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IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.17 OF 2017

The New India Assurance Company Ltd.
City Branch No.I (168701)
Khandesh Mill Shopping Centre,
Nehru Chowk, Jalgaon – 425 001,
Maharashtra State. …. Appellant

Versus

1. Shri Swajay @ Amar Narahari Bhosle,
Since dec. through his legal heirs

1.1. Manjiri Bhosle,
Widow of late Swajay Bhosle,
Major in age.

1.2 Nirbhay Bhosle,
Son of late Swajay Bhosle,
Aged 17 years,

Both residents o H.No.535/3,
Madapai, Marcel, Ponda Goa.
Respondent No.1.2 - Mr. Nirbhay
Bhosle, represented by respondent
no.1.1. - Miss Manjiri Bhosle
as the guardian.

2. Shri Krishna Pratap Patil,
S/o. Pratap Patil, aged 32 years (driver),
r/o. Erandol Khadka Daragir, Taluka -
Erandol, District - Jalgaon,
Maharashtra State.

3. Shri Bhaskar Vithal Mahajan,
son of Vithal Mahajan, major, married,

r/o. House no.90, Nandra Post,
Taluka and District Jalgao,
Maharashtra (owner). .... Respondents

Mr. Amey Kakodkar with Mr. P. Shirodkar, Advocates *for the Appellant.*
Mr. Nilesh Shirodkar, Advocate *for Respondent No.1.*

CORAM: M. S. SONAK, J.

DATE : 30th SEPTEMBER 2022

ORAL JUDGMENT :

1. Heard Mr Amey Kakodkar for the Appellant and Mr Nilesh Shirodkar for respondents – claimants.

2. The challenge in this appeal is to the judgment and award dated 31.05.2016 in Claim Petition No.82/2008, by which the Tribunal has awarded the original claimant - Shri Swajay @ Amar Narahari Bhosle compensation of ₹18,21,000/- for the permanent disabilities suffered by him in a vehicular accident that occurred on 30.05.2006.

3. Mr Kakodkar, learned Counsel for the Appellant, submits that finding of rashness and negligence of the mini truck canter is not supported by the evidence on record. He presents that the original claimant, driving Tata Truck, was negligent.

4. Mr Kakodkar, without prejudice to the above, submits that the Tribunal was not justified in awarding an amount of ₹6,00,000/- towards loss of earnings for the period of treatment between 30.05.2006 and 30.08.2011. In any case, Mr Kakodkar submits that having awarded this amount, the Tribunal was not justified in granting a further amount of ₹8,16,000/- towards loss of future earnings on account of permanent disability. He submits that this is a clear case of duplication and, therefore, the award of ₹6,00,000/- must be deleted. Finally, Mr Kakodkar presents that even the compensation awarded under other heads is excessive and warrants interference.

5. Mr Shirodkar, learned Counsel for the claimants, defends the impugned award based on the reasonings reflected therein. But he points out that the Tribunal has failed to make an allowance for future prospects. He submits that the Tribunal also failed to notice the distinction between clinical disability and functional disability. He points out that the claimant's leg was shortened, as a result of which the claimant could not continue as a truck owner/driver. Finally, he points out that the truck had to be sold even though owning and driving the truck and undertaking transport business was the sole occupation of the claimant. For all these reasons, Mr Shirodkar submits that this appeal must be dismissed and some additional compensation be awarded to the claimant's legal representatives because the claimant expired after the award and during the pendency of this appeal.

6. The rival contentions now fall for my determination.

7. The finding of rashness and negligence on the part of the canter truck driver is supported by clear and compelling evidence on record. The investigating authorities, upon investigations, chose to file an FIR followed by a charge - sheet against the canter truck driver alleging offences under Sections 279, 337, 338, 427 of IPC, and Section 180 of the MV Act. Even though the canter truck driver has been acquitted in criminal proceedings, the evidence before the Tribunal was more than sufficient to conclude, by the test of preponderance of probabilities, the negligence on the part of the canter truck driver.

8. The Tribunal has considered the deposition of AW2/Umesh Khandeparkar, the police documents like the panchanama, sketch of the accident spot, photographs, etc. and concluded that the canter truck driver was indeed rash and negligent. The Tribunal has also relied upon ***Union India Insurance Co. V/s. Shila Datta & Ors.***[1], ***Bimla Devi & Ors. V/s. Himachal Road***

1 2011 10 SCC 509

Transport Corporation[2] and guided by the principles therein determined the issue of rashness and negligence. In my judgment, no case is made to interfere with the finding of rashness and negligence.

9. On the aspect of quantum of compensation, there is indeed some element of duplication. The Tribunal, having determined the compensation for loss of future earnings on account of permanent disability, was not justified in again awarding an amount of ₹6,00,000/- towards loss of earnings for the period between 30.05.2006 to 30.08.2011. This period would also, to some extent, be included in the loss of future earnings. However, the duplication is not to the entire extent but only partially because the compensation awarded is for the period during which the claimant couldn't undertake his transport business. Therefore, the compensation of perhaps ₹3,00,000/- or thereabouts, instead of awarded amount of ₹6,00,000/-, might have been justifiable.

10. However, upon perusing the award, it is clear that the Tribunal has failed to make an addition of 40% towards future prospects and has also taken the clinical disability and the functional disability at the same percentage level. In terms of

2 2000 (II) ACC 444 (SC)

National Insurance Company Ltd. V/s. Pranay Sethi & Ors.[3] upon addition of 40% towards future prospects and even after maintaining the functional disability at 40%, the claimant would have been entitled to compensation of about ₹11,42,400/- towards loss of future earnings due to permanent disability instead of ₹8,16,000/- awarded by the Tribunal.

11. Thus, if compensation has to be reduced by about ₹3,00,000/- under the head of loss of earnings during the treatment period, approximately ₹3,00,000/- will have to be added towards compensation for loss of future earnings due to the permanent disability. Considering the above position, no case is made to interfere with the final compensation amount determined by the Tribunal.

12. For the above reasons, therefore, this appeal is dismissed. Accordingly, there shall be no order for costs.

13. The claimant, as was pointed out by Mr Shirodkar, expired during the pendency of this appeal. The widow and minor son survive him. From out of the deposited amount, the claimant's legal representatives have withdrawn ₹20,00,000/-. The claimants are now entitled to withdraw the balance amount.

3 (2017) 16 SCC 680

14. However, it would be in the interest of the minor son if some amount is kept in a Fixed Deposit which he can utilise on attaining the majority for purposes of his education or business.

15. Accordingly, from out of the balance of the deposited amount, 50% can be withdrawn by Swajay's widow Manjiri on furnishing identification and bank details. The Registry can invest the balance amount in a nationalised bank in a suitable financial instrument. Swajay's son Nirbhay will be entitled to apply for withdrawal of this amount once he attains the majority.

16. The Registry to ensure that the amounts are directly transferred to the bank account. The appeal is disposed of in the above terms without any order for costs.

M. S. SONAK, J.

NITI K HALDANKAR

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