

IN THE HIGH COURT OF BOMBAY AT GOA**First Appeal No. 4 of 2013**

Smt. Sunanda alias Urmila U.
Kalangutkar
Wife of Shri Umesh Kalangutkar
aged 58, resident of H.No.176,Gudi
Wada, Neura, Tiswadi, Goa. Appellant

V/s.

- 1 Shri Surendra Ramdas Naik
Nachinolkar Major, r/o. Thorlem
Bhat, Dongri, Neura, Tiswadi Goa.
- 2 Shri Jeevan Suryakant Kuttikar,
major, r/o. Dhaktem Bhat, Dongri,
Neura, Tiswadi, Goa.
- 3 United India Insurance Co.Ltd.
Damodar Chambers, II floor, Near
Municipal Garden, Panaji, Goa. Respondents.

Mr. S.S. Kakodkar, Advocate for the Appellant.

Mr. E. Afonso, Advocate for the Respondents.

Coram :- SMT. M. S. JAWALKAR,J.

Reserved on : 26th October, 2020

Pronounced on: 26th November, 2020

JUDGMENT

Present appeal is filed by the appellant being aggrieved by the Judgment and Award in Claim Petition No.106 of 1997 dated 16/10/2012. The appeal is filed for enhancement of compensation.

2. The petitioner claim before the Claim Tribunal was as under :

That on 28/04/1997, the petitioner was the pillion rider on the scooter bearing No.GA-01-H-0969 and the same was driven by her brother Anand Naik. While they were climbing the slope at Kundaim a truck bearing No.GA-01-T-3378 came from the opposite direction and in the process of overtaking another truck dashed against the said truck then dashed against the fiat car and thereafter against the scooter driver i.e. to her brother. The said accident was caused solely due to rash and negligent driving by respondent No.2 i.e. driver of truck. The claimant sustained grievous injuries which have resulted in permanent disability which also affected her earning accordingly she claimed compensation of

₹5,64,648/-.

3. The learned Tribunal after considering the evidence on record awarded amount of ₹20,000/- and interest @ 9% p.a. from the date of the Award. The appeal is filed on the ground that the learned Tribunal failed to appreciate 40% permanent disability supported by medical evidence. It also failed to appreciate that due to injuries she would not be able to sit on the floor, squat and run and the disability would affect the day to day activities of the appellant. Amount of compensation is too low and meagre. The learned Tribunal erred in granting compensation towards future loss of income. It also erred in not awarding interest from the date of filing of petition.

4. The learned Counsel for the appellant Shri S.S. Kakodkar, relied on **Raj Kumar v/s Ajay Kumar** [2011 (1) All MR 402 SC] wherein general principles relating to compensation in injury cases are laid down by the Apex Court. The learned Counsel also relied on **Smt. Sarla Varma and others v/s. Delhi Transport Corporation** [2009(4) All

MR 429] for applying proper multiplier. As against this learned Counsel for the respondent Shri E. Afonso, submitted that as per the Clause in the medical certificate(Exh.63) which is produced is having no medical value and cannot be produced in the Court of law.

5. If Dr. Nachinolkar's(Cw3) evidence is perused he is in clear words stated that fracture mentioned in the certificate could heal by three months from the date of injuries. He has also deposed that the nature of injuries would not prevent the claimant from doing regular work of tailoring and labouring. In re-examination he deposed that after a period of one year from the date of injuries patient would have no difficulty in sitting and squatting on the floor.

6. Learned Counsel for the appellant drawn my attention to the evidence of Cw4 Dr. Shivanand Bandekar who was one of the members of the Medical Board. The Board examined the claimant on 22/11/2011 as per the direction of the Court. He deposed that the patient had malunited fracture pelvis with limited movement of right hip joint with

inch shortening of right limb. Percentage of permanent disability is assessed as 40%. It is pointed out that he deposed that the patient will have difficulty in squatting, running and sitting on the floor.

7. I have gone through the evidence on record. As per evidence of Cw3 Dr. Nachinolkar dated 24/02/2005 fracture could heal by three months from the date of injury and the patient could perform her regular work of tailoring and labouring. After one year from the date of injuries patient would have no difficulty of sitting and squatting on floor. Whereas Dr. Shivanand Bandekar, one of the Board Members examined the patient as per the order of the Court (as reflected in the evidence and also from the Judgment of Tribunal) deposed that she had malunited fracture pelvis with limited movement and she will have difficulty in squatting, running and sitting on the floor. However, she would be able to walk without support and she will have no difficulty in doing agricultural and labour work. As such the learned Tribunal conclude that the patient though have suffered permanent disability there is no loss of income due to

disability. The learned Tribunal though considered medical evidence and come to the conclusion that there is 40% permanent disability held that the claimant is not entitled for any compensation towards loss of amenities of life and also not entitled for future loss of income.

8. In **Raj Kumar Vs Ajay Kumar, 2011(1) ALL MR 402 SC** (supra) there are certain general principles related to compensation in injury cases are laid down for the guidance of the Court and Tribunal. As per the provisions of the Motor Vehicles Act, the Award must be just, which means that compensation should, to the extent possible, fully and adequately restored the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The Court or Tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences is inevitable. A person is not only to be compensated for the physical injury but also for the

loss which he suffered as a result of such injury such as his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned. Hon'ble Apex Court laid down heads under which compensation can be awarded in personal injury cases broadly divided in to pecuniary damages and non-pecuniary damages. In the said citation itself Hon'ble Apex Court held as under :

"6. Disability refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human-being. Permanent disability refers to the residuary incapacity or loss of use of some part of the body, found existing at the end of the period of treatment and recuperation, after achieving the maximum bodily improvement or recovery which is likely to remain for the remainder life of the injured. Temporary disability refers to the incapacity or loss of use of some part of the body on account of the injury, which will cease to exist at the end of the period of treatment and recuperation. Permanent disability can be either

partial or total. Partial permanent disability refers to a person's inability to perform all the duties and bodily functions that he could perform before the accident, though he is able to perform some of them and is still able to engage in some gainful activity. Total permanent disability refers to a person's inability to perform any avocation or employment related activities as a result of the accident. The permanent disabilities that may arise from motor accidents injuries, are of a much wider range when compared to the physical disabilities which are enumerated in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ('Disabilities Act' for short). But if any of the disabilities enumerated in section 2(i) of the Disabilities Act are the result of injuries sustained in a motor accident, they can be permanent disabilities for the purpose of claiming compensation.

7. 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."

9. In my considered opinion when disability mentioned in certificate 40% lower limb it can be considered as 20% functional disability. It has already come in evidence of Dr. Bandekar that she has malunited fracture pelvis with limited movement and also that she will have difficulty in squatting, running and sitting on the floor, that would definitely affect her work as agricultural labourer or tailoring consequently earning capacity. For doing labour work without sitting on the floor or by bending it would not be possible to work. Therefore, I am of the considered opinion that the petitioner is also entitled for loss of future earning. From the evidence it has also come on record that to heal the fracture three months time is required. Therefore, obviously she would not have gainfully employed during that period as the accident was of 1997 her notional income per month can be considered at the rate of ₹2,000/-. Apart from this the claimant is also entitled for the travelling and attendant's charges to the tune of ₹3,000/-. As there are no medical bills produced and she

has taken treatment in Goa Medial College (Government hospital) it appears that she has not incurred any amount towards purchase of medicines. Apart from this she is entitled for ₹10,000/- compensation towards pain and sufferings and loss of amenities as a consequence of injuries as she would not be able to run, squat and sit on the floor. As her age at the time of accident was shown as 43 years as per **Sarla Varma**(supra) multiplier of 14 would be proper therefore claimant is entitled for future loss of income to the tune of ₹5600/- (i.e. 20% of 2000 x 14)

Thus, the claimant is entitled for compensation as under:

	Notional income	
1	(₹2000/- x 3 months)	₹6000/-
	Loss of future income	₹5600/-
2	(20% of 2000 x 14)	
	Travelling and attendant's	₹3,000/-
3	charges to the tune of	
	Damages towards pain and	₹10,000/-
4	sufferings and loss of amenities	
	TOTAL	₹24600/-

The claimant is also entitled for amount of interest on the said compensation @ 9% per annum from the date of filing of petition till its realization.

10. Accordingly, I proceed to pass the following

ORDER

1. Appeal is partly allowed.

2. Judgment and Award in Claim Petition No.106 of 1997 dated 16/10/2012 is modified as under :

(i) Claim petition is partly allowed with proportionate cost.

(ii) Respondents no.1 to 3 are jointly and severally liable to pay amount of compensation to the tune of ₹24,600/- (Rupees Twenty Four Thousand Six Hundred only) (including amount u/s. 140 of the M.V. Act) to the claimant. The said amount shall carry interest @9% p.a. from the date of filing of petition

till its realisation.

(iii) Award be drawn accordingly.

3. If any amount is already deposited by the respondent as per award dated 16/10/2012 they are entitled for adjustment.

SMT. M.S. JAWALKAR,J.

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