

IN THE HIGH COURT OF BOMBAY AT GOA**FIRST APPEAL NO. 212 OF 2009**

National Insurance Company Ltd.,
2nd Floor, Marchon Bldg.,
Above Bank of Baroda,
V. V. Road, Opp. Lohia Maidan,
Margao Goa.
(Insurer of Maruti Esteem 1000)
Car No. GA-02/J-1511

.. Appellant

V e r s u s

1. Mr. Jitendra Kumar Pandye,
Son of Shri Chaneswar Pandye,
Aged 32 years, Defence Service,
Bachelor, resident of R/No. 429,
Company ASC Supplies,
Monte Hills, Margao Goa.
2. Mr. Rajeev Hegde,
Son of Mahabaleshwar Hegde,
Aged 22 years, student,
Resident of H.No.14,
Bank of India Colony,
Vidhyanagar, Aquem, Margao Goa.
3. The Managing Director,
Timblo Private Limited,
Kadar Manzil,
Near Harl Mandir,
Margao Goa.
4. Mr. Deepak Haldankar
Son of Pareswar Haldankar,
Major in age,
resident of H.No.176,
Ambaulim, Quepem Goa.
(Rider of Hero Honda
No. GA-02/T-0506)
5. Mr. Prakash Haldankar,
Major in age,
resident of H.No. 8/7,

Gogol, Margao Goa.
(Regd. Owner of Hero
Honda No. GA-02/T-0506)

6. New India Assurance Co. Ltd.,
2nd Floor, Jagannath Building,
Near Railway Fly-over,
Margao Goa.

.... Respondents

Mr. U. Timble, Advocate for the appellant.

Mr. A. Kakodkar, Advocate for respondent no.6.

CORAM : K. L. WADANE, J

JUDGMENT RESERVED ON : 12.02.2015

JUDGMENT PRONOUNCED ON : 20.02.2015

J U D G M E N T :

The present appeal is preferred by the original respondent no.3 against the judgment and award passed by the learned Presiding Officer of the Motor Accident Claims Tribunal, Margao, in Claim Petition No. 102/2004 dated 03.01.2009.

2. The brief facts giving rise to the present appeal may be summarised as follows :

3. The parties are referred to their original status.

4. The claimant Jitender filed the petition under the

provisions of Section 166 of the Motor Vehicles Act and has claimed compensation on the ground that the accident occurred due to the negligence of the driver of the car of respondent no.1 as well as the rider of the motor cycle of respondent no.4 on which the claimant was a pillion rider. According to the claimant, the accident occurred on 28.06.2003 at about 9.00 p.m. near Sadekar house Pajifond, Margao. At the relevant time of the accident, the claimant was the pillion rider of Taxi Hero Honda motor cycle No. GA-02-T-0506 driven by respondent no.4 and owned by respondent no.5 and insured with respondent no.6. When the claimant reached at the spot of the accident, Maruti Esteem car bearing No. GA-02-J-1511 came with a high speed and gave dash to the motor cycle due to which he fell down and sustained grievous injuries and, therefore, he was taken to the Hospicio hospital and thereafter, shifted to the G.M.C. He was under medical treatment from 28.06.2003 to 07.08.2003. In the accident, he received fracture injury on left fibulae coupled with other injuries. According to the claimant, the accident occurred due to the negligence of both the drivers i.e. respondent no.1 and respondent no.4.

5. The respondent no.3 by way of its written statement vide Exhibit 18 has denied almost all the contents of the petition

specially it has denied the salary of the claimant, injuries sustained to the claimant and the claim of compensation. However, admitted about the insurance and ownership of the vehicle and further pleaded that there was breach of terms and conditions of the policy as the respondent no.1 was not holding driving licence at the time of the accident.

6. Respondent nos.1 and 2 have adopted the written statement of respondent no.3.

7. Respondent nos. 4 to 6 have filed their written statement at Exhibit 21. They denied the age, occupation, income, nature of the injuries, expenses of medical treatment, its duration and permanent disability. They further denied that there was any promotional avenues to the claimant nor there was any rise in the pay. According to the respondents, the accident occurred due to the negligence of respondent no.1 and at the time of the accident, respondent no.4/the motor cycle rider almost reached on the other side of the road. Hence, respondent nos. 4 to 6 have no liability to pay any compensation.

8. Before the learned Tribunal, the claimant testified himself and led his oral evidence by filing his affidavit at Exhibit

26. In support of his oral testimony, he has produced the copy of First Information Report, scene of offence panchanama along with sketch, hurt certificate, details of the vehicle, case summary and discharge record issued by the G.M.C. hospital and the Military hospital vide Exhibits 27 to 32 Colly. The disability certificate is at Exhibit 33. To prove the salary of the claimant, the claimant has examined AW3 Om Prakash Jai Narayan and produced the salary certificate at Exhibit 60. The Investigating Officer has been examined as AW2 at Exhibit 42 to prove the negligence.

9. Considering the pleadings of the parties, the learned Tribunal has awarded the total compensation of Rs.3,48,000/- and the respondents were jointly and severally directed to pay the compensation to the claimant together with 9% interest. Hence, the present appeal.

10. I have heard the arguments of Mr. U. Timble, learned counsel appearing for the appellant and Mr. A. Kakodkar, learned counsel appearing for respondent no.6.

11. During the course of the arguments, the learned counsel appearing for the appellant/original respondent no.3 has argued that while deciding the claim petition the learned Tribunal

has not considered the evidence on record. The learned Tribunal has granted lump-sum compensation of Rs.2,88,000/- on account of 25% permanent disability sustained to the claimant. According to the learned counsel there is no base for calculation of such amount of compensation nor its break up is given. According to him, the learned Tribunal has to assess the permanent disability first. Admittedly, the permanent disability is to the particular limb. Therefore, it is for the learned Tribunal to assess the permanent disability considering the whole body then to calculate the loss of earning, if any, based upon the other available evidence on record. According to the learned counsel, the amount determined by the learned Tribunal especially on account of permanent disability is without any basis and calculation. Therefore, the learned Tribunal has committed an error in determining the amount of compensation. Further, the learned counsel has argued that even as per the case of the claimant the accident occurred due to the negligence of both the drivers i.e. the car driver as well as the motorcycle rider. In such circumstances, the rest of the respondents i.e. respondent nos. 4 to 6 also were held to be responsible for payment of compensation.

12. As against this, Mr. A. Kakodkar, learned counsel appearing for respondent no.6 has argued that the claimant

himself was injured in the accident. Obviously, he was a witness to the accident and he has admitted during the cross examination that there was no fault on the part of the motor cycle rider i.e. respondent no.4. The same fact is admitted by the Investigating Officer AW2 Jaganath Gaonkar. So according to the learned counsel the aspect of the negligence is properly adjudicated by the learned Tribunal.

13. With the help of both the learned counsel, I have gone through the evidence on record. On perusal of the same, it appears that though it is contended by the claimant that the accident occurred due to the negligence of the motor cycle rider i.e. respondent no.4 but the claimant has failed to establish that aspect. On perusal of the cross examination of the claimant himself, it appears that he has admitted during the cross examination that the motor cycle almost crossed the junction. The criminal case is against the car driver and more specifically in clear words he has admitted that there was no fault on the part of the motor cycle rider in the accident which took place due to the fault of Maruti Esteem driver alone.

14. AW2 Jaganath Gaonkar, who has investigated the matter deposed at Exhibit 42 and in the cross examination

conducted on behalf of respondent nos. 4 to 6 he has categorically admitted that there was no fault on the part of the rider of the motor cycle but only fault of the Maruti Esteem driver as per his investigation. The copy of the scene of offence panchanama is produced on record at Exhibit 28 Colly along with the sketch. On careful perusal of the sketch attached to the panchanama, it appears that the car was proceeding from Margao towards Pajifond whereas the motor cycle was proceeding towards Hospicio hospital from Station road Margao and the motor cyclist has almost crossed the chaukh/four-road junction and the exact spot of the accident is at the extreme end of the road i.e. near Sadekar house. Further, it is brought on record that the maruti car gave dash to the other vehicle on road and turned exactly in the opposite direction which indicates the high speed of the car. During the course of the arguments, the learned counsel appearing for respondent no.6 has pointed out that the motor cycle was not taking turn but was proceeding towards Hospicio hospital and he has almost crossed the road. Hence, looking to the situation appearing from the contents of the sketch and the spot panchanama, it appears that the accident occurred due to sole negligence of the car driver i.e. respondent no.1 and even this fact has been admitted by the claimant as well as by the Investigating Officer. Investigating Officer submitted the charge-sheet against the respondent no.1 as

the car driver was negligent while driving the vehicle hence, the learned Tribunal has determined the aspect of the negligence properly.

15. Looking to the next aspect, it appears that the monthly earning of the claimant has been established by way of oral evidence of AW3 Om Prakash as well as the other documents on record. The learned Tribunal has granted lump-sum compensation of Rs.2,88,000/- on account of permanent disability of 25% caused to the claimant in the accident. On perusal of the entire reasons recorded by the learned Tribunal, I do not find any reason as to how the learned Tribunal has determined the compensation of Rs.2,88,000/-. In my opinion, for determination of the compensation the learned Tribunal has to determine the monthly earning of the claimant and then assess the percentage of disability. The percentage of disability of a particular limb to certain extent may not have equal to that extent with reference to the whole body. Therefore, the learned counsel appearing for the appellant has relied upon the observations in the case of ***Raj Kumar V/s Ajay Kumar and another***, reported in **(2011) 1 SCC 343** wherein the Apex Court has only given the illustration so as to assess the percentage of disability at para 9 which reads thus :

"9. The percentage of permanent disability is expressed by the doctors with reference to the whole body, or more often than not, with reference to a particular limb. When a disability certificate states that the injured has suffered permanent disability to an extent of 45% of the left lower limb, it is not the same as 45% permanent disability with reference to the whole body. The extent of disability of a limb (or part of the body) expressed in terms of a percentage of the total functions of that limb, obviously cannot be assumed to be the extent of disability of the whole body. If there is 60% permanent disability of the right hand and 80% permanent disability of left leg, it does not mean that the extent of permanent disability with reference to the whole body is 140% (that is 80% plus 60%). If different parts of the body have suffered different percentages of disabilities, the sum total thereof expressed in terms of the permanent

disability with reference to the whole body
cannot obviously exceed 100%.”

16. Looking to the example given by the Apex Court, I am of the opinion that the learned Tribunal has not determined the amount of compensation properly. Further, during the course of arguments, it is submitted on behalf of the appellant/respondent no.3 that the medical officer who has issued the disability certificate is not examined. Therefore, it is very difficult to assess the percentage of disability caused to the claimant with reference to his body as a whole. Therefore, this Court is also unable to assess the percentage of disability caused to the claimant with reference to the whole body. The learned Tribunal has granted the amount of compensation to the other heads like pain and suffering, loss of income and diminishing marital prospects which cannot be said to be incorrect. However, the lump-sum compensation awarded to the claimant is without any basis and calculation. Therefore, I am of the opinion that the matter needs to be remanded to the learned Tribunal to determine that aspect only i.e. the determination of the compensation on account of permanent disability. It is made clear that the other findings and reasons recorded by the learned Tribunal stand confirmed.

17. In view of the above, the reasons recorded in the judgment and award dated 03.01.2009 by the learned Tribunal in Claim Petition No. 102/2004 is hereby set aside and the matter is remanded back to the learned Tribunal, Margao. The parties are directed to remain present before the learned Tribunal on 25.03.2015. After the appearance of the parties, the learned Tribunal shall give an opportunity to both the parties to lead evidence, if desired, in respect of the aspect for which the matter is remanded. The learned Tribunal is directed to dispose of the matter as expeditiously as possible and in any event within a period of six months from the date of receipt of this order by the learned Tribunal. Hence, the appeal is disposed of in above terms.

K. L. WADANE, J

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