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IN THE HIGH COURT OF BOMBAY AT GOA

MISC. CIVIL APPLICATION NO.404/2018
IN
STAMP NUMBER (MAIN) NO.3579/2017

THE UNITED INDIA INSURANCE COMPANY LIMITED, 24, White Road, Chennai-600014 (T.N.), through its Divisional Manager. … APPLICANT

Versus

1. CONCEPTION RODRIGUES, Son of Luis Santana Rodrigues, 42 years of Age, Resident of H.No. 1459, Fatorda, Margao, Goa.

2. APPASAHEB BALAPPA NAIK, Son of Balappa Naik, Major in Age, Resident of Belgavi, Hujjeri Taluka, District Belgaum, State of Karnataka (Driver of Truck No. KA-22-B-9899). [**Deleted**]

3. BHARAMANNA G. DONGARE, Son of Ganapati Dongare, Major in Age, Businessman, Resident of 'Ganapati Krupa', 614/C/A, E ward 1st lane, Shahupuri, Kolhapur, State of Maharashtra. (Registered Owner of Truck KA-22-B-9899). [**Deleted**] … RESPONDENTS

Mr. Pavithran A.V., Advocate *for the Applicant*.

Mr. A. D. Bhobe with Ms. A. Kuvelkar, Advocates *for the Respondent No.1-Claimant.*

CORAM: M. S. SONAK, J.

DATED: 29th September 2022

ORAL JUDGMENT:

1. Heard Mr. Pavithran for the applicant and Mr. Bhobe, who appears with Ms. Kuvelkar for the respondent-claimant.

2. The delay of 254 days has been substantially explained. Accordingly, the same is condoned.

3. With the consent of the learned counsel for the respondent-claimant and at the request of the learned counsel for the applicant, the appeal is taken up for a final hearing. Records and Proceedings were already called, and the learned counsel for the parties submitted that the appeal is decided based on such records and proceedings.

4. Learned counsel for the parties refer to the Judgment and Order dated 13.04.2022 in Stamp Number (Main) No.3580 of 2017 and Misc. Civil Application No.369 of 2018 and Stamp Number (Appln) No.1568 of 2018. This Judgment was in an appeal instituted by this very appellant challenging the Judgment and Award made in a claim petition arising out of the accident that occurred on 17.09.2010. This appeal arises from the

Judgment and Award dated 25.11.2016 in Claim Petition No.6/2012, also concerning the same accident that occurred on 17.09.2010.

5. Mr. Pavithran, learned counsel for the applicant, submitted that the compensation of ₹7,27,024/- awarded by the Tribunal towards medical expenses, transport, etc., is excessive and not supported by the evidence on record.

6. Mr. Pavithran submits that there is an error apparent on the face of the record in determining the compensation of ₹13,04,000/-towards loss of future earnings. He points out that the Tribunal, after accepting that the income tax returns were filed jointly by the claimant along with his wife Maria, failed to make a deduction of 50% towards the wife's income. Instead, the Tribunal assessed 30% of the income based upon the claimant's average earnings and his wife's earnings. Therefore, he submits that a 50% deduction had to be necessarily made from the average income; only after that, 30% of the same could have been considered for loss of future earnings.

7. Mr. Pavithran submits that if the above principle, which according to him, was the only correct principle that had to be adverted in the present case, were to be applied, then the compensation payable towards loss of future earnings would come to ₹6,52,000/- and not ₹13,04,000/- as determined by the Tribunal.

8. Mr. Bhobe, learned counsel for the claimant, submits that the compensation awarded finds support from the oral and documentary evidence on record. He points out that the joint income tax returns were filed considering the provisions of Section 5-A of the Income Tax Act, 1961. He submits that the income was entirely the claimant's, but joint tax returns were filed by apportioning 50% of such income to the wife. He, therefore, submits that there is no error, much less, an error apparent on the face of the record in computing the compensation.

9. The rival contentions now fall for my determination.

10. On the aspect of compensation of ₹7,27,024/-, there is ample evidence to sustain the same. The oral, as well as documentary evidence on record supports this award. The medical evidence establishes that the claimant suffered a permanent disability of 30% to both his eyes due to his injuries in the accident. The evidence of CW-11 Dr. Herlia Furtado Teles confirms this fact. CW-15 Dr S. M. Bandekar has also deposed to 35% permanent disability to the claimant's right lower limb due to his injuries in the accident. The Tribunal, upon considering the law laid down in ***Raj Kumar v/s. Ajay Kumar – (2011) 1 SCC 343*** has determined the functional disability at 30%.

11. The claimant has produced several medical and pharmacy bills justifying the claim for medical expenses. AW7 and AW8 are the Pharmacists who have deposed to the several bills that are produced on record. In addition, there are bills from the Physiotherapist, there are bills from the Apollo Victor Hospital, and there are bills from the Sankhara Netralaya, Chennai. Therefore, based on the oral and documentary evidence, the Tribunal has awarded ₹6,12,854/- for medical treatment.

12. AW4 was the attendant of the claimant. He has deposed to the amounts received by him. There is evidence of the taxi driver who was engaged to travel to Belgaum; his taxi bills are also on record. AW16 Ms. Gracy Quadros, working in the Airline Agency, has deposed to the airline tickets. Based on all this evidence, the Tribunal has awarded compensation of ₹7,27,024/-. There is no case made out to interfere with this award.

13. On the second ground urged by Mr. Pavithran, the Tribunal in its award, has indeed referred to the joint income tax returns filed by the claimant and his wife for the Assessment Years

2009-10, 2010-11 and 2011-12. Accordingly, the Tribunal has taken the claimant's average annual income at ₹3,10,427/-. After that, the Tribunal, considering the functional disability of 30%, computed 30% on this amount of ₹3,10,427/- and determined the yearly loss at ₹93,128/-.

14. Ordinarily, Mr. Pavithran's contention about deducting his wife's income from out of joint income tax returns could have been accepted. However, on perusal of the income tax returns from the record, it is evident that the entire income was that of the claimant. Still, half of this income was apportioned to the wife, having regard to the provisions of Section 5-A of the Income Tax Act, 1961. These provisions are peculiar to spouses governed by the Portuguese Civil Code in the State of Goa and in the Union Territories of Dadra and Nagar Haveli and Daman and Diu.

15. Section 5-A of the Income Tax Act reads as under:

> *"**5A. (1)** Where the husband and wife are governed by the system of community of property (known under the Portuguese Civil Code of 1860 as "COMMUNIAO DOS BENS") in force in the State of Goa and in the Union territories of Dadra and Nagar Haveli and Daman and Diu, the income of the husband and of the wife under any head of income shall not be assessed as that of such community of property (whether treated as an association of persons or*

a body of individuals), but such income of the husband and of the wife under each head of income (other than under the head "Salaries") shall be apportioned equally between the husband and the wife and the income so apportioned shall be included separately in the total income of the husband and of the wife respectively, and the remaining provisions of this Act shall apply accordingly.

(2) Where the husband or, as the case may be, the wife governed by the aforesaid system of community of property has any income under the head "Salaries", such income shall be included in the total income of the spouse who has actually earned it."

16. Now, suppose the returns on record are perused in the context of the above-referred provisions in Section 5-A of the Income Tax Act, 1961. In that case, it is apparent that the claimant's income has been apportioned equally between himself and his wife and the income so apportioned has been included separately in the total income of the husband and wife, respectively. The remaining provisions of the Act are applied accordingly. Thus, the joint returns do not indicate that the claimant's wife actually earned 50% of the income. This is quite clear from the returns and the statement of income appended to the returns, where precisely half of the income is apportioned to the spouse. Accordingly, Mr. Pavithran's second contention will also have to be rejected in the peculiar facts of the present case.

17. Thus, no case is made out to interfere with the impugned award. The appeal is accordingly liable to be dismissed and is hereby dismissed.

18. The applicant has deposited the entire awarded amount along with interest. Now that the appeal is dismissed, the claimant will be entitled to withdraw the same along with the interest that might have accrued on this deposited amount. For this purpose, the claimant will have to furnish identification documents and bank details so that the Registry can directly transfer the amount into his bank account.

19. The appeal and the Misc. Civil Application are disposed of in the above terms.

20. Accordingly, there shall be no order for costs.

M. S. SONAK, J.

SUCHITRA NANDAN SINGBAL

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