in this Appeal:

A. Is any case of contributory negligence made out from the evidence on record?

B. Has the Tribunal awarded just compensation?

11. The Tribunal, on assessing the evidence, has concluded that the accident was due to negligence of Amit. Neither Amit, the driver, nor Rashmi, his wife and the owner, bothered to file any Appeal or cross-objections to challenge this finding. Accordingly, Amit and Rashmi cannot now contend that Amit was not negligent or that Anush contributed to the accident. In any case, Mr Dessai's plea on behalf of Amit and Rashmi was duly considered in this Appeal.

12. On the aspect of negligence on the part of Anush or contributory negligence on the part of Anush, there is no evidence to accept this position. The Tribunal assessed the evidence and concluded that Amit was drunk and solely responsible for the accident. Rajat Harmalkar, one of the occupants in the offending vehicle, along with deceased Anush, has deposed in this matter.

13. Rajat has deposed about Anush and other friends pleading with Amit not to drink and drive or to let someone else drive the jeep if Amit were to continue to drink. He has deposed how despite warnings from friends, Amit insisted on driving the jeep, which led to the accident and the unfortunate demise of Anush. The cross-examination made no significant dent in Rajat's clear and convincing testimony. The evidence also bears out that criminal prosecution was lodged against Amit. Though the prosecution is stated to be pending, Amit, in his cross-examination, admitted that he had not protested against the lodging of the FIR or complained to the higher authorities that the FIR was wrongly or maliciously lodged against him.

14. Therefore, based upon Amit's solitary and self-serving statement, neither can any negligence be shifted to Anush nor can Anush be said to have contributed to the accident in which he lost his life. On the other hand, the evidence on record overwhelmingly establishes Amit's negligence, given the preponderance of probabilities standard. The first point is determined accordingly.

15. On the aspect of Anush's notional income, the Tribunal has grossly erred in computing the same at only ₹1,250/- per month or ₹15,000/- p.a. In doing so, the Tribunal has completely overlooked the decisions of the Hon'ble Supreme Court in ***R. K. Malik v/s. Kiran Pal – (2009) 14 SCC 1***, ***Kishan Gopal v/s. Lala – (2014) 1 SCC 244***, ***Puttamma v/s. K.L. Narayana Reddy – (2013) 15 SCC 45***, ***Rajendra Singh v/s. National Insurance Co. Ltd.*** and *Kurvan Ansari alias Kurvan Ali (supra).*

16. In all the above cases, the Hon'ble Supreme Court has held that the Central Government was bestowed with the duty to amend Schedule II given Section 163-A (3) of the M.V. Act, but it failed to do so. Because of the same, specific directions were issued to the Central Government to make appropriate amendments to Schedule II, considering the present cost of living. In the said judgment, till such amendments are made, directions were issued for the award of compensation by fixing a sum of ₹1,00,000/- towards compensation for the non-earning children up to the age of five years old and a sum of ₹1,50,000/- for the non-earning persons of more than five years old. These were the specific directions in *Puttamma (supra)* decided in 2013.

17. After that, in *R. K. Malik (supra)*, the Hon'ble Supreme Court held that the notional income of ₹15,000/- p.a. should be enhanced and increased as the same continued to exist without any amendment since 14.11.1994. In *Kishan Gopal (supra),* where the deceased was a ten-year-old child, the Court fixed notional income at ₹30,000/- p.a. In *Kurvan Ansari alias Kurvan Ali (supra),* where the child was hardly seven years old, and the accident occurred in the year 2004, the Hon'ble Supreme Court computed the notional income at ₹25,000/- p.a.

18. In *Sahana Khatoon (supra)*, the learned Single Judge of this Court computed the monthly income of the deceased at ₹5,000/- without concrete evidence about his earnings. In *Janabai Dinkarrao Ghorpade (supra)*, the monthly income was taken at ₹10,000/- where the deceased was about 50 years old without concrete evidence about earnings. Finally, in *Andrez Vangad (supra)*, the monthly income of a student undertaking a refrigeration and air conditioning course was taken at ₹10,000/- even though the deceased was not earning anything at the time of the accident.

19. In the present case, considering the evidence on record and giving due credence to the unencouraging results of Std. Xth, Anush's monthly income can be notionally taken even on a conservative basis to ₹5,000/- per month or ₹60,000/- p.a. In *Kurvan Ansari alias Kurvan Ali (supra)*, if the notional income of a seven-year-old child could be taken at ₹25,000/- p.a. for the year 2004 then, indeed the notional income of an 18-year-old boy could be taken at ₹60,000/- p.a. for an accident that occurred in 2017.

20. The Tribunal erred in taking Anush's notional income at only ₹1,250/- per month or ₹15,000/- p.a. based upon Schedule to the M.V. Act and ignoring the above decisions of the Hon'ble

Supreme Court in the context of the above Schedule. The Tribunal also erred in taking the multiplier as 17 when in terms of *Sarla Verma (supra)* and *Pranay Sethi (supra),* the correct multiplier, in this case, was 18. The Tribunal also ignored principles in *Magma General Insurance Co. Ltd. (supra)*. Based upon the same, a 10% enhancement was due on the compensation awarded towards funeral expenses, loss of estate and consortium.

21. Based on the above determination, the just compensation works out to ₹8,77,000/- instead of ₹3,00,000/- as computed by the Tribunal. Therefore, the award of interest @ 7% p.a. appears fair and proper, considering the accident date as 02.07.2017.

22. This Appeal is partly allowed. Accordingly, the compensation amount is enhanced from ₹3,00,000/- to ₹8,77,000/-. However, the interest awarded by the Tribunal is maintained. The second point for determination is answered accordingly.

23. Mr Desai states that the respondents have already paid some amounts to the appellants. Therefore, if such payments have already been made, the same will have to be adjusted while computing the compensation amount in this Judgment and Order.

24. The Appeal is disposed of in the above terms. Accordingly, there shall be no order for costs.

M. S. SONAK, J.