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IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.20 OF 2013

National Insurance Company Ltd.,
2nd floor, Marchon Bldg.,
Above Bank of Baroda,
V.V. Road, Opp. Lohia Maidan,
Margao, Goa.

...Appellant

Versus

1. Mr. Sanjay Shrikant Naik Dessai,
Son of Shrikant Dessai, Aged 37 years,
married, Occupation Service,
R/o. H.No.169/11, Omkar Residency,
Opp. Sapana Park, Betoda Road, Ponda,
Goa.

2. Shri Sanad Kashinath Naik (Rider)
R/o. H.No.86/4, GPS, Parigol,
Gauthan Kavle. Ponda – Goa.

3. Shri Sadanand Dinesh Naik
R/o. H.No.35, Shirvodem,
Margao , Goa.

...Respondents

Mr. U.R. Timble, *Advocate for the Appellant.*

Mr. V. Sardesai, *Advocate for the Respondent No.1.*

CORAM: M. S. SONAK, J.

DATED: 3rd February 2022

JUDGMENT :

1. Heard Mr. U.R. Timble, learned Counsel for the appellant, and Mr. V. Sardesai, learned Counsel for respondent no.1.
2. This appeal is directed against the judgment and award dated 15.12.2009 made by the Motor Accident Claims Tribunal (Tribunal) in Claim Petition No.7 of 2008, awarding the claimant compensation of ₹9,50,000/- together with interest at the rate of 9% p.a. for the permanent disablement, which he had to suffer on account of the accident that took place on 15.09.2007.
3. Mr. Timble, learned Counsel for the appellant, submitted that this appeal was restricted to the quantum of compensation which according to him was quite excessive. He pointed out that, in this case, on account of the injuries or the disability there was no reduction in the income of the claimant, who was working as a Senior Officer in Automobile Corporation of Goa Ltd. (ACGL) and earning ₹21,536/- per month. Mr. Timble submitted that given this clear and categorical evidence available on record the Tribunal was not justified in making an award for ₹9,50,000/-. He submitted that an award of ₹8,00,000/- towards permanent disablement was, therefore, clearly not warranted in this case.

4. Mr. Timble submitted that an award of ₹1,00,000/- towards pain and suffering is also quite excessive and, at the highest, ₹25,000/- could have been awarded to the claimant.

5. Mr. V. Sardesai learned Counsel defended the impugned award based on the reasoning reflected therein. He submitted that the claimant suffered permanent disablement to the extent of almost 62.5%. He submitted that the claimant lost chances of promotion and is now forced to remain at the same post and that too on humanitarian grounds. He, therefore, submits that there is no infirmity in the impugned award and this appeal may be dismissed.

6. The rival contentions now fall for my determination.

7. There is no dispute, in this case, about the accident that took place on 15.09.2007 and the injuries that the claimant suffered on account of this accident. There is also no dispute that at the time of the accident the claimant was 37 years old and in service as a Senior Officer in ACGL, which, Mr. Timble contends is a Semi-Government organization or a public sector undertaking.

8. The evidence on record establishes that the claimant was in a semiconscious state for about 20 days from the date of the accident and had to take treatment at Goa Medical College Hospital and KLE, Belgaum. He had to also fix dentures as he lost his three upper teeth by going to a private dentist.

9. There is evidence that on account of the accident the claimant suffered head injuries with multiple wounds on the right forearm, oral cavity because the claimant hit his head on the tar road due to the accident. The C.T. scan indicated a fracture of the skull bone and there were blood clots in the brain. The oral cavity showed fracture/avulsion of three upper teeth.

10. The claimant has deposed that he suffered permanent disablement, which had affected seriously him to do his routine work. He has deposed that he requires supervision by some other person and he is deprived of the enjoyment of leading a normal life with his family. He deposed about convulsion, amnesia, mental stress, and the impact of noise pollution. He has deposed about how he has become sluggish on account of his disability sustained by him.

11. Dr. P. Sundaram (AW4), who examined the claimant, had in his evidence assessed the disability at 40% due to the head

injury. His evidence is quite clear and cogent and there is no case made out to reject the same. AW4 has also deposed that the claimant suffers from convulsions and is advised not to undertake driving, working at heights, handling heavy machinery, electrical equipment, as this would affect his life. He, however, deposed that the disablement will not seriously affect the claimant's routine jobs at the desk.

12. James Balu (AW3) deposed in the matter and produced the salary certificate of the claimant. He also deposed as to how the claimant was on leave for 6 months due to the accident and was forced to remain absent even thereafter on account of the permanent disability suffered by him.

13. AW3 has deposed that the claimant could have reached the post of Deputy Manager and drawn an additional salary of ₹5,000/- per month, but for the accident. He also deposed as to how the claimant could not earn a bonus or terminal benefits after the accident. He deposed that in the normal course the claimant could have reached the post of General Manager, who draws a salary of ₹13.00 to ₹14.00 lakhs annually. AW3 deposed that the claimant was not given any promotion, but was retained in service on clearly humanitarian grounds.

14. There is also evidence about the permanent disablement suffered by the claimant due to the dental issues. This is assessed at 22.5%.

15. Based on all these, the Tribunal has, in fact, quite conservatively determined the compensation on account of permanent disability and the redundant impact on the life and career prospects of the claimant at only ₹8,00,000/-. According to me, there is no error in such determination and certainly, the Insurance Company has no good ground to complain about this award.

16. Similarly, the compensation of ₹1,00,000/- towards pain and suffering is also justified in the facts of the present case. The claimant met with a very serious accident resulting in a serious head injury and maxillofacial injuries. The permanent disability has been assessed by the doctors at 40% (neurology) and 22.5% (maxillofacial). There is evidence as to how the claimant had to remain at home for six months out of which most of the time was spent on taking treatment at hospitals at Goa and Belgaum. Therefore, the award of ₹1,00,000/- is justified.

17. The balance amount of ₹50,000/- has been awarded towards medicines, medical bills, treatment, transport, and

attendant. Again, this is on a very conservative basis and, in any case, requires no interference at the behest of the Insurance Company.

18. For all the aforesaid reasons, I see no merit in this appeal, which is hereby dismissed. There shall be no order for costs.

M. S. SONAK, J.