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IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.55 OF 2015

National Insurance Co. Ltd.
Having their Branch Office at
Town Centre, Bicholim Goa.

.... Appellant

Versus

1. Shri Rajendra Bhikaji Naik Satardekar
son of Bhikaji Naik Satardekar,
major, married, service,
C/o. Registrar of Co-operative Societies,
Government of Goa, Panaji Goa.

2. Shri Pradeep Suhas Naik
major, married, driver and owner
of vehicle no.GA-01-U-2847,
R/o. H.No.311, Bhandarwada,
Amona, Sankhalim Goa.

.... Respondents

Mr. U.R. Timble, Advocate for the Appellant.
Mr. J. Godinho, Advocate for the Respondent No.1.

CORAM: M. S. SONAK, J.

DATED: 4th FEBRUARY 2022

ORAL JUDGMENT :

1. Heard Mr. U.R. Timble, learned Counsel for the appellant and Mr. J. Godinho, learned Counsel for respondent no.1 – claimant.

2. The challenge in this appeal is to the judgment and award dated 07.10.2014, made by the Motor Accident Claims Tribunal (Tribunal), awarding compensation of ₹6,35,000/- to the claimant together with interest at the rate of 9% per annum from the date of filing of the petition till realization of the amount.

3. Mr. Timble, learned Counsel for the appellant submits that the evidence on record clearly makes out a case of contributory negligence on the part of the claimant. He referred to the evidence of Ulhas Chari (RW1) and the sketch accompanying the panchanama. He submits that RW1 was a commuter in the bus, who clearly saw the alleged accident and has deposed that it is the claimant, who skid on the road, slipped and came under the bus. Mr. Timble submits that the version put up by the claimant is completely demolished by the testimony of RW1.

4. Mr. Timble then referred to the sketch accompanying the panchanama and submitted that this sketch corroborates the testimony of RW1. He submits that based on all these at least a finding of contributory negligence ought to have been made. Mr. Timble, without prejudice to the aforesaid, submits that the compensation awarded is quite excessive. He submits that once an award was made of ₹2,00,000/- towards future prospects, taking into account 76% of disability, there was no question of making further awards towards loss of amenities, in life or loss of expectations in life. He submits that, at the highest, a nominal award could have been made under these heads as was held by the Hon'ble Supreme Court in *Raj Kumar V/s. Ajay Kumar & Anr.*¹. He submits that what is awarded is not just compensation

¹ (2011) 1 SCC 343

but a bonanza and, therefore, the impugned award warrants interference.

5. On the other hand, Mr. Godinho, learned Counsel for the claimant, defends the impugned award based on the reasonings reflected therein. He points out that the evidence of RW1 is completely unreliable and even in a criminal prosecution, which was lodged against the driver, this witness was declared hostile. Mr. Godinho submits that in this case best possible evidence could have been given by the driver, who has failed to step into the witness box. Mr. Godinho submits that earlier finding of contributory negligence had been recorded by the Tribunal but the said finding was set aside by this Court and, on remand, the Tribunal has correctly assessed the evidence on record and disbelieved the case of contributory negligence. He submits that the finding is backed by the evidence on record, which warrants no interference.

6. Mr. Godinho submits that in this case, as a result of injuries sustained, on account of the accident, the claimant continues to suffer from a facial disfigurement, partial loss of vision and partial loss of hearing. The two doctors, who have deposed in this matter have certified that the percentage of disability is to the extent of 76%. He points out that compensation of hardly ₹2,00,000/- has been awarded towards loss of earnings (future prospects). He submits that the decision in *Raj Kumar* (supra) was considered and explained in *K. Suresh V/s. New India Assurance Company Ltd. & Anr.*². He also relies on *Rekha*

² (2012) 12 SCC 274

*Jain V/s. National Insurance Company Ltd & Ors.*³. Based on all these factors, Mr. Godinho submits that the impugned award warrants no interference.

7. The rival contentions now fall for my determination.

8. On the aspect of contributory negligence, there is no ground made out to interfere with the impugned award. The Tribunal has quite correctly analyzed the evidence on record and declined to hold that this was a case of contributory negligence.

9. In this case, the driver of the bus, which was involved in the accident, has not been examined. The adverse inference is necessarily liable to be drawn on account of such non-examination and the Insurance Company cannot now make good the plea of contributory negligence.

10. Besides, in this case, the Tribunal has gone by the evidence of the claimant, who suffered the accident, but lived to depose about the same and AW2, who was also an eyewitness and who deposed to the rashness and negligence of the bus driver. FIR and the sketch to the panchanama to a great extent corroborate the version of the claimant and the claimant's witness, rather than the version of Ulhas Chari RW1.

11. RW1, cannot be held to be a reliable witness because he has contradicted himself in the context of the statements that he gave before the police. Even in the criminal prosecution RW1 was declared hostile. Even otherwise, the version of RW1 does not

3 (2013) 8 SCC 389

appear to be a probable version. The Tribunal has quite correctly held that the bus being a bigger vehicle requires some place at the time of taking a turn at the curve. The Tribunal has also correctly observed that it is the duty of the bus driver to be more careful and cautious at the curve. As noted earlier, the bus driver did not even choose to step into the witness box. Based on the aforesaid, the contention about contributory negligence now urged cannot be accepted.

12. In so far as the determination of compensation is concerned, from the evaluation of the reasonings in the impugned award, I find that such determination is proper and borne out from the evidence on record.

13. In this case, the doctors have assessed the percentage of disability at 76%. However, the Tribunal has not determined the loss of earnings or future prospects based on this percentage disability. The Tribunal was conscious that the claimant was a government servant and in that sense, there was no direct loss of earnings. The Tribunal has, however, quite correctly held that on account of disability suffered by the claimant, his prospects of promotion were correctly reduced. Therefore, even though the percentage of disability was assessed as high as 76%, compensation of only ₹2,00,000/- was awarded to the claimant. Considering this peculiar fact, the observations in paragraphs 14 & 15 of **Raj Kumar** (supra) will not be attracted in this case.

14. Besides, the Tribunal has gone by the decision of **K. Suresh** (supra), which considers the decision in **Raj Kumar** (supra) and based upon this latter decision assessed the pecuniary and non-

pecuniary damages. Assessment is quite proper and can hardly be regarded as a bonanza.

15. The injuries sustained by the claimant involved disfigurement to his face, disablement of his visionary capacity and hearing impairment. Considering all these aspects and the fact that the claimant will have to live with these issues all his life, I do not think that the compensation awarded in this case is not just compensation but a bonanza.

16. Therefore, upon cumulative consideration of all the aforesaid factors, there is no case made out to interfere with the impugned judgment and award. This appeal is liable to be dismissed and is hereby dismissed.

17. The amount deposited by the appellant in this Court can now be withdrawn by the claimant. The Registry to facilitate such withdrawals by ensuring that this amount together with the interest that may have accrued thereon should be transferred directly into the account of the claimant. Mr. Godinho states that the account details will be furnished to the Registry.

18. The appeal is disposed of in the aforesaid terms. There shall be no order for costs.

M.S. SONAK, J.