

IN THE HIGH COURT OF BOMBAY AT GOA
FIRST APPEAL NO. 47 OF 2013

Nina Correa Colaco
aged 31 years,
E-13, House No. 681,
La Marvel Colony
Dona Paula-Goa 403 004. Appellant

V e r s u s

Siddharth Subhas Kamat,
164, Landscape Pinto Park,
Behind Reliance Web World
Campal, Panaji, Goa. Respondent

Ms. C. Afonso, Advocate for the Appellant.
None for the Respondent.

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

Reserved on : 26th October, 2020

Pronounced on: 26th November, 2020

JUDGMENT

1. Heard Ms. C. Afonso, learned Counsel for the appellant.

2. The petition is filed for enhancement of compensation.

3. The present appeal is filed being aggrieved by the judgment and award dated 23.10.2012, passed by the Motor Accident Claims Tribunal, Panaji, in Claim Petition No. 74 of 2007.

4. The case of the claimants before Claims Tribunal was that on 11.03.2007, at about 3.15 a.m., she and her friend were proceeding from Arpora towards Panaji, by Santro Car bearing no. GA-08-E-6274. The driver respondent who was driving the Scorpio jeep bearing no. GA-01-S-9131, came from the opposite direction at a high speed and by going to its wrong side of the road, heavily grazed the right side of Santro car which was driven by the claimant. Due to accident, she suffered grievous injuries and permanent disablement.

5. She further contended that at the time of accident, she was working as investment banker with Kotak Mahindra Bank and was earning Rs.30,262/-. She incurred amount of Rs.34,995/- towards medical expenses. Therefore, she claimed amount of Rs.5,00,000/- towards the loss of

earning, loss of job and marital prospects.

6. As respondent's vehicle was not insured and respondent no.1 himself was the owner and driver, he is liable to pay the amount of compensation.

7. Learned Counsel for the appellant, Ms. C. Afonso, submitted that Claims Tribunal totally erred in awarding amount of Rs.30,000/- only without appreciating the evidence on record. It is pointed out that the learned Claims Tribunal awarded only amount towards medical bill and failed to take into account other facts. She required six weeks to recover. She was unable to eat. She was required to visit 14 times to the Doctor out of which, four visits to GMC and ten visits to private hospital. It was also not appreciated that she was having swelling on right eye and, therefore, she was referred to Ophthalmologist. Two months after the said injury, it was found that two pieces of glass were still there. She was treated on 12.03.2007. She was required to undergo CT scan on 08.04.2007. Since March to May, treatment was going on and two glass pieces

which were found embedded in skin were extracted. The medical bills are up to 03.08.2007. It is her contention that an injury was significant. She was unable to complete target being employed in a private banker. She further submitted that Claims Tribunal without any reason, awarded only Rs.15,131/- towards loss of actual income whereas it is on record that she was on leave from 12.03.2007 to 27.03.2007 and thereafter 01.06.2007 to 16.06.2007. Though this fact is mentioned in the judgment, there is no reason to grant only 15 days salary as the actual loss of income. The learned Tribunal has also not considered her visit to the hospital and not awarded any amount, traveling and other miscellaneous expenses. At the time of accident, she was employed as an Investment Banker, Public Relationship Manager with Kotak Mahindra Bank. She was forced to give up her job as she was unable to attend her duties and her whole career is ruined.

8. It appears from the records that inspite of service on respondent, he chose to remain absent in appeal.

9. I have gone through the evidence on record and the judgment and award passed by the Claims Tribunal. Admittedly, there is no permanent disability suffered by the claimant. However, from evidence on record, it appears that she was required to proceed on leave from 12.03.2007 to 27.03.2007 and thereafter 01.06.2007 to 16.06.2007 i.e. total 31 days. There is no reason not to treat the said period as leave period resulting in loss of income. Her salary is proved as Rs.30,362/- per month. Therefore, she is entitled for that amount of Rs.30,362/- towards loss of income. The Claims Tribunal erred in holding that there is no evidence that she was on leave from 01.06.2007 to 16.06.2007. In fact, this statement of witness, Aw.5, is not at all controverted by respondent. Moreover, there is medical evidence in respect of extraction of glass pieces from the skin after a period of two months.

10. Claimant also placed on record medical bill of Rs.11,995/- to be rounded up to Rs.12,000/-. Her visits to GMC and private hospital are supported by documents. In my considered opinion, keeping in mind the year of accident

and distance she required to travel, she is entitled for travelling, diet and miscellaneous expenses to the tune of Rs.3,000/- .

11. She is also entitled for pain and suffering Rs.5,000/- as she was required to undergo operation to remove the glass pieces from her face and also she sustained fracture of right maxillary sinus and medial wall and floor of right orbit. There is no loss of future income as she herself resigned from the job and resignation is on her personal ground as came in the evidence of Aw.5.

12. The claimant is also entitled for interest at the rate of 9% on the amount of compensation from the filing of application till its realisation. Thus, total amount for which claimant is entitled to is as under :

Loss of Earning	Rs. 30,362.00
Medical Bills	Rs. 12,000.00
Travelling, diet & Miscellaneous expenses	Rs. 3,000.00
Pain and Suffering	Rs. 5,000.00
TOTAL	Rs. 50,362.00

13. Accordingly, I proceed to pass the following:

O R D E R

1. The appeal is partly allowed
2. The judgment and award passed in Claim Petition No. 74 of 2007 dated 23.10.2012 passed by the Claims Tribunal, is hereby modified as under :

(i) Claim Petition is allowed with proportionate cost.

(ii) Respondent is liable to pay an amount of Rs.50,362/- (Rupees fifty thousand three hundred and sixty two only), (inclusive of amount under Section 140 of the M. V. Act to the claimant. The said amount shall carry interest at the rate of 9% per annum from the date of filing of petition till its actual realization.

(iii) Award be drawn accordingly.

3. Respondent is entitled for set off if any amount deposited as per award dated 23.10.2012 in Claim Petition No. 74 of 2007.

SMT. M. S. JAWALKAR,J.

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