

IN THE HIGH COURT OF BOMBAY AT GOA.

FIRST APPEAL NO.30 OF 2010.

Bajaj Allianz General Insurance
having its Branch office at 3CD
Sesa Chambers, 20 Patto Plaza,
Panjim-Goa.

..... Appellant.

Versus

1 Miss Selma Fernandes
d/o Luis G. Fernandes,
aged about 22 years,
resident of House No.510,
Curilo Waddo, Majorda,
Salcete Goa.

2 Mr. Abdul Samad Bepari,
S/o A. R. Bepari, aged about
25 years, resident of House no.226,
St. Jose Areal, Combhabhat,
Salcette Goa.

3 M/s Chowgule Industries Limited,
having Office At D. B. Bandodkar Marg,
Campal, Panaji- Goa.

.....Respondents.

Mr. V. G. Kuttikar, Advocate for the appellant.
Mr. V. G. P. Duple, Advocate for the respondent no.1.

Coram:- K. L. WADANE, J.
Reserved on:13th March, 2015.
Pronounced on:-20th March, 2015.

JUDGMENT

The present appeal is preferred by the appellant against

the judgment and award dated 21.07.2009 passed by the Presiding Officer, Motor Accident Claims Tribunal, Salcete, Margao ("Presiding Officer" for short) by which the claim petition filed by the respondent no.1 herein is partly allowed and an amount of ₹3,24,750/- (Rupees three lakhs twenty four thousand seven hundred and fifty only) is granted to the respondent no.1 herein together with 9% interest.

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

3. The above appeal is preferred by the respondent no.3 broadly on the ground that the learned Presiding Officer has ignored the fact of the contributory negligence. Secondly, amount of compensation granted to the claimant is disproportionate looking to the nature of the injuries and percentage of permanent disability caused to the claimant and amongst other grounds mentioned in the appeal memo.

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

The claimant filed the petition under Section 166 of the Motor Vehicles Act.

On 30.7.2007 at about 15.45 hours, the claimant was proceeding from Majorda to her aunt's place at Fatorda and she was riding the scooty bearing registration No. GA-08-D-9259. When she reached near the Durga Petrol Pump at Fatorda and after putting right indicator, she took turn to proceed to her aunt place which is near the Durga Petrol Pump, at that time suddenly respondent no.1 came from behind with jeep bearing registration No. GA-02-T-8700 in a rash and negligent manner and gave dash to the claimant vehicle. It is further contented that at the time of the accident the claimant had already reached other side of the road, therefore, the respondent no.1 had ample space to proceed ahead and instead of this the respondent no.1 took his vehicle towards right side in a rash and negligent manner and dash the claimant from behind. It is further contended that after the accident the claimant was admitted in Hospicio hospital at Margao and as the injuries sustained to the claimant were serious, the claimant was immediately shifted to GMC Bambolim and she was under medical treatment till 25.8.2007. Thereafter she was under follow up medical treatment for long period.

5. According to the claimant due to injuries sustained to her in motor vehicular accident she became permanently disabled,

therefore, the claimant has claimed ₹7,00,000/-(Rupees seven lakhs only) on all counts.

6. The respondent no.2 filed his written statement at Exh. 19 and it has denied the age, occupation and income of the claimant so also it has denied rash and negligent driving of the vehicle by the respondent no.1. On the contrary the claimant herself was negligent while driving the scooty. Lastly contended that claim for the compensation is excessive and exorbitant. The respondent no.3 also contested the petition on various grounds. Looking to the contentions of the Written statement it appears that this is an general denial of each and every fact, however, the respondent no.3 admitted the insurance of the jeep at the relevant time of the accident. Negligence of the respondent no.1 has been specifically denied. It is further contended that the claimant suddenly turn to the right side that too without horn or signal.

7. Looking to the pleadings of the parties, the learned Presiding Officer has framed issues at Exh. 28. The claimant examined herself by filing her affidavit at Exh. 32 and has examined in all nine witnesses in support of her claim. AW1

Selma Fernandes, AW2 Angelo Mascarenhas, AW3- Nazareth Pereira, AW4- Dr. Tania Souza, AW5 Melwyn Pereira, AW6- Sambhaji Gurav, AW7- Milagres Colaco, AW8 Caetano Pereira, AW9- Dr. Zelio D'Mello and AW10 Dr. Xavier Kochery.

8. As against this the respondent no.1 had led his evidence by filing his affidavit in evidence at Exh. 89.

9. Considering the evidence on record, the learned Presiding Officer has partly allowed the petition and granted compensation to the claimant as referred above. Hence, the present appeal.

10. I have heard the arguments of the learned counsel for the respective parties at length. With the help of the learned counsel appearing for both the sides, I have gone through the entire evidence on record, reasons recorded by the Presiding Officer while allowing the petition.

11. Considering the arguments advanced by both the sides and on perusal of the entire evidence, the following points arise for my determination:-

<u>SR. NO.</u>	<u>POINTS FOR DETERMINATION</u>	<u>FINDINGS.</u>
1)	Whether the respondent no.3 proved that the accident took place due to negligence of the claimant herself?	 No.
2)	Whether the compensation awarded to the claimant is exorbitant compare to the percentage of the disability caused to the claimant?	 No.
3)	What Order?	 Appeal is dismissed.

12. During the course of the arguments the learned counsel appearing for the respondent no.3 has argued that amount awarded to the claimant compared to the permanent disability is disproportionate. It is on the higher side particularly when the concerned doctor has admitted that the claimant can do the clerical work. In support of his submission learned counsel appearing for the respondent no. 3 has relied upon the judgment in the case of Raj Kumar VS. Ajay Kumar and another, reported in 2011(1) ALL MR 402(S.C.) in which it is observed thus:-

“On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of 'loss of future earnings', if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a

limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity. “

13. On perusal of the above observations, it appears that the facts of the cited case and the facts of the present case are different. The claimant in the cited case was in government service whereas the claimant in the present case is in temporary services with the private company, therefore, the said observations are inapplicable to the facts of the present case.

14. Secondly, the learned Advocate for the respondent no.3 has argued that the accident occurred due to the negligence of the claimant herself but the learned Presiding Officer has not considered this material aspect. Therefore, on these two grounds amongst other grounds mentioned in the appeal memo, the appeal is liable to be allowed.

15. As against this, the learned Advocate appearing for the claimant has argued that the claimant is unmarried lady, due to the injuries sustained to her she is unable to do any work. She lost her marriage prospectus, therefore, the amount of

compensation awarded to her on various grounds is absolutely just and reasonable. Therefore, it is not necessary to interfere with the findings recorded by the learned Presiding officer.

16. In the light of the pleadings of the parties and the arguments advanced on their behalf now it is necessary to reassess the evidence on record in reference to the points framed for its determination.

17. It is admitted fact that the accident took place between two vehicles proceeding on the same direction. Admittedly, the vehicle on which the claimant was riding is small vehicle compared to the vehicle driven by the respondent no.1. Looking to the situation and the direction on which both the vehicles were proceedings, the claimant had no opportunity to observe the traffic from behind. On the contrary the respondent no.1 had opportunity to see the vehicle in front of him while driving the vehicle.

18. AW1- Selma Fernandes stated on oath that the accident took place due to rash and negligent driving of the jeep driver. She took right turn after showing signal manually as well as

putting on light signal. In addition to the oral evidence of the claimant, she relied upon the contents of the FIR and the Accident spot panchanama alongwith sketch. During the cross examination nothing in brought on record to disbelieve the contentions of the claimant. Besides oral evidence of the claimant, there is evidence of AW2 Angelo Mascarenhas who deposed that the jeep was driven at the fast speed of approximately 70 kms per hour and the road at the spot of the accident was straight road. In his cross examination nothing is brought on record to disbelieve the evidence of this witness about his presence at the relevant time at the spot of the accident. This witness appears to be an independent witness, has no reason to depose falsely against the respondent no.1.

19. Respondent no.3 fail to establish that the claimant suddenly took right turn that too without signal. Respondent no.1 in his deposition has tried to blame the claimant but one cannot lost the sight of the fact that the respondent no.1 is prosecuted by the concerned police and this fact has been admitted by the respondent no.1 in his cross examination. Even he has given candid admission about the guilt and negligence in reference to the accident. The relevant deposition reads as

follows:-

“I admit that the police had filed the chargesheet against me before the JMFC, Margao and I have admitted that the accident took place due to my fault.”

20. Because of the candid admission oral evidence of respondent no.1 in reference to the negligence goes away, since the respondent no.1 as the driver of the offending vehicle has admitted his guilt, therefore, it is not necessary to scrutinize other evidence on record. Hence point no.1 is answered in the negative.

21. From the record it is seen that the claimant is young lady who was seriously injured in the accident and she was indoor patient till 25.8.2007 in the hospital at GMC and even thereafter the claimant was under medical treatment for a long period. Looking to the nature of the injuries, it appears that the claimant had head injury with supra condylar fracture of the left humerus for which she was admitted on 30.07.2007 in the GMC hospital and treated there till 25.8.2007. Due to the head injuries the claimant lost memory, as such some investigation of the neurology was conducted. Concerned Medical Officer Doctor

deposed that the claimant is permanently disable to the extent of 50%, therefore looking to the nature of the injuries the claimant must have suffered pains and agony. Needless to say that due to the injuries physical ability of the claimant to do work is reduced.

22. From the evidence of PW9 Dr. Zelio D'mello, a professor of Department of Orthopeadics, it is seen that the claimant is permanently disable to the extent of 50% due to bony ankylosis to left elbow. The claimant had continued in neurosurgery department from the time of admission in GMC till 12.8.2007. This witness has admitted in the cross examination that the claimant would face no difficulty to do her clerical job. By referring to this very admission, the learned Advocate appearing for the respondent no.3 has argued that the claimant had suffered no loss of her future earning. Even if it is presumed that the claimant has not suffered any future loss of earning still I am of the opinion that the claimant has to carry physical disability throughout her life, therefore, looking to the nature of injuries and the percentage of disablement, the amount of compensation awarded by the Presiding Officer to the extent of ₹2,29,500/- (Rupees two lakhs twenty nine thousand five hundred only)

appears to be reasonable. Other compensation is awarded against pecuniary damages which is substantiated by the claimant by filing documents together with the oral evidence of the witnesses and, as such, I do not find any illegality in the reasons recorded by the learned Presiding Officer while awarding the compensation. Therefore, it is not necessary to interfere with the findings recorded by the learned Presiding Officer. Hence, point no. 2 is answered in the negative.

23. In view of the negative finding recorded to the points determined above, appeal is liable to be dismissed. Accordingly, it is dismissed with no order as to costs.

K.L. WADANE, J.

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