

IN THE HIGH COURT OF BOMBAY AT GOA.

FIRST APPEAL NO.43 OF 2009.

National Insurance Co. Ltd.
Margao Branch Office
Marchon Bldg Varde
V. Road Margao,
Salcette, Goa.

..... Appellant.

Versus

1. Smt. Conceicao A. Mascarenhas,
Major, married, Teacher,
R/o. H. No.240, Sinquetim
Navetim, Salcete-Goa.

2. Shri Nanik K. Bhatia,
R/o Karam Channa
Bhatia, H. No.65/E,
Plot no.8, Arlem-Raia
Salcete Goa.

..... Respondents.

Shri U. R. Timble, Advocate for the Appellant.
None for the respondents.

Coram:-PRITHVIRAJ K. CHAVAN,J.
Reserved on:18th January, 2018.
Pronounced on:-8th February,2018.

JUDGMENT:

This is an appeal by the Insurance Company under Section 173 of the Motor Vehicles Act, challenging the judgment and award dated 23.11.2007 passed by the Presiding Officer, Motor Accident Claims Tribunal, Taluka Salcete, Margao in Claim Petition No.191/2002.

2. The impugned judgment and award has been challenged by the appellant mainly on the grounds that the learned Presiding

Officer has failed to appreciate that it was a case of contributory negligence indicating some negligence on the part of the claimant. Secondly, the impugned award is assailed on the ground that the learned Presiding Officer has failed to appreciate that the claimant had received all the premature retirement benefits and, therefore, there was no loss of income. The award has been also assailed on the ground that the Presiding Officer has erred in awarding separate sum for permanent disablement which are exorbitant and unjustified.

3. Brief facts of the case are that the respondent no.1 who is original claimant was walking on the edge of the road on 20.2.2002 near Navelim Church when the offending scooter bearing registration No.GA-02-K-5809 was driven by respondent no.2 in a rash and negligent manner resulting into violent dash to the claimant due to which she suffered multiple injuries including injuries to her head. Due to said injuries the claimant suffered loss of memory including other disabilities. The claimant was a teacher in St. Mary's of the Angels Convent High School Chinchinim and was drawing a monthly salary of ₹15,335/-. She was hospitalised for a considerable period. Subsequently she was compelled to take premature voluntary retirement.

4. Original respondents have filed a common written statement denying almost all the averments in the petition. It is the specific contention of the original respondents that on the day of the accident claimant suddenly and unexpectedly ran from the left to the right of the road which passes from Navelim to Margao and after crossing half of the road retracted back, on noticing a bus which was coming from Margao side and dashed to the middle portion of the scooter which was driven by respondent no.2 in a slow speed on the correct side of the road. Admittedly, the offending scooter was insured with the appellant.

5. After recording the evidence of the claimant's witnesses and on going through the documents on record, the learned Presiding officer by the impugned judgment and award granted compensation in the sum of ₹14,72,160/- to the claimant with interest at the rate of 9% from the date of petition till satisfaction of the award.

6. I heard Shri U. R. Timble, learned Counsel for the appellant. None present on behalf of the respondents.

7. At the outset, the learned Counsel for the appellant took me through the sketch drawn by the Investigating Officer from which he tried to suggest that the claimant had almost crossed half of the

road as the spot of the accident as per sketch Map is about 2.50 mts inside the high way. It is submitted that had the claimant been walking from the edge of the road she could not have crossed the road to the extent of 2.50 mts. A bare look at the said sketch which is marked at Exh.27 though indicates that there were blood stains on the spot at a distance of 2.50 mts from the edge of the main road, it is pertinent to note that the offending scooter was also shown in a perpendicular manner on the said road ahead of the spot of the accident. However, it is deposed by the claimant that Vespa Scooter driven by the respondent no.2 came from behind and dashed against her which was driven in a rash and negligent manner. Due to the dash she was thrown on the ground and sustained injuries. A conjoint reading of the FIR, Panchanama of the accident spot and the evidence of the claimant reveals that accident occurred only due to rash and negligent driving by the respondent no.2 for the reason that the testimony of the claimant could not be shattered in the cross by the respondents. It was suggested that she was crossing the road and suddenly retracted which the claimant has denied. The Original respondents could have entered into the witness box in order to rebut the testimony of the claimant. Since they remained away from the Tribunal, an adverse inference can be drawn against them. Nothing has prevented respondent no.2 to enter into witness box. Merely because the

sketch shows the spot of the accident at a distance of 2.50 mts from the edge would not ipso facto mean that the claimant had crossed half of the road and suddenly retracted. The original respondents could have proved this fact as regards the arrival of the bus from Margao direction which prompted the claimant to retract. I am, therefore, unable to accept the argument of the learned Counsel for the appellant to that effect. As such, there is no case made out by the appellant so as to say that it was a case of contributory negligence.

8. As regards the quantum of compensation awarded to the claimant by the Tribunal, it can be borne out from the record that she took premature voluntary retirement on 1.7.2004 and was drawing a monthly salary of ₹15,335/-. Salary certificate is at Exh.29. It is argued by the learned Counsel for the appellant that the claimant had opted for voluntary retirement two and half years after the accident which means she was medically fit and, therefore, she could not have been awarded exorbitant amount of compensation. The learned Presiding Officer of the Tribunal, however has appreciated the evidence of the claimant vis-a-vis the testimony of AW2 Dr. Sundaram. The observations of the Tribunal in paragraphs 11 and 13 can be reproduced which reads as under:-

“11. The non-production of her Birth Certificate or for

that matter, her appointment letter would not cause any prejudice to her case since there was no dispute to her status as a teacher and otherwise no rebuttal to her age, as stated in the petition and on oath in Court. There was also no rebuttal of her case on the nature of the injuries, the hospital treatment and also the follow-up treatment from time to time, entitling her to the compensation on the distinct heads. The un rebutted testimony of Dr. Sundaram AW2 that she would have a compromised capacity in teaching on account of behavioural disturbance and memory deficiency would have to be independently seen whether she would have been able to continue her service. Even otherwise, with such memory losses and at lucid intervals, the school, in all probability, would have found her a liability and terminated her services which therefore emphasizes her statement that she was compelled to take premature voluntary retirement.

13. At the outset, the respondents took a plea that there was no Certificate produced by the

claimant to substantiate her case that she was unfit for the job of a teacher and also her Certificate of Birth to confirm her age and pressing for an adverse inference to be drawn against her. The school would have its own reasons or compulsion not to issue her any Certificate on her capacity or lack of it to continue her teaching job. The un rebutted testimony of the Doctor that her loss of memory would affect her teaching faculty by itself is adequate to accept her case that she could not have continued to teach in the school and compelling her thus to put in her retirement papers prematurely. At the same time, the claimant had not produced her Certificate of Birth which may make a difference to her case. However, though the respondents examined Menino Rw1 in support of their case, no attempt too was made by the respondents to bring her actual age on record and therefore, in the circumstances, i am inclined to accept her age as 55 years as stated on oath."

9. Undisputedly, the claimant took voluntary retirement w.e.f 1.7.2004. Normally she would have retired in the month of October 2010 and, therefore, she could have served the school for a period of six years and three months which comes to about 75 months. As she was drawing pension at the rate of ₹7000/- per month, said amount will have to be deducted from her last drawn salary of ₹15,335/-. Thus, the claimant ought to have been awarded ₹8335/- per month for a period of 75 months which comes to the tune of ₹6,25,125/- towards loss of pay. This is in the light of the fact that the claimant had worked for two and half years after the date of the accident and received full salary for two and half years at the rate of ₹15335/- and, therefore, there was no question of loss of income for two and half years. The learned Presiding Officer of the Tribunal erred in awarding compensation to the tune of ₹14,72,160/- by multiplying 96 months i.e. 8 years with ₹15335/- i.e last drawn salary (Gross Salary) by the claimant. As already stated the claimant has been drawing pension at the rate of ₹7000/- per month, therefore, she ought to have been awarded ₹8335/- per month for a period of 75 months which comes to the tune of ₹6,25,125/-.

10. Learned Counsel for the appellant has not seriously challenged an amount of Rs.4,00,000/- paid towards compensation

on account of permanent disabilities to the claimant and other pecuniary benefits.

11. As such, appeal needs to be partly allowed by modifying the amount of compensation from ₹14,72,160 to ₹10,47,225/-.

12. Appeal is partly allowed. The respondent shall jointly and severally pay/deposit an amount of Rs.10,47,225/-. Bifurcation of the compensation under different heads can be stated as follows:-

i. Permanent disability		₹4,00,000/-
ii. Loss of pay		₹6,25,125/-
iii. Medical and related expenses		₹17,100/-
iv. Travelling expenses		₹5,000/-
Total		₹10,47,225/-

13. Appeal stands disposed of in the aforesaid terms.

PRITHVIRAJ K. CHAVAN,J.

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