

IN THE HIGH COURT OF BOMBAY AT GOA.

FIRST APPEAL NO.10 OF 2011.

Jose Alberto D'souza,
Aged about 44 years,
Son of Pedro De Souza,
R/o H.no. 381/2,
Vaikisher, Mettar,
Macasana, Salcete, Goa.

..... Appellant.

Versus

1) Mrs. Felicia Leitao, (Owner)
Wife of Luis Marques,
Resident of Zoddis, Macazana,
Curtorim, Salcete-Goa.

2) Mr. Luis Marques(driver).
R/o, Zoddis Macazana Curtorim,
Salcete, Goa.

3) Bajaj Allianz General
Insurance Company,
3C-D, Sesa Ghor, Patto Plaza,
Panaji Goa.

..... Respondents.

Mr. Tarshish Pereira, Advocate for the appellant.
None present for the respondents.

Coram:- K. L. WADANE, J.
Reserved on 16th April, 2015.
Pronounced on:- 23rd April, 2015.

JUDGMENT

The present appeal is preferred by the

appellant/original claimant against the judgment and award dated 28.7.2007 passed by the Presiding Officer, Motor Accident Claims Tribunal, Salcete, Margao, ("Presiding Officer" for short) in Claim Petition No. 165 /2007, by which the claim petition of the appellant is partly allowed. The appellant was granted total compensation of Rs.95,225/- together with 9% interest.

2. Parties are referred to as per their original status in the claim petition.

3. Brief facts of the case may be stated as follows:-

On 24.7.2006 at about 12.30hours the claimant along with his minor daughter and her schoolmate were proceeding to his residence at Macazane on his motorcycle. When they reached on the road between St. Alex High School and Curtorim Church, a Matiz Car bearing No. GA-02-J-8126 was proceeding in the same direction and it was behind the motorcycle. When the claimant reached the culvert existing on this part of the road and close to the house of one Mr. Shirodkar, said car tried to overtake the motorcycle and in that process gave dash to the motorcycle, consequently the claimant lost control over the motorcycle and fell down. In the accident both

claimant and his minor daughter received injuries.

4. The claimant sustained following injuries:-

- i. Right front parietal subdural hemorrhage 4mm with right temporal and basi temporal contusion extending to parietal region of 6.8 X 3.9 X 3.5 cms.
- ii. Left basi temporal region had subdural hemorrhage of 4mm.
- iii. Cerebral oedema
- iv. Comminuted fracture for left parietal bone, left side of frontal bone, left front bone, right temporal bone.

5. Prior to the accident, the claimant was doing the business of carpentry since the year 1980. Since, 1990 he was making wooden coffins. On an average the claimant would be able to make one coffin per day and earning Rs.300/- by way of making charges. However, due to the injuries sustained to the claimant, he is now unable to do such type of work. Due to the injuries he was unable to work from 24.7.2006 till May, 2007 for continuous period of 10 months, therefore, he suffered a loss of income to the tune of Rs. 80,400/-.

6. The claimant has lost capacity to do work, therefore, the claimant is entitled for future loss of his earning which is calculated to the extent of Rs.7,92,000/-. The claimant is required to incur medical expenses of Rs. 1488/- per year for another 25 years and he has calculated future medical expenses to the extent of Rs. 37,100/- . So the claimant has claimed a total compensation of Rs. 17,00,000/- on all all permissible heads.

7. The claim petition of the claimant is opposed by the respondent nos.1 and 2 and they have contended that the accident occurred due to the rash and negligent driving of the motorcycle by the claimant himself. On the other hand there was no negligence on the part of the driver of the car, respondent no.2. Rest of the contents of the petition are denied. At the relevant time the car involved in the accident was insured with the respondent no.3. The respondent no. 3 has admitted insurance of the car, however policy was issued subject to terms and conditions and it is further contended that the claimant as well as the respondent no.2 were not holding valid driving licence. It has denied the negligence of the respondent no.2. It is their contention that the accident occurred due to the negligence of the claimant. It is further contended that the

accident occurred, almost on middle portion of the road. The accident took place between two vehicles, therefore, owner and the insurer of the motorcycle are also necessary parties. In the absence of such parties, petition is bad for non-joinder of the necessary parties.

8. Considering the rival contentions, learned Presiding Officer has framed issues at Exh. 24 and decided the same in favour of the claimant. However, according to the claimant, the compensation awarded to him under various heads is too much less, on that ground alone the claimant came in the appeal.

9. I have heard Mr. T. Pereira, learned counsel appearing for the claimant at length.

10. The respondents duly served. None present for the respondents.

11. In order to prove the claim of the claimant, the claimant filed his affidavit at Exh. 32 under the provisions of Order 18 Rule 4 of C.P.C. and has reiterated all the contents of the petition at Exh. 1. AW2 Smt. Catherine Cardoz, examined

to prove the charges of attendant. AW3 Filipina Sequiera is the employer of the claimant who deposed about earnings of the claimant. AW4 Patric Vaz is examined to prove the transportation charges. AW5 Dr. Caraciolo Vas, AW7 Dr. Ponraj K. Sundaram, AW8 Dr. Sidharth Singbal and AW10 Xavier George Kochery are the experts witnesses i.e Doctors who have examined the claimants and gave medical treatment. So also AW8 Dr. Sidharth Singbal and AW10 Dr. Xavier George Kochery issued disability certificates.

12. As against this no evidence is adduced on behalf of the respondents.

13. Looking to the rival contentions of both the sides, evidence on record and upon hearing the learned counsel Mr. Pereira for the claimant a following point arises for my determination.

<u>Sr. No.</u>	<u>POINT FOR DETERMINATION</u>	<u>FINDINGS</u>
1)	Whether the amount of compensation awarded to the claimant is too less compare to the evidence on record?	 No.
2)	What Order?	 Appeal is dismissed.

14. The present appeal is preferred by the claimant only on the ground that the amount awarded by the learned Presiding Officer is a meager amount, infact the claimant has suffered a lot mentally as well as physically, therefore, according to the appellant, the learned Presiding Officer ought to have been awarded compensation of Rs.17,00,000/- on account of all permissible heads.

15. At the outset it is pertinent to note that certain amount is claimed by the claimant on account of future medical expenses. However, there is absolutely no evidence on record to show that the claimant is required future medical treatment. The evidence of the experts is absolutely silent on this aspect.

16. The claimant testified himself by filing affidavit at Exh. 34 and has deposed that he was getting Rs.8400/- per month from the work of carpentry i.e making of the coffins. However, now the claimant is facing difficulty to do the work continuously due to pain in his hands and headache. During the cross examination he has admitted that prior to the accident he was making one coffin per day but after the accident and the injuries now he is making one coffin in a three days. So

indirectly or impliedly he wants to suggest that his working capacity is marginally reduced to the extent of 2/3rd. However, it is material to refer the evidence of AW8 Dr. Singbal, as he has admitted in the cross examination that such patient (claimant) shall not suffer much while doing carpentry work. Similar admission is given by the another witness AW10 Dr. Xavier George Kochery which reads as follows:-

“ The routine life of such patient should not be of much problem.”

17. So looking to the opinion expressed by the two experts i.e doctors one orthopedic surgeon and another is Assistant Professor in a Nero Surgery who have opined that claimant will not face much difficulty in doing carpentry work and he will not face much problem and probably because of this learned Presiding Officer has not considered future loss of earning rather there is no evidence to show that due to the disablement caused to the claimant he is suffering a loss of future earning. Except the bare words of the claimant and so called employer i.e AW3, there is no documentary evidence on record to show the earning of the claimant.

18. Looking to the above aspect, I am of the opinion that the learned Presiding Officer has determined and fixed the monthly earning of the claimant on the basis of guess or he has considered a notional income of the claimant at the relevant time of the accident.

19. In view of the statements made by two doctors, I do not think that working capacity of the claimant is marginally reduced, therefore. in my opinion, the learned Presiding Officer has awarded a lumpsum compensation of Rs. 50,000/- for the permanent disability.

20. I have also gone through the other evidence on record and found that the amount of compensation awarded to the claimant on account of actual loss of his income, pains and suffering, transportation charges, charges of attendant appears to be just and reasonable compensation.

21. Learned Advocate appearing for the claimant has cited following judgments:-

- i. K. Suresh Vs. New India Assurance Co. Ltd. and Anr., 2012(12) SCC 274.

- ii. Raj Kumar Vs Ajay Kumar and anr., 2011(1) SCC 343.
- iii. Nizam Institute of Medical Sciences Vs Prasanth S. Dhananka and ors., 2009(6) SCC 1.
- iv. Kavita Vs. Deepak and others, 2012(8) SCC 604.
- v. Sarla Verma and ors Vs. Delhi Transport Corporation and anr. 2009(6) SCC 121.

22. During the course of arguments this Court has made specific query to Advocate Pereira as to how the facts of the cited authorities and the facts of the case in hand are identical. However, the learned counsel appearing for the claimant was unable to distinguish the facts of the present case with the facts of the cases cited above. The learned counsel appearing for the claimant was also unable to explain which of the principle in the above cited authorities was not followed by the learned Presiding Officer and he was unable to explain this thing during the course of the arguments.

23. For the reasons stated above and on perusal of the reasons recorded by the learned Presiding Officer while determining the compensation on each of the heads, I am of the

opinion that the learned Presiding Officer has considered all the evidence on record properly and has awarded a reasonable compensation on the basis of the evidence on record. Therefore, it is not necessary to disturb the findings recorded by the learned Presiding Officer. There is no substance in the appeal, therefore, appeal is liable to be dismissed. Accordingly it is dismissed with no order as to costs.

K.L. WADANE, J.

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