IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION NO. 6 OF 2015

The Oriental Insurance Co. Ltd.,
Through its Divisional Manager
Avinash Anaokar, Gouveia Chambers,
3rd floor,
Heliodoro Salgado Road,
Panaji, Goa. …... Petitioner

Versus

1. Mandar Vaman Manerkar,
s/o Vaman Manerkar,
aged 35 years, service,
married, r/o H. No.270,
Ward 2, Valpoi-Sattari, Goa.

2. Shri Sitaram Kasenappa Lamani,
s/0 Kasenappa Lamani,
aged 33 years, (driver)
C/o Chandu Satardekar,
Ramnagar Colvale,
Bardez, Goa.

3. Shri Sadanand J. Aldonkar,
Major in age (Owner)
r/o L-14, Housing Board Colony,
Porvorim,Bardez, Goa. …... Respondents

Mr. Emerico Estevam Afonso, Advocate for the Applicant.

Mr. R. G. Ramani, Senior Advocate with Mr. P. Kakodkar, Advocate for the Applicant.

Coram :- M. S. JAWALKAR, J.
Reserved on : 17th September, 2020
Pronounced on : 29th September,2020.

JUDGMENT

1. Heard Mr. E. Afonso, the learned Counsel for the applicant and Mr. R. G. Ramani, learned Senior Counsel with Mr. P. Kakokdar, learned Advocate for the respondent no.1 (claimant).

2. The present revision application is filed by the Oriental Insurance Company being aggrieved by the judgment and award dated 03.06.2014 by the Motor Accident Claims Tribunal, North Goa, Panaji, Goa, in Claim Petition No. 69 of 2010.

3. The learned Advocate for revision applicant Mr. E. Afonso, submitted that before the Tribunal, the claim of the petitioner was under Section 166 of the Motor Vehicles Act, 1988 and he claimed an amount of ₹ 8,00,000/- for personal injuries in motor accident on 06.11.2008 involving motorcycle bearing no. GA 03/F 5964 belonging to the respondent no.1 and Van bearing no. GA 01/Z 0404, driven by respondent no.2, owned by respondent no.3 and insured with the applicant-Company. The driver and the owner of the van did not contest the claim and Tribunal proceeded exparte against them. It is also matter of record that the applicant-insurance company, did not apply to defend the petition under Section 170 of Motor Vehicles Act, (Act, for brevity). The learned Tribunal awarded amount of compensation of ₹ 7,70,000/- with 9% interest to be paid jointly and severally to the petitioner and the respondent nos.2 and 3, (driver and owner).

4. It is submitted by the learned Counsel for appellant that in the case of ***United India Insurance Company Ltd., vs. Shila Datta & Ors.,*** reported in ***(2011) 10 SCC 509,*** which is a three Judges Bench, constituted for interpretation of Section 170 and 149 of the Act however having taken a different view on interpretation, the matter was referred to a larger bench of five Judges. The real issue was that when owner and driver remained absent in collusion with the claimant, whether the insurance company required to obtain permission of the Tribunal under Section 170 of the Act to defend the petition on all grounds available to the driver and owner of the vehicle. Failing which, the appeal under Section 173 of the Act by the insurer is not maintainable. As there is no appeal maintainable by the insurer, a revision petition is maintainable.

5. The learned Counsel also relied on the citation in the case of ***Sadhana Lodh vs National Insurance Company Ltd.,*** reported in ***(2003) 3 SCC 524.*** So also he relied on judgment of Hon'ble Bombay High Court at Panaji, in ***First Appeal no. 104 of 2001*** in the case of ***New India Assurance Ltd., vs. Veerapanaidu & Ors.,*** wherein it is held that the revision is not barred by the said legislation.

6. Learned Advocate for respondent no.1-claimant fairly accepts this position of law that revision is maintainable. However, it is submitted that the scope of revision is limited as against the scope of appeal. Thus, I will proceed with the admitted position of law that revision is maintainable.

7. I have called for the records and proceedings of the Claim Petition no.69 of 2010 for perusal. Learned Counsel for the applicant submitted that the learned Accident Claims Tribunal while passing the impugned judgment and award, exercised jurisdiction not vested in it by law or acted in the exercise of jurisdiction illegally with material irregularity. It is totally erred in holding ₹1,14,400/- as annual income of respondent no.1 (claimant) for assessing the compensation by compounding 10% every year. It failed to appreciate that there was no question of increasing the salary by compounding the same by 10% every year for loss of future prospects. It also erred in holding 45% permanent disability while assessing the compensation and awarding huge compensation. It needs to be considered by the learned Tribunal that the 45% disability is of one limb and it was not of whole body.

8. Learned Counsel relied on the citation in the case of ***Raj Kumar vs. Ajay Kumar & anr.*** Reported in ***(2011) 1 SCC 343*** wherein Hon'ble Apex Court held that in disability certificate, the extent of disability of a limb (or part of the body) cannot be assumed to be extent of disability of whole body. Tribunal should not mechanically apply percentage of permanent physical disability as percentage of economical loss or loss of earning capacity but must assess functional disability and in the said matter the injured claimant, who was a cheese vendor, sustained fracture of lower limb of left leg and fracture of right radius. The Tribunal assuming 45% disability has shown in disability certificate as economical disability. The Tribunal overlooked to the fact that disability certificate referred to 45% disability to left lower limb and not to functional disability of the body. The Hon'ble Apex Court assessed permanent functional disability of body as 25% and loss of future earning capacity as 20%. It is also held that in case of injured claimant, no need to deduct one third of income towards personal and living expenses.

9. The learned Tribunal further totally erred in holding that respondent no.1-claimant was out of job for four years without there being any evidence and awarded compensation towards loss of income for four years. On these grounds, it is prayed that the impugned judgment and award be quashed and set aside.

10. Mr. R. G. Ramani, the learned Senior Counsel for the claimant (respondent no.1), fairly conceded that there is no provision of 10% compounding increase as granted by the Tribunal. However, amount of ₹3,00,000/- granted against disability cannot be said to be excessive as he was out of employment for four years. Moreover no amount is granted towards loss of future income or future prospects. It is further submitted that monthly salary of claimant was ₹7375/- and there was no deduction towards tax. Therefore, total salary was in fact required to be taken into consideration while computing compensation. He relied on the citation in the case of ***Sarla Verma & Ors. vs. Delhi Transport Corporation & Ors.*** reported in ***(2009) 6 SCC 121*** and ***Govind Yadav vs. New India Insurance Co. Ltd.,*** reported in ***(2011) 10 SCC 683,*** wherein the Hon'ble Apex Court laid down certain guidelines for computing compensation in the case of injury claim. In non pecuniary loss, the amount of compensation can be awarded under various heads. It is always necessary to estimate the non-pecuniary loss. If he is suffering from permanent disability, then the adequate compensation should be awarded not only for physical injury and treatment but also for loss of earning and inability of victim to lead normal life and enjoy amenities. It is held that inability of victim to lead normal life and enjoy amenities, pain and trauma suffered by the disabled victim and future handicaps and stigma likely to be suffered by him.

11. As it is not possible to make precise assessment of pain and trauma suffered by disabled victim and future handicap and stigma likely to suffer by him, the Tribunal should make a broad guess for the purpose of fixing the amount of compensation.

> **12.** Learned Senior Counsel also relied on the citation in the case of ***Sanjay Batham vs Munnalal Parihar & Ors.*** Reported in ***2011(10) SCC 665.*** In the said matter before the Apex Court, claimant was 20 years old. Due to head injury, left part of his body was paralyzed. The Hon'ble Apex Court enhanced the compensation from ₹ 1,44,000/- to ₹5,62,000/- with 9% interest even after claimant claimed ₹4,20,000/-. It is held that in view of high cost of living, the awarded amount of compensation of ₹2,00,000/- towards future treatment, including medical and other allied expenses, awarded compensation of ₹2,00,000/- for pain and suffering and

trauma caused due to the accident, reduced marriage prospects and loss of amenities and enjoyment of life. It is held that "*while computing compensation, the Tribunal or Court is required to do some guess work, some hypothetical consideration and sympathy for disability caused with objective standards. In cases of disability, support needed by a severely handicapped person comes at an enormous physical, financial and emotional price. It not only burdens the victim but also his family and attendants. Therefore, compensation must be just but at the same time unjust enrichment must be discouraged. As the purpose of compensation is to put the claimant in the same position as he was insofar as money can, many factors including changed social conditions, global scenario and future prospects of victim are required to be considered by the tribunals and the courts while determining compensation. Damages have to be assessed separately as pecuniary damages and special damages. Medical expenses, future medical expenses, loss of earnings during treatment and loss of future earnings come under pecuniary damages. Damages for pain, suffering and trauma as a consequence of the injuries, loss of amenities including loss of prospects of marriage and loss of expectation of life come under special damages.*"

13. The learned Counsel for the respondent no.1 (claimant) also relied on the citation in the case of ***Jagdish vs. Mohan & Ors.*** reported in ***(2018) 4 SCC 571,*** wherein Hon'ble Apex Court summarized settled principle of granting compensation in motor vehicle accident injury cases and held in paras 8 and 14 thus :

> *"8. In assessing the compensation payable the settled principles need to be borne in mind. A victim who suffers a permanent or temporary disability occasioned by an accident is entitled to the award of compensation. The award of compensation must cover among others, the following aspects:*
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> *(i) Pain, suffering and trauma resulting from the accident;*
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> *(ii) Loss of income including future income;*
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> *(iii) The inability of the victim to lead a normal life together with its amenities;*
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> *(iv) Medical expenses including those that the victim may be required to undertake in future; and*
>
> *(v) Loss of expectation of life.*
>
> *...*
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> *14. In making the computation in the present case, the court must be mindful of the fact that the appellant has suffered a serious disability in which he has suffered a loss of the use of both his hands. For a*

person engaged in manual activities, it requires no stretch of imagination to understand that a loss of hands is a complete Civil Appeal No. 7750 of 2012, decided on 1 November 2012 deprivation of the ability to earn. Nothing – at least in the facts of this case – can restore lost hands. But the measure of compensation must reflect a genuine attempt of the law to restore the dignity of the being. Our yardsticks of compensation should not be so abysmal as to lead one to question whether our law values human life. If it does, as it must, it must provide a realistic recompense for the pain of loss and the trauma of suffering. Awards of compensation are not law's doles. In a discourse of rights, they constitute entitlements under law. Our conversations about law must shift from a paternalistic subordination of the individual to an assertion of enforceable rights as intrinsic to human dignity."

14. In the citation **Narendra Singh Vs. Nishant Sharma and anr.**,***(2015) 14 SCC 353*** in the case of Narendra, in which the Apex Court held that the disability is correctly assessed by Doctor as 60% and as claim was not challenged by the insured or by insurance company before Appellate Court by obtaining permission of the Tribunal under Section 170(b) of Motor Vehicles Act, to avail defence available for the injured and contest proceedings. Therefore, the appellant i.e. the claimant was entitled to 60% of loss of future income. There was right leg amputation below knee and had to be operated three more times along with plastic surgery, etc.

15. Mr. Ramani, learned Senior Counsel for the respondent no.1(claimant), also relied on the citation in the case of ***Rajesh Kumar vs. Ajay Kumar*** (supra) for computation of compensation.

16. In the present matter, the fact of accident and other details are not disputed. Only on the question of quantum, the present revision application is filed. It is the claim of the claimant that after the accident, he was shifted to GMC where he was operated for deformity, swelling and tenderness with communited fracture of the middle one third of the femur, one third of tibia fabulla with deformity and fracture of right radius. He was bedridden for 16 months and thereafter he was unable to perform his day to day activities and therefore he was out of job.

17. On perusal of evidence, it appears that Aw.3 Dr. Zelio De Melo, deposed that percentage of disability was 45%. Accordingly, he issued certificate exhibit 65. He deposed that patient will not be able to do his duties as a Security Officer. The patient is unable to walk normally, run, climb steps and further deposed that it takes about two years time for this injury to heal. As matter proceeded exparte against the driver and owner and there is no application by insurance company, evidence of Doctor has gone unchallenged.

18. The claimant also examined Calangutkar, who is the Manager, Personnel of Intelligence & Security India Ltd., where he was in service as area officer. His evidence was recorded on 15.10.2013, whereas Doctor was examined on 09.04.2013 and claimant filed his affidavit of evidence on 11.12.2012. As per this Manager Personnel, the claimant was out of job for four years. He also identified the signature of Branch Manager below certificate exhibit 49 (Salary Certificate). This witness has not brought any document or office record. He deposed that claimant was working as Area Officer. He further deposed that claimant had been posted in the Administrative Department. However, this witness has not brought any document about posting in Administrative Department or appointment as an Area Officer. Whereas, claimant deposed on 22.11.2011 that he was bed ridden for 16 months and even on that day was unable to do his day to day activities and still under medical treatment. Thus, since accident, in the year 2008, in the month of November until his deposition, i.e. a period of three years, he was under treatment.

19. Manager Personnel deposed that he was out of employment for four years. Then it is deposed by the said personal Manager that he was posted in administrative department as he was not fit to work as area officer. It was not difficult for him or to the claimant to produce order of appointment/ order directing claimant to work in administrative department. Therefore, the learned Claims Tribunal erred in holding that claimant was out of employment for four years specifically when Doctor deposed that it takes two years' time for the injury to heel.

20. Though it is submitted by the learned Counsel for the appellant that salary certificate is not established and in view thereof salary of the claimant ought not to have been considered more than ₹3000 to ₹3500/- per month. I am not in agreement with the arguments advanced by the learned Counsel for the appellant on this count. Even taking into account ₹200/- per day expenses or earning of daily wager monthly amount comes to ₹6,000/-. The Tribunal on the basis of the salary certificate considered gross salary ₹7375/- for assessing compensation. It is settled position of law in Claim Petitions no strict Rule of evidence is applicable. Hence, I do not see any reason to interfere in finding of Tribunal holding income of claimant as ₹7375/-. However, as fairly conceded by the learned Counsel for the claimant there is no provision to increase the amount by 10% per year. However, the learned Claims Tribunal erred in holding that the amount of yearly salary with the increase of 10% per annum is erroneous. The finding that the claimant was without salary for four years is also cannot be accepted. In my considered opinion in view of the evidence of Doctor, two years' time is required to heel the injuries. The claimant as well as employer would have easily produced the document about absence on duty or assignment / appointment in administrative department. In absence thereof, loss of two years salary would be just and proper.

21. As discussed in citation Raj Kumar (supra), the disability in the certificate if showing the disability of any particular limb then Court has to assess functional disability. The disability in certificate cannot be assumed to the extent of disability of whole body. The Tribunal should not mechanically apply percentage of permanent physical disability as percentage of economic loss. In the said matter the Hon'ble Apex Court for 45% disability to left lower limb assessed permanent functional disability of body as 25% and loss of future earning capacity as 20%.

22. The learned Trial Judge awarded an amount of ₹3,00,000/- towards permanent disability. It is held by the learned Trial Judge that as the claimant had to undergo surgery on three occasions ₹3,00,000/- is the just and fair amount for such disability. There is no any guidelines followed by the learned Tribunal while arriving at amount of compensation.

23. Hon'ble Apex Court in Raj Kumar (supra), held that

> *"4. The provision of the Motor Vehicles Act, 1988 (`Act' for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore 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. This means that he is to be compensated for 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. (See C. K.*

Subramonia Iyer vs. T. Kunhikuttan Nair - AIR 1970 SC 376, R. D. Hattangadi vs. Pest Control (India) Ltd. - 1995 (1) SCC 551 and Baker vs. Willoughby - 1970 AC 467).

5. The heads under which compensation is awarded in personal injury cases are the following :

Pecuniary damages (Special Damages)

(i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising :

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General Damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity). In routine personal injury cases,

compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life. Assessment of pecuniary damages under item (i) and under item (ii)(a) do not pose much difficulty as they involve reimbursement of actuals and are easily ascertainable from the evidence. Award under the head of future medical expenses – item (iii) -- depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of non-pecuniary damages - items (iv), (v) and (vi) -- involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/deprivation/disability suffered by the claimant and the effect thereof on the future life of the claimant. Decision of this Court and High Courts contain necessary guidelines for award under these heads, if necessary. What usually poses

> *some difficulty is the assessment of the loss of future earnings on account of permanent disability - item (ii)(a). We are concerned with that assessment in this case. Assessment of future loss of earnings due to permanent disability.*"

24. In this matter, accident occurred on 06/11/2008 the claimant was at the relevant time 31 years of age and working as Area Officer with Bombay Intelligence Security (India) Ltd. on monthly salary of ₹7,375/-. He sustained grievous injuries to his leg and other parts. He was operated for deformity, swelling and tenderness with comminuted fracture. He was bedridden for 16 months and has claimed under treatment for more than 3 years. There was permanent disability of 45% due to shortening of leg. As discussed earlier, there is no proof of loss of any future income as he is continued in service but not as an Area Officer but in administrative department. However, from the evidence of Doctor Aw3 and Medical Certificate produced on record makes it clear that he suffered 45% permanent disability due to severe limitation of right lower limb. He will not be able to walk normally, run climb steps and squat and sustain three fractures.

25. Thus, considering overall evidence on record and guidelines provided by Hon'ble Apex Court time to time following amount towards compensation will be just and fair compensation.

(i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and expenses towards attendant.	₹40,000/-
(ii) Loss of earnings for Two years (₹7,375/-x 12 x 2)	₹1,77,000/-
(iii) Damages for pain, suffering and trauma as a consequence of injuries. He also required to undergo three surgeries.	₹50,000/-
(iv) Loss of amenities and enjoyment of life, discomfort and inconvenience due to permanent disability – claimant will require to suffer in his future.	₹2,00,000/-
TOTAL	=4,67,000/-

26. Thus the judgment and award passed by the learned Tribunal is required to be modified accordingly.

27. Thus I proceed to pass the following :

ORDER

1. The application is partly allowed.
2. The Order dated 03/05/2014 passed by the learned Claims Tribunal, Panaji in Claim Petition No.69/2010 is hereby modified as under:

i. The Claim Petition is allowed partly with proportionate costs.

ii. The respondent nos.1, 2 and 3 are jointly and severally liable to pay the amount of ₹4,67,000/- (Rupees Four Lakh Sixty Seven Thousand only) (this includes amount awarded to the claimant under Section 140 of M.V. Act) to the claimant together with interest @9% per annum from the date of filing of the petition till its realization.

iii. Award be drawn accordingly.

3. If Insurance Company have already deposited the amount as per award of the Claims Tribunal the Insurance Company is entitled to receive the excess amount deposited on and above the amount of compensation awarded in this revision application alongwith proportionate interest accrued thereon if amount is lying

or is in Fixed Deposit with any Bank.

4. The revision application is accordingly disposed off.

M. S. JAWALKAR

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