Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 80 OF 2018

SMT. LAXMI CHOLU PEREIRA,
wife of Cholu Pereira,
aged 48 years, Indian National,
in service, resident of House No.107/3,
Gavlibhat, Chimbel, Tiswadi-Goa. …. Appellants.

Versus

1) SHRI NILESH FALKAR,
son of Shri Shankar Falkar,
Driver of Maruti zen Car bearing Registration No. GA-04-C-4257,
resident of House No. 146,
Narva, Bicholim-Goa.

2) SHRI MOHAN ROHIDAS NAIK, Owner of Maruti Zen Car bearing Registration No. GA-04-C-4257,
resident of House No. 6/F, Pilgao, Bicholim-Goa.

3) BAJAJ ALLIANZ GENERAL INSURANCE CO, LTD., Insurance Company of Maruti Zen Car bearing Registration No. GA-04-C-4257, having Office at Shop No. 9, Flat No. 2, Garden Centre, Phase-II, Opposite Police Station, Mapusa, Bardez-Goa. ….. Respondents.

Mr. Parikshit Sawant, Advocate *for the Appellant.*

Mr.Guruprassad Naik, holding for Mr. Sarvesh Kamat Malyekar, Advocate *for Respondents No.1 & 2.*

Mr. Amey Kakodkar, Advocate *for Respondent No.3.*

CORAM : M. S. SONAK, J.

DATE : 22nd December 2022

ORAL JUDGMENT: -

1. Heard Mr. Parikshit Sawant for the Appellant-Claimant, Mr. Guruprassad Naik holding for Mr. Sarvesh Kamat Malyekar for Respondents No.1 and 2, and Mr. Amey Kakodkar for Respondent No.3-Insurance Company.

2. The Appellant-Claimant challenges the Judgment and Award dated 22/7/2016 made by the Motor Accident Claims Tribunal, Panaji (Tribunal) in Claim Petition No.22/2015, awarding her compensation of only ₹3,42,000/- with interest at the rate of 9% per annum for the injuries/disability sustained by her in a vehicular accident occurred on 25/4/2013.

3. Mr. Sawant submits that though the medical bills of ₹50,153/- were produced, the Tribunal erred in awarding only ₹35,000/-. He presents that an additional amount should have been awarded towards transportation expenses, special diet, and more particularly towards influence of disability on the future earnings of the Claimant. He submits that the claim of ₹6,50,00/- was reasonable and the Tribunal erred in not awarding the same.

4. Mr. Kakodkar, learned Counsel for the Insurance Company, submits that the award is commensurate with the evidence. He points out that the Claimant did not have a regular job and, therefore, the Tribunal was right in not considering future prospects. He points out that even the disability is cosmetic and a lump-sum award of ₹1,15,000/- is just in the case circumstances. Finally, he submits that an excessive amount has been awarded towards pain and suffering, and even the interest awarded is excessive. He, therefore, offers that this Appeal may be dismissed.

5. The rival contentions now fall for my determination.

6. On the aspect of medical bills, the Claimant produced bills of ₹50,153/-. A Doctor was also examined who identified 17 out of the total produced bills in an amount of ₹35,000/- approximately. However, on perusal of the evidence on record, the bills appear genuine, and this is the expenditure that the Appellant-Claimant must have incurred for her treatment. Her treatment included admission to the hospital for almost 19 days because she suffered from extensive burn injuries due to the vehicular accident. Accordingly, the amount of ₹50,153/- should have been awarded to the Appellant-Claimant.

7. The award towards transportation, special diet, or three months' salary during which the Claimant could not attend her duties in PWD calls for no interference. Although no bills were produced towards transportation, the Tribunal has awarded an amount of ₹5,000/-. Similarly, an amount of ₹15,000/- has been awarded towards a special diet. Therefore, an amount of ₹72,000/- is awarded for loss of income for three months as claimed by the Claimant. Even the award of ₹1,00,000/- towards non-pecuniary damages appears to be just in the facts and circumstances of the present case.

8. In so far as compensation towards injuries and personal disability is concerned, the Tribunal has made a lump-sum award of only ₹1,15,000/-. The disability certificate produced in Exhibit 32 reports burns injuries. There is a permanent disability of the front of the trunk and abdomen, excluding the breast and 0.25% permanent disability on the right breast. There is skin disfigurement, and there is a disability to the extent of 1% on the left breast. The certificate certifies that Claimant's rotation has been restricted up to 40° and the disability has gone up to 5%.

9. Considering that the Claimant was employed in PWD as a labourer, all these injuries/disabilities, particularly the restriction of her rotation up to 40°, will affect her future capacity to work. Therefore, though there is no evidence of the Claimant losing her job, considering the nature of her job with the PWD, some additional compensation is due towards diminished future prospects. Accordingly, it was not sufficient for the Tribunal to only go by the medical disability established by the medical evidence on record; instead, the Tribunal should have considered the impact of this medical disability on the functioning of the Appellant *i.e.* functional disability.

10. Thus construed, the Claimant would be entitled to compensation of ₹2,00,000/-, instead of ₹1,15,000/- awarded by the Tribunal. In addition, the Claimant is entitled to a further compensation of ₹1,00,053/- over and above the compensation of ₹3,42,000/- determined by the Tribunal. Thus, the Appellant is entitled to a total compensation of ₹4,42,153/-, instead of ₹3,42,000/- determined by the Tribunal. On this amount, however, the Appellant would be entitled to interest at the rate of 8% and not 9% per annum since the accident occurred in 2013.

11. This Appeal is partly allowed. The just compensation is determined at ₹4,42,153/- together with interest at the rate of 8% per annum from the date of the claim petition till the effective payment. The Respondents, including in particular Respondent No.3-Insurance Company, are directed to deposit this amount in this Court within eight weeks from today after giving due intimation to the learned Counsel for the Claimant. Upon such deposit, the Claimant is entitled to withdraw this amount after furnishing proper identification and bank details. Registry to ensure that this amount is directly transferred into the Claimant's bank account.

12. The Appeal is disposed of in the above terms, with costs.

M. S. SONAK, J.

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