

Rahul/Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.40/2023

1. MRS LOURDINA FERNANDES,
wife of Late Sebastiao Fernandes, aged
about 62 yrs, housewife, and her son,

2. MR SAVIO FERNANDES, son of
late Sebastiao Fernandes, aged about 31
years, both residents of H.No.1638,
Vasvaddo, Benaulim, Salcete-Goa 403
716.

... APPELLANTS

Versus

1. MR RAMY V, son of Sanjeevappu,
major in age, R/o H.No.186, RRST,
JC Layout 8th Cross, Devasandra
Krishna Raj Puram, Bangalore,
Karnataka,

2. M/S SRI SATHYA SAI
TOURISTS (R) a registered
Company herein, represented by its
CEO Mr B.N.K. Chidambara,
with office at No.151/17/1, 36th Cross
9th Main, Opposite Jayanagar
telephone Exchange, 5th Block,
Jayanagar, Bangalore, Karnataka-
560041,

3. RELIANCE GENERAL
INSURANCE COMPANY
LIMITED, having office at Environ

Towers, 60/4, Hosur Main Road, ... RESPONDENTS
Electronic City, Bangalore, Karnataka
560 100.

Mr Vaman Kurtikar, Advocate for the Appellant.

Mr Jatin Ramaiya, Amicus Curiae.

CORAM: **M. S. SONAK, J.**

Reserved on: **2nd FEBRUARY 2024**

Pronounced on: **6th FEBRUARY 2024**

JUDGMENT:

1. Heard Mr Vaman Kurtikar, learned counsel for the appellant and Mr Jatin Ramaiya learned Amicus Curiae. Though duly served, the respondents did not bother to appear in this appeal.

2. First Appeal No.40 of 2023, arising out of Claim Petition No.148/2014, has been instituted by the dependents of the late Mr Sebastiao Fernandes. Mr Sebastiao was riding a Honda Activa scooter bearing registration number GA-08-B-9208 on the Mungul Bridge, heading from Margao towards Benaulim, when the bus bearing registration No. KA-05-AB-24, being driven by Respondent No. 1 in a rash and negligent manner at a very high speed, dashed the said Activa scooter while overtaking it, causing the deceased to sustain injuries resulting in his death.

3. The learned tribunal has recorded a finding that the accident was caused due to the rash and negligent driving of the bus bearing registration number KA-05-AB-24 by Respondent No. 1 after considering *inter alia* the evidence given by AW7, AW2 and AW5.

4. The Appellants/claimants are Lourdina Fernandes (widow), and Savio Fernandes (son) of the deceased, Sebastiao Fernandes, who was 64 years old at the time of the accident on 03.11.2013. The tribunal saw it fit to grant ₹1,00,000/-as compensation after having recorded a finding that the Appellants had failed to prove any loss of dependency. Of which, ₹55,000/- was to be paid to Appellant No. 1, and ₹45,000/- to be paid to Appellant No. 2, along with ₹26,744/- in the form of costs of the petition, to be apportioned proportionally between Appellants No. 1 and 2.

5. Mr Kurtikar, learned counsel for the Appellants, submitted that though the tribunal had rightly held that the accident was caused by the rash and negligent driving of respondent number one, it had erroneously, after over-emphasising the absence of the deceased's income tax returns and the balance sheet of the Restaurant run by the deceased held that the Appellants/ claimants had failed to prove the income earned by the deceased and as a consequence also failed to prove the loss of dependency. Mr Kurtikar submitted that the approach adopted by the tribunal to come to such a determination was perverse and not in consonance with the law laid down by the Honourable Supreme

Court in *Kubrabibi & Ors. v. Oriental Insurance Co. Ltd. & Ors.*- 2023 Live Law (SC) 697.

6. Mr Kurtikar further submitted that it had been proved that the deceased was operating the restaurant and that once it had so been proved, the necessary corollary was that he would be earning an income and that, therefore, the tribunal was incorrect in insisting upon some documentary evidence to prove the same. Mr Kurtikar relied upon *Sidram v. United India Insurance Co. Ltd., - (2023) 3 SCC 439*, to sustain the above proposition.

7. Finally, Mr Kurtikar submitted that the amount determined by the tribunal under the heads of loss of consortium, loss of love and affection, funeral expenses and loss of estate were inadequate and subject to interference by this court. He relied upon *Rajwati v. United India Insurance Co. Ltd.,- 2022 SCC OnLine SC 1699*.

8. Mr Ramaiya, the learned Amicus Curiae, adopted the arguments put forth by the counsel for the appellants and also submitted that the tribunal had erred by not considering the social status of the deceased and, at the very least, accepting a notional income for the deceased.

9. Mr Ramaiya also submitted that, even if it were to be assumed that it was Appellant No. 1 who owned and operated the restaurant, the tribunal could not have avoided determining notional income. Mr Ramaiya submitted that in the case of a

homemaker, the law mandates the determination of notional income based on the facts and circumstances of the case and that in the case of a housewife, it would be no less than Rs.5,000/-.

Mr Ramaiya relied upon *Kirti v. Oriental Insurance Co. Ltd.,-* (2021) 2 SCC 166 and *Bajaj Allianz General Insurance Company Ltd. v. Bhimrao,-* 2018 SCC OnLine Bom 20838.

10. Before proceeding with the determination of the contentions raised, the Court conveys its gratitude to Mr Ramaiya for tendering his assistance as Amicus Curiae, especially on short notice.

11. The contentions now fall for my determination.

12. The prime issue that falls for my determination is whether the tribunal could have determined that the deceased had no income, primarily on the basis that no documentary evidence was adduced by the Appellants/claimants. Such an approach is, suffice to say, completely erroneous and not in consonance with the beneficial nature of the Act, as well as the ratio laid down by judgements of the Hon'ble Supreme Court, and this court.

13. If the tribunal was of the opinion that the income received by the deceased was not sufficiently proved, it would have been incumbent upon the tribunal, at the very least, to determine the notional income of the deceased, considering the facts and circumstances of the case, and the social status of the deceased.

AW1 (Appellant No.1) and AW3 (Cook at 'Meridian'/ 'Brilliant')

have given evidence that it was the deceased who used to run the restaurant, cyber-café and lodging.

14. AW1 and AW3 have also deposed that it was the deceased who used to shop for provisions and ingredients such as groceries, poultry, fish, etc., on a daily basis and that he would pay the salaries of the employees and supervise the functioning of the businesses. Further, a total of 14 employees were employed by the restaurant and connected enterprises. This evidence has not been dented in cross-examination.

15. AW3 has also deposed that the business has been negatively affected by the death of Mr Sebastiao and that though Appellant No. 1 now operates the business, she is unable to do so, as well as the deceased due to her inability to purchase the requisite groceries, provisions, etc. as she does not drive or ride a bike. Further, her inexperience in conducting such business was also an impediment. AW3 has also deposed that the Cyber-Café that had been run along the restaurant was now shut down and no longer in operation. This evidence also has not been dented in cross-examination.

16. The Tribunal notes that the evidence of AW3 corroborates that the claimant was running the business after the death of her husband. However, the tribunal then proceeds to disbelieve the claimed income based on the absence of income tax returns or the balance sheet of the business. Further, on the basis that Appellant No.2 earned a higher income abroad and that he was unable to

stay in Goa due to the inadequacy of his income here, the tribunal has noted that the income derived from the businesses was likely much lesser than the salary earned by Appellant No.2, i.e. approximately ₹5,000/- after converting Appellant No.2's monthly wage from pounds to rupees.

17. The evidence on record sufficiently proves that the deceased was indeed running and operating the businesses as claimed by the Appellants. The tribunal has noted that the evidence of AW3 corroborates that the deceased was running the businesses while he was alive; once this contention was proved, the tribunal was required to determine the notional income of the deceased, even if the Appellants had failed in proving the quantum of income. In not doing so the tribunal has committed an error, thereby warranting this court's interference.

18. Once it has been proved that the deceased was employed, or rather that he was running the enterprises, the notional income has to be calculated keeping that in mind. Therefore, the supplementary contentions put forth by Mr Ramaiya need not be gone into.

Notional Income

19. In *Kirti v. Oriental Insurance Co. Ltd.*, (supra) (N.V. Ramana, J. supplementing), the Hon'ble Supreme Court held that the situation is quite clear with respect to notional income determined by a court in the first category of cases outlined earlier, those where the victim is proved to be employed. Still,

claimants are unable to prove their income before the court. Once the victim has been proven to be employed at some venture, the necessary corollary is that they would be earning an income. It is clear that no rational distinction can be drawn with respect to the granting of future prospects merely on the basis that their income was not proved, particularly when the court has determined their notional income.

20. In *Kubrabibi* (supra), it was observed by the Hon'ble Supreme Court that in a matter of the nature where the compensation is sought in the absence of definite proof of income, even then, the social status of the deceased is to be kept in perspective where such persons are employed in the unorganised sector. The notional income, in any event, is required to be taken into consideration.

21. In *Sidram* (supra), the Hon'ble Supreme Court, keeping in mind the dictum in *Kirti* (supra), held that it was not necessary to adduce any documentary evidence to prove the notional income of the victim and the Court can award the same even in the absence of any documentary evidence. In *Kirti* (supra), it was stated that the Court should ensure while choosing the method and fixing the notional income that the same is just in the facts and circumstances of the particular case, neither assessing the compensation too conservatively nor too liberally.

22. The Appellants claim an amount of ₹12,000/- as the notional income of the deceased. Keeping in mind *inter alia* the

social status of the deceased and that a 16-table restaurant was being operated by the deceased, along with a cyber-café and seasonal lodging, assessing the notional income of the deceased at ₹10,000/- per month would be appropriate.

23. The second contention that the tribunal had inadequately determined the compensation under the heads of 'loss of consortium,' 'funeral expenses', and 'loss of estate', also merits acceptance.

24. In *National Insurance Co. Ltd. v. Pranay Sethi*, - (2017) 16 SCC 680, a constitution bench of the Hon'ble Supreme Court deemed it fit to fix reasonable figures under the conventional heads, namely, loss of estate, loss of consortium and funeral expenses at ₹15,000/-, ₹40,000/- and ₹15,000/- respectively. The court held that the principle of revisiting the said heads is an acceptable principle. However, the revisit should not be fact-centric or quantum-centric. The court felt it would be condign that the amount that quantified should be enhanced on a percentage basis every three years, and the enhancement should be at the rate of 10% in a span of three years.

25. In *Rajwati* (supra), the Hon'ble Supreme Court noted that the deceased had left behind four dependants; in view of this, the grant of ₹40,000/- by the Tribunal towards loss of consortium was considered insufficient by the Court and deserved interference. Placing reliance on the *United India Insurance Co. Ltd. v. Satinder Kaur*-(2021) 11 SCC 780, the grant of ₹40,000/-

towards loss of consortium was increased to ₹44,000/- to each Appellant, amounting to a total of ₹1,76,000/-. Along with this, ₹15,000/- each for the heads of ‘funeral expenses’ and ‘loss of estate’ was also increased to ₹20,000/- each. The Court in *Rajwati* (supra) also observed that the compensation under these heads also needs to be increased by 10% after every three years.

26. The learned Tribunal has rightly determined that both the Appellants were due compensation under the head of loss of consortium; however, the quantum determined warrants interference. The tribunal apportioned ₹40,000/- and ₹30,000/- under the same to Appellants No. 1 and 2, respectively, however keeping in mind the dictum in *Pranay Sethi* (supra) and *Satinder Kaur* (supra), just compensation would amount to ₹48,400/- to each of the two Appellants. Similarly, under the heads of Funeral Expenses and Loss of Estate, the amount required to be revised to ₹18,150/- from ₹15,000/- so determined.

27. In *Sarla Verma v. DTC - (2009) 6 SCC 121* the Hon’ble Supreme Court laid down a standardised yardstick to determine the age based multiplier, which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.

28. The just compensation, in this case, would have to be computed in the following manner :

Sr. No.	Head of Compensation	Amount
1.	Income	₹10,000/- per month
2.	Deduction towards personal expenses	₹3,333.3 (1/3 of ₹ 10,000/-)
3.	Income after deduction	₹6,666.66/-
4.	Total Annual Income	₹80,000 (i.e. ₹6,666.66x12)
5.	Multiplier	7 (Age 64)
6.	Loss of Dependency	₹5,60,00 (i.e ₹80,000x7)
7.	Loss of Spousal Consortium	₹48,400/-
8.	Loss of Parental Consortium	₹48,400/-
9.	Loss of Estate	₹18,150/-
10.	Funeral Costs	₹18,150/-
11.	Sub-Total	₹6,93,100/-
12.	Total Amount Due	Rs. 5,93,100/- (₹ 6,93,100- ₹1,00,000/- already awarded)

29. Therefore, upon a holistic consideration of the totality of facts and circumstances, a sum of ₹6,93,100/- would be just compensation in the context of this case.

30. Thus, in First Appeal No. 40 of 2023, the Claim petition No. 148/2014 is partly allowed. The respondents are directed to jointly and severally pay to the Appellants/claimants a sum of ₹5,93,100/- together with interest at the rate of 7% from the date of institution of the claim petition till the actual payment. The Respondents, including in particular the Respondent Insurance Company must deposit this amount in this court within two

months from today after giving due intimation to the learned counsel for the Appellants.

31. Upon deposit, the Appellants would be entitled to withdraw the said amount after furnishing identity and bank details. Registry to ensure that the amount is directly transferred to the Appellants/claimants. The second Appellant (son) is awarded compensation of ₹1,00,000/- and the balance must be paid to the first Appellant (widow). The Appellants must be paid proportionate interest at the rate of 7 per cent per annum from the date of the institution of the claim petition till payment.

32. This appeal is disposed of by making the following order:

(a) First Appeal No.40 of 2023, in Claim Petition No.148/2014, is partly allowed. The respondents are directed to jointly and severally pay to the Appellants/ Claimants a sum of ₹5,93,100/- together with interest at the rate of 7% from the date of institution of the claim petition till the actual payment.

(b) The Respondents, including in particular the Respondent Insurance Company, must deposit this amount in this court within two months from today after giving due intimation to the learned counsel for the Appellants.

(c) Upon deposit, the Appellants would be entitled to withdraw the said amount after furnishing identity and bank details. The Registry to ensure that the amount is directly transferred to the Appellants/Claimants.

33. The Appeal is allowed in the aforesaid terms.

34. There shall be no order for costs.

M. S. SONAK, J.

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