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IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.48 OF 2016

Mr. Salim Khan Alias Salim Pathan,
S/o of Mr. Shabbir Ahmad Khan,
22 years of age, Resident of Khalwadem,
Canacona-Goa. .... APPELLANT

Versus

1. Mr. Murad Ahemad Shaikh,
S/o Abdul Hamid Sheikh,
Major of age , R/o NP Maldarwada,
Mohalla, Sadashivgad , Karvar,
(Driver and) (owner of the truck)
(Deleted and amendment carried out as
per Order dated 01/10/2014).

2. National Insurance Co. Ltd.
1628, Kaikini Road, Karwar,
Kanara, North Karnataka, 58301
(Insurance Company of the truck).

3. Mr. Mustak A. Shaikh,
S/o Mr. Hameed Shaik,
R/O Maldarwada Mohalla,
Sadashivgad, Karvar, Karnataka,
(Driver of the truck under Reg
No. KA-30-9071) - Amendment carried
out as per Order Dated 01/10/2014) .... RESPONDENTS

Mr. Ravi Gawas, Advocate *for the Appellant.*
Mr. Amey Kakodkar, Advocate *for Respondent No.2.*

CORAM: M. S. SONAK, J.

DATE : 22nd SEPTEMBER 2022

ORAL JUDGMENT :

1. Heard learned Counsel for the parties.

2. The challenge in this appeal is to the judgment and award dated 22.02.2016 in Claim Petition No.96/2014 made by Motor Accident Claims Tribunal, South Goa at Margao (Tribunal).

3. The appellant-claimant claims enhanced compensation by instituting this appeal.

4. Mr Gawas states that the Tribunal was not justified in holding that the truck driver was responsible for the accident only to the extent of 75%. Mr Gawas also submits that compensation has not been determined following the law because there was no good reason to restrict the future earnings to only up to one year.

5. Mr Kakodkar defends the impugned award based on the reasonings reflected therein. He points out that the evidence on record shows that the accident was caused entirely due to the rickshaw driver of the rickshaw in which the appellant-claimant was sitting. Mr Kakodkar, therefore, submits that this appeal may be dismissed.

6. On the aspect of contributory negligence, there is no case made out to interfere with the finding recorded by the Tribunal. The evidence on record establishes that there were cattle on the road. Instead of stopping the rickshaw, the driver chose to come on the wrong side, resulting in the speeding truck from the opposite side dashing against the rickshaw. The rickshaw driver and another occupant died in the accident.

7. In the above circumstances, the finding of the Tribunal that the rickshaw contributed to the accident to the extent of 25% deserves to be confirmed.

8. On the aspect of compensation, however, the Tribunal erred in awarding compensation for future loss of earnings only to the extent of one year. The Tribunal was swayed by the claimant's answer that he was a fruit vendor. Based on that, the Tribunal concluded that his statement about presently not doing any business was false. In my judgment, this was not the proper mode of evaluating and assessing the evidence on record.

9. There is medical evidence that the claimant had sustained a permanent disability of 30%. The claimant was doing the business of a fruit vendor and earning ₹9,000/- per month. The injuries he suffered and the consequent disability to the extent of

30% would naturally affect his business capacity to the extent of 30%. This is one of those cases where functional disability and medical disability coincide.

10. The claimant was 20 years old at the time of the accident. Thus, the addition of 40% was due towards future prospects. Therefore, the multiplier, in this case, would be 18. Thus, the compensation for loss of future earnings would come to ₹8,61,480/-. Besides, the petitioner would be entitled to compensation of ₹50,000/- towards pain and suffering as determined by the Tribunal. Furthermore, the Tribunal has also determined reimbursement towards medical bills at ₹7,348/-, travelling expenses at ₹27,000/- and attendant charges at ₹60,000/-. Thus, the total compensation will have to be determined at ₹9,60,828/-.

11. However, since the finding on contributory negligence is upheld, the respondent shall jointly and severally be liable to pay compensation of ₹7,20,621/- to the claimant. Furthermore, the interest rate of 9% per annum is also excessive considering that the accident occurred in 2013. Therefore, this will have to be reduced to 7% per annum.

12. The appeal is accordingly allowed, and the compensation amount is enhanced from ₹1,93,086/- to ₹7,20,621/- with interest at the rate of 7% per annum from the filing date of the petition till effective payment.

13. The respondents are jointly and severally liable to pay the above-enhanced amount. Accordingly, respondent no.2 is directed to deposit the enhanced compensation amount in this Court with interest within six weeks after giving due intimation to the learned Counsel for the appellant.

14. Upon deposit, the appellant - claimant can withdraw this amount by furnishing proper identification documents and bank details. The Registry is to transfer this amount directly into the appellant's bank account.

15. Appellant - claimant, will have to pay the deficit Court fee before withdrawing the compensation amount now awarded.

16. The appeal is allowed in the above terms. Accordingly, there shall be no orders for costs.

M. S. SONAK, J.

NITI K HALDANKAR

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