Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 68 OF 2022

1. Shivaji Hanumant Pawar,
Son of Mr. Hanumant Pawar, aged 58 years, unemployed,

2. Smt. Sawitri @ Savitri Shivaji Pawar, wife of Mr. Shivaji Hanumant Pawar, aged 53 years, housewife,

Both residents of House No. 35, Pratapnagar, Dharbandora-Goa .... Appellants.

Versus

1. Pradeep Govind Gaonkar [driver] Son of Mr. Govind Gaonkar,
major in age, resident of Malpe, Sattari-Goa,

2. Yuvraj Narsuli Naik [owner]
Son of Mr. Narsuli Naik,
major in age, resident of House No. 407, Tiral-Usgao, Ponda-Goa,

3. National Insurance Company Limited, [through its manager], Megjidada Mansion, 2nd floor, above Dena Bank, Ponda-Goa,

... Respondents.

Mr Milton Marshal, Advocate *for the Appellants.*

Mr Amey Kakodkar, Advocate *for Respondent No.3.*

CORAM : M. S. SONAK, J.

DATE : 20th January 2023

ORAL JUDGMENT: -

1. Heard Mr Milton Marshal for the Appellants and Mr Amey Kakodkar for Respondent No.3-Insurance Company.

2. The Appellants are the parents of Madhavi, who died in a vehicular accident on 13/12/2013. Madhavi was studying in Standard 12th (Arts Stream). At the time of her demise, she was 20 years old.

3. The Appellants filed a Claim Petition under Section 163-A of the Motor Vehicles Act, 1988 (MV Act) before the Motor Accident Claims Tribunal, North Goa, at Ponda (Tribunal), seeking compensation. However, by the impugned Judgment and Award dated 18/7/2022, the Tribunal has dismissed this Petition on the ground that the Appellants failed to establish rashness and negligence on the part of the driver of the insured mini-bus. For this, the Tribunal relied on ***National Insurance Company Ltd. vs. Sinitha*** - (2012) 2 SCC 356.

4. The Hon'ble Supreme Court in ***United India Insurance Co. Ltd. Vs. Sunil Kumar and anr.*** (2019) 12 SCC 398, by interpreting the provisions of Section 163-A of the MV Act, has expressly overruled *Sinitha* (supra). The Court has held that grant of compensation under Section 163-A based on the structured formula is like a final award, and the adjudication thereunder is required to be made without insisting upon proof of negligence of the driver/owner of the vehicle involved in the accident. The Court held that to interpret Section 163-A as permitting the insurer to raise the defence of negligence would be to bring a proceeding under Section 163-A on a par with the proceeding under Section 166 of the MV Act. This would be self-contradictory and defeat the legislative intent of enacting Section 163-A. Thus, in the proceedings under Section 163-A, it is not open for the insurer to raise any defence of negligence on the victim's part.

5. Perhaps, the decision in *Sunil Kumar* (supra) was not brought to the notice of the Tribunal, which dismissed the Claim Petition on 18/7/2022, holding that the victim was negligent and not the driver of the insured vehicle. Therefore, on this short ground, the impugned Award, which has relied on an overruled Judgment, will have to be reversed and is, hereby, reversed.

6. Instead of remanding the matter to the Tribunal, since the compensation is to be determined based on the structured formula provided in the Schedule, it would be appropriate if the compensation amount is determined in these proceedings and awarded to Madhavi's parents.

7. Considering the decision in ***Govindappa Hanumappa Biroji & anr. vs. Shankar Hammappunawar and ors.*** (First Appeal No.105/2016 decided on 18th August 2022), and the decisions in ***R.K. Malik vs. Kiran Pal (***2009) 14 SCC 1, ***Kurvan Ansari alias Kurvan Ali & anr. vs. Shyam Kishore Murmu & anr***. 2021 (4) TAC 673 (SC), ***Puttamma vs. K.L. Narayana Reddy*** (2013) 15 SCC 45, ***Kishan Gopal vs. Lala*** (2014) 1 SCC 244 and ***Rajendra Singh vs. National Insurance Co. Ltd.*** (2020) 7 SCC 256, the notional income can be safely taken at₹40,000/- per month. This is the maximum in terms of the Schedule appended to Section 163-A of the MV Act, the time of the accident, and also at the time of institution of the Claim Petition.

8. Based upon this determination and the fact that Madhavi was 20 years old at the time of the accident, the compensation towards dependency would work out to ₹4,26,672/-. Therefore, considering the above decisions of the Hon'ble Supreme Court, which have been discussed in *Govindappa Biroji* (supra), and applying the reasoning therein, the Claimants can be awarded ₹44,000/- each towards filial consortium, ₹16,500/- towards loss of estate and ₹16,500/- towards funeral expenses. Thus, the total compensation, in this case, would work out to ₹5,47,672/-. This will carry interest at the rate of 7% per annum.

9. Accordingly, this Appeal is allowed. Therefore, the impugned Award is set aside. Instead, the Respondents are jointly and several directed to pay to the Appellants (Claimants) the compensation of ₹5,47,672/-, with interest at the rate of 7% per annum from the date of the Claim Petition till effective payment. In addition, the Appellants (Claimants) also be paid costs on the usual terms.

10. The Respondents, including in particular Respondent No.3-Insurance Company, must deposit in this Court the above amount within 8(eight) weeks from today, after due intimation to the learned Counsel for the Appellants. Upon deposit, the Appellants (Claimants) will be entitled to withdraw the deposited amount after furnishing identity and bank details. Registry to ensure that the amount is transferred directly into the Claimants' Bank accounts.

11. The Appeal is allowed, with costs, in the above terms.

M. S. SONAK, J.