

IN THE HIGH COURT OF BOMBAY AT GOA**FIRST APPEAL NO. 73 OF 2007**

New India Assurance Company Ltd.,
NCL Building, 1st floor,
Bandra Kurla Complex,
Bandra (E), Mumbai- 51.

... Appellant

V e r s u s

1. Mr. Alberto Diogo Rodrigues,
s/o Franscisco Rodrigues,
H. No.363, Virlosa,
Britona, Bardez Goa.

2. Anant Manik Kale,
Major, residing at Ganesh Nagar,
Dange Chowk, Therego, Pune.

3. Mr. Kundol M. Wane,
Major, residing near Khunshara
Patil Vidyalaya, Dange Chowk,
Theregao, Pune.

..... Respondents

Mrs. Y. Mandrekar for the Appellant.

Coram:- C. V. BHADANG, J.

Date:- 12th December, 2018.

ORAL J U D G M E N T:

By this appeal, the appellant is challenging the judgment and award dated 13/12/2005 passed by the Motor Accident Claims Tribunal at Mapusa (Tribunal, for short) in Claim Petition no.40/2004. By the impugned award, the Tribunal has granted a compensation of Rs.4,37,500/- to the respondent

no.1 towards permanent partial disability suffered by him in a vehicular accident. The Tribunal has granted interest at the rate of 7.5% p.a. from the date of the petition till realization. This is inclusive of the compensation under No Fault Liability.

2. I have heard the learned counsel for the appellant. Nobody appears for the first respondent, who is alone the contesting respondent. With the assistance of the learned counsel for the appellant, I have gone through the record and the impugned award passed by the Tribunal.

3. The learned counsel for the appellant has restricted the challenge only to the quantum of the compensation and thus it would not be necessary to set out the facts in details. Suffice it to mention that the first respondent/claimant was a rickshaw driver and was proceeding from Panaji to Mapusa on 10/12/2003. When he reached at Porvorim, the rickshaw was dashed by a tempo bearing registration no. MH-14-V-4384 resulting into injuries to the left leg of the first respondent. Besides he also suffered fracture and an injury to the spinal cord. According to the first respondent, he was operating the rickshaw belonging to his sister and was earning Rs.6000/- per month on an average, excluding the daily expenditure. The first respondent filed the aforesaid petition claiming compensation of Rs.10,00,000/-.

4. Before the Tribunal, the claimant examined himself along with Dr. Ravish Kolwalkar (AW.2), HC Vilas Phadte (AW3) and Caroline Rodrigues (AW4), who is the sister of the claimant. There was no evidence led by the appellant or any other respondent, before the Tribunal.

5. The Tribunal found that the first respondent had suffered permanent partial disablement of 15% on account of, mild restriction of the hip joint movement. The Tribunal on the basis of the evidence of AW4, Caroline whose rickshaw the first respondent was operating, found that the first respondent was earning Rs.200/- per day. The Tribunal reckoned the monthly income at Rs.200/- per day for 25 days in a month that is, Rs.5000/- per month. The Tribunal awarded a sum of Rs.1,50,000/- towards permanent disability, Rs.5000/- towards conveyance, Rs.72,500/- towards the actual cost of medicines and an amount of Rs.50,000/- as attendant charges. The Tribunal also awarded Rs.60,000/- as actual loss of income for one year and Rs.1,00,000/- as general damages towards pain and suffering. The total compensation awarded is Rs.4,37,500/-.

5. The learned counsel for the appellant took exception to the grant of compensation under the head of attendant charges. It is contended that it was

not necessary for the brother of the claimant to have attended the claimant, as the claimant was married. Secondly it is contended that the amount of Rs.60,000/- granted towards loss of income for one year is on a higher side, as the record shows that the first respondent was admitted in the hospital only for a period of 10 days. Lastly it is contended that the compensation towards permanent partial disability and general damages are also on a higher side.

6. I have considered the circumstances and the submissions made. The compensation of Rs.72,500/- towards the actual cost of medicines is supported by bills and Rs.5000/- towards conveyance is also just and proper. In so far as the attendant charges are concerned, the same can be reduced to Rs.20,000/-. Even so far as the actual loss of income is concerned, there is no clear evidence as to for what period the claimant was unable to drive the rickshaw and the record shows that he was admitted in the hospital for a period of 10 days. However, considering the fact that even after his discharge, the claimant would need some rest looking to the nature of the injuries, before he could resume work, I find that it would be reasonable to grant the compensation towards actual loss of earning for four months i.e. Rs.20,000/-. I am not inclined to interfere with the compensation granted towards the permanent disability at Rs.1,50,000/-. The general damages are more often than not of a notional character. Considering the nature of

injuries, the general damages towards pain, shock and suffering can be granted at Rs.50,000/-. Thus the net compensation would be Rs.3,17,500/-.

7. In the result the following order is passed:

(i) The appeal is partly allowed.

(ii) The impugned judgment and award is modified and the respondent no.1 is held entitled to a compensation of Rs.3,17,500/- along with interest at the rate of 7.5% p.a. from the date of the petition, till realization.

(iii) The appellant has paid an amount of Rs.2.00 lakhs to the first respondent by cheque no.23585 of Central Bank of India dated 11/7/2008.

(iv) From out of the amount deposited before this Court, the office shall pay the remaining amount of Rs.1,17,500/- along with proportionate interest to the first respondent. The balance amount along with interest, if any, shall be refunded to the appellant. In the circumstances there shall be no order as to costs.

8. Award be drawn accordingly.

C. V. BHADANG, J.

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