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**IN THE HIGH COURT OF BOMBAY AT GOA
FIRST APPEAL NO.33 OF 2016
AND
MISC. CIVIL APPLICATION NO.817 OF 2022**

United India Insurance Co. Ltd.
Salgaonkar Chambers, 2nd Floor,
Margao, Goa.

.... Appellant

Versus

1. Victor Daniel
S/o. K.K. Daniel,
Aged about 31 years,
R/o. Danies House,
Baag, Sanvordem, Goa.

2. Nasir Hussain,
aged about 24 years,
S/o. Abdul Quadar,
R/o. Flat No.1,3rd floor,
Anant Dhara Appts.,
Pajifond, Margao Goa.

...Respondents

Mr. A.R.S. Netravalkar, Advocate for the Appellants.

**Mr. C.A. Coutinho with Mr. I. Santimano, Advocate for
Respondent No.1.**

CORAM : M. S. SONAK, J.

DATE : 22nd APRIL 2022

ORAL JUDGMENT :

1. Heard Mr. A.R.S. Netravalkar learned Counsel for the Appellant, and Mr. C.A. Coutinho, learned Counsel for Respondent no.1 (claimant).

2. The appellant-Insurance Company challenges the judgment and award dated 31.03.2015 made by the Motor Accident Claims Tribunal (Tribunal) in Claim Petition No.125/2012, awarding the claimant compensation of ₹73,55,580/- together with interest at the rate of 9% per annum for the injuries/disablement suffered by him in a vehicular accident that took place on 30.05.2010.

3. Mr. Netravalkar, at the outset, neither contested the factum of the accident nor the finding of rashness and negligence. In fact, Mr. Netravalkar did not contest the liability to pay the compensation. Still, he submitted that the compensation was not just, but the same was excessive and not supported by the evidence on record.

4. Mr. Netravalkar firstly pointed out that there was no evidence about the claimant's monthly income being ₹25,000/-. He pointed out that neither any income tax returns, bank records, or other known modes of payment were produced. He pointed out that there was no evidence about the victim's income. He submitted that the Tribunal erred in considering the claimant's

income at ₹25,000/- and, after that, adding to it further amount towards future prospects and taking such income at ₹35,000/- per month. He submits that the income could have been taken at a maximum of ₹6,000/- per month and not anything further on a notional basis.

5. Mr. Netravalkar then submitted that the Court had not determined the functional disability that is required to be determined in such matters. He relied on *Raj Kumar V/s. Ajay Kumar & Anr.*¹ to submit that there is a variation between medical disability and functional disability. He submitted that this distinction was glossed over by the Tribunal and, therefore, the finding that the claimant suffered 90% disability is contrary to law and the evidence on record.

6. Mr. Netravalkar submits that from the evidence on record and the activities that the claimant was alleged to be performing, there was hardly any functional disability. Therefore, at the highest, an amount of ₹2,00,000/- would have been awarded for the inconvenience, but there was no question of making any award based on 90% disability, whether functional or medical.

¹ (2011) 1 SCC 343

7. Mr. Netravalkar fairly agreed that compensation of ₹3,82,580/- towards medicines, medical treatment, and hospitalization could be sustained. He also, again quite fairly, agreed that the compensation towards loss of marital prospects could be enhanced from ₹2,00,000/- to ₹2,50,000/-. He also agreed that the compensation of ₹75,000/- towards transportation could be maintained. He, however, submitted that the compensation towards loss of income, services of an attendant, special diet, pain, and suffering is excessive and is required to be scaled down. He submitted there was no evidence supporting these heads of compensation, and the Tribunal has been unduly charitable in the matter. Mr. Netravalkar finally submitted that the award of interest at the rate of 9% is also excessive, and the interest, if any, could be in the range of 6% to 7% maximum. Based on all this, Mr. Netravalkar submitted that the impugned award warrants interference by scaling down the overall compensation amount.

8. Mr. C.A. Coutinho defended the impugned award based on the reasoning reflected therein. But he submitted that the Tribunal had failed to make any award towards future medical expenses and loss of expectation of life. He pointed out that even the award for pain and suffering due to injuries is too meager and does not represent just compensation. He proposed compensation

of ₹5,00,000/- towards future medical expenses, an addition of ₹6,00,000/- towards pain and suffering, and further ₹6,00,000/- towards loss of expectation of life. He submitted that this Court must determine the just compensation even though the claimant may not have filed a cross-appeal or cross-objections. He relied on *Surekha W/o. Rajendra Nakhate & Ors. V/s. Santosh S/o. Namdeo Jadhav & Ors.*², *The New India Assurance Co. Ltd. V/s. Fatima Malik Shaikh & Ors.*³, *Kadamba Transport Corporation Ltd. V/s. Smt. Akshata Santosh Sawant & Ors.*⁴, *New India Assurance Co. Ltd. V/s. Smt. Seema Sudam Auti & Ors.*⁵ and *The State of Maharashtra (Through the Collector of Nashik & Ors.) V/s. Smt. Kamladevi Kailashchandra Kaushal & Ors.*⁶ in support of this submission.

9. Mr. Coutinho also relied on *Syed Sadiq & Ors. V/s. Divisional Manager, United India Insurance Company Ltd.*⁷ to submit how the non-production of income tax returns may not be very relevant in all cases. He relied on *Pappu Deo Yadav V/s. Naresh Kumar & Ors.*⁸, which according to him, explains the

2 (2021) 201 PLR 795

3 First Appeal No.10/2016 decided on 07.04.2022

4 First Appeal No.110/2015 decided on 10.03.2022

5 First Appeal No.1991/2011 decided on 09.06.2017

6 First Appeal No.103 of 2017 decided on 15.03.2017

7 (2014) 2 SCC 735

8 2020 SCC OnLine SCC 752

principles of determining functional disability and the compensation where the accident injuries render the claimant disabled and unable to lead a life ordinarily. He relied on *Sri Benson George V/s. Reliance General Insurance Co. Ltd. & Anr.*⁹ for the principles to determine the compensation for pain and injury. He also relied on *Raj Kumar* (supra) to submit how normally an award has to be made towards future medical expenses and loss of expectation of life.

10. Based on the above, Mr. Coutinho submits that the Insurance Company's appeal should be dismissed but only after suitably enhancing the compensation amount to the levels of just compensation.

11. The rival contentions now fall for determination.

12. The only issue that arises for determination in this matter is the issue of just compensation.

13. The record otherwise bears out that the claimant, who was 29 years old, suffered severe injuries from the accident on 30.05.2010. The claimant was riding a Royal Enfield Bullet motorcycle bearing registration no.GA-09-C-5561 and

⁹ AIR 2022 SC 1216

proceeding from Colva to Savordem when at about 17.20 hours, one Deepak Pandrikar drove the Hero Honda Karizma motorcycle bearing registration no.GA-08-J-2428 in a rash and negligent manner and dashed against this bullet motorcycle on the wrong side of the road. The impact was so significant that the claimant suffered severe injuries due to the accident caused solely by the rashness and negligence of said Deepak Pandrikar.

14. The evidence on record bears out that the claimant suffered several severe injuries, and his treatment went on for more than two years and included no less than 6 to 7 surgeries. At least five doctors have been examined in this matter. They have deposed in great detail the injuries suffered by the claimant from the treatment he had to undergo and, more significantly, the disabilities that the claimant sustained and continues to suffer due to the accident.

15. Dr. H.C. Goel (AW4), Director Professor, Department of ENT, GMC hospital, Bambolim, deposed that the claimant was suffering from complete loss of smell and taste, which would be permanent, that is, permanent, and irreversible feature. Furthermore, he deposed about the fracture to the base of the skull in which there was a 99% possibility of a nerve being sheared and in which event the disability would be permanent.

16. Dr. Senthil Kumar (AW5), a plastic surgeon from Ernakulum, Kerala, has deposed in quite a detail about the disability suffered by the claimant, the operations that he has performed upon the claimant, and the prospects of the claimant. AW5 spoke about how the claimant did not have any movement of his left upper limb from the shoulder to the fingers, had no sensation in his left hand, and had permanently lost his left eye. He has deposed to the claimant's numerous medical complications and conditions. He has deposed the two surgeries he performed by giving several details. AW5 was quite candid in his deposition and stated that should the surgery be successful, and the claimant benefited from proper physiotherapy, he would be able to do some essential functions. However, if this were not possible, the upper limb would fall off and dislocate from the shoulder, which would cause bad deformity. He deposed about 90 to 95% non-functionality of the left limb compared to the right. He also spoke about how the left hand would be atrophied due to losing the nerve supply. He admitted that he may not have issued any disability certificate. Still, he maintained that the claimant had lost 90 to 95% functionality of his left hand due to the injuries suffered in a vehicular accident. This evidence inspired confidence and was not dented by the cursory cross-examination.

17. Dr. Francis Akkara (AW7), professor at Goa Dental College, also deposed. He gave several medical details of the claimant's condition and the treatment that was offered to the claimant. He opined on the assessment that the extent of permanent disability was 30% as per the defined scale. He deposed to the loss of tooth and how his speech and eating would be affected, that is, functional and aesthetic disability. He deposed the possibility of food coming out of the nose and mouth while eating because of this disability. He spoke about a compound fracture to the maxilla, a symphysis fracture of the mandible, and how a plate has been put to hold the fractures together.

18. AW7, in his cross-examination, stated that there is no treatment for this reduction inability over a period of time. Based on the standard chart issued by the All India Institute of Medical Sciences, AW7 deposed the permanent disability at 30% (functional and aesthetic disability).

19. Dr. Rohit Chodankar (AW9), an Orthopaedic Surgeon, also deposed. He spoke about a closed fracture distal end radius with a scaphoid fracture on the right side. He also told about a closed fracture of the left scapula with brachial plexus injury apart from the head and facial injuries. He assessed the percentage of permanent disability as 50% of the left upper limb starting from

the shoulder to the fingertips. He identified the disability certificate at X8 colly, which he signed at point A held in the cross-examination. He deposed that the brachial plexus injury was not healed, and even in the absence of healing, the disability could be assessed. In his re-examination, he admitted that the brachial plexus injuries are nerve injuries that take a very long time to heal with poor results. The certificate issued by Dr. Rohit Chodankar is also part of the evidence.

20. Dr. Pradeep Naik, Dean, GMC, and Professor of the Head of the Ophthalmology (AW10) also deposed in this matter and gave several medical details about the ophthalmic state of the claimant post the accident. He deposed that the claimant had permanent visual disablement of 30% as per the Ministry of Social Justice and Empowerment, Government of India notification dated 28.08.1998. He identified his signature on the Disability Certificate. He admitted that the claimant could not gain vision in the left eye even with an eye transplant in his cross-examination. A certificate issued by Dr. Naik is also a part of the evidence. Still, Mr. Naik pointed out that this certificate speaks that the right eye of the claimant is within the normal limits though the left eye was indicated as 'Nil'.

21. Dr. Tania Souza is also examined in this matter. But her evidence is mainly in the context of expenses incurred by the claimant towards Physiotherapy.

22. Based on the above medical evidence, which is virtually unchallenged, the question that arises is whether the Tribunal was justified in holding that the claimant had suffered a functional disability to the extent of 90% or whether the Tribunal had confused the two distinct aspects of medical disability to certain parts of the claimant's body and the overall functional disability not only in the context of the claimant's entire body but also his capacity to perform the same kind of work which he was performing before he sustained the injuries in this accident.

23. In *Raj Kumar* (supra), the Hon'ble Supreme Court has explained that firstly the Tribunals have to determine the extent of disability and whether the same is permanent or temporary. After that, the Tribunal has to ascertain the effect of such disability on the actual earning capacity of the claimant. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability. This aspect is also relevant for awarding compensation under the head of loss amenities of life. The next step is to ascertain his avocation, profession, nature, or

work before the accident and his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood or (ii) whether, despite the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood. The Court has given several illustrations to elaborate on this aspect.

24. The principles in *Raj Kumar* (supra) have been summarised in paragraph 19 of the judgment, and the same reads as follows:

19. We may now summarise the principles discussed above :

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that the percentage of loss of earning capacity is the same as the percentage of permanent disability).

(iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.

25. In this case, it is not as if the Tribunal has omitted to undertake the exercise prescribed in *Raj Kumar* (supra). On the contrary, merely because the exercise may not have been undertaken with the precision indicated in *Raj Kumar* (supra), we cannot say that such exercise has been omitted altogether. The discussion in the impugned award bears this aspect.

26. The evidence on record establishes that the claimant was 29 years old at the time of the accident. His father and two brothers were involved in the business of retreading tyres in the conventional & pre-cured process. They had a partnership firm functioning under the name and style of M/s. Danies Earthmoving Retreads. Their business premises were at SA-67,68 and 84 at Cuncolim Industrial Estate. There is an admission that this was a family involving the father and two brothers, one of

whom was operating from abroad. The claimant, Victor, was the youngest son, and though he was not admitted as a partner in the firm, he was employed as a manager and was assisting his father in the day-to-day functioning of the business. This involved collecting and delivering tyres from customers, collecting outstanding payments, procuring raw materials, and overall supervision of the workmanship at the factory.

27. Mr. Vinoj Daniel (AW3) has deposed in this matter and has produced a certificate certifying that the claimant was paid a salary of ₹25,000/- per month. He has also deposed how the claimant was unable to do any of the works that he was earlier doing at the firm/factory in Cuncolim Industrial Estate after the accident.

28. Mr. Netravalkar is justified in submitting that no income tax returns have been produced even though Vinoj Daniel (AW3) claimed that the payments made to the claimant were reflected in the income tax returns. He is also justified in submitting that no bank details were produced nor partnership registration details were produced. But in the cross-examination, apart from some suggestions and denials, there were no questions or searching questions on this aspect. Though the production of income tax returns or other documents would have been proper, in the

absence of the same, there is no good reason to turn down the claim that the claimant was indeed discharging the works that Vinoj Daniel (AW3) has deposed to or that he was earning an amount in the range of ₹25,000/- per month.

29. In such matters, some inferences and even guesswork are not entirely illegitimate. The evidence on record suggests that there was indeed a firm under the name and style of M/s. Danies Earthmoving Retreads, which was wholly comprised of family members of the Daniel Family. Some lack of formalism can be accepted in such a situation and, therefore, not much can be made out from the circumstance that no appointment letter or terms of appointment were available to evidence the claimant's employment. The same applies to the formal records or payment registers as well. The evidence on record suggests that the firm was carrying on the business of retreaders in conventional & pre-cured processes.

30. Further and most importantly, the evidence suggests that this business was carried out through SA-67,68 & 84 at the Cuncolim Industrial Estate. This means that there was a factory/workshop at which such business was carried out. There is a reference to the claimant involved in the works of collection and delivery of tyres from customers, collection of outstanding

payments, procurement of raw materials, and, most importantly, overall supervision of the workshop at the factory. There was no cross-examination or, in any case, serious cross-examination on all these counts.

31. There was no challenge that this firm was functioning through an industrial estate or when the claimant was supervising the work as an employee in the factory/workshop. The claimant's contribution to the industry before the accident was undoubtedly equivalent to the income now deposited. Based on all these materials, there is nothing wrong with the Tribunal accepting the claimant's case that he was earning ₹25,000/- per month. The Tribunal was also justified in making an addition towards future prospects. Significantly, this addition was made even before the decision in *National Insurance Company Limited V/s. Pranay Sethi & Ors.*¹⁰ This addition aligns with Pranay Sethi's judgment (supra).

32. On the aspect of functional disability, considering the medical evidence on record, the finding of such disability extending to almost 90% warrants no interference. The Tribunal has observed the distinction between medical disability and functional disability. This is not a case where the medical

10 (2017) 16 SSC 680

disability percentages, which, in the present case, exceed 100%, have simply been totaled and styled as a functional disability. Instead, this is a case where the Tribunal had considered the nature of duties that the claimant performed before he sustained injuries in the accident. After comparing the impact on such functions, functional disability was to the extent of 90%. The medical evidence coupled with evidence of AW3 is sufficient to sustain this finding.

33. Now, we come to the issue of compensation. Since the findings of the percentage of functional disability and income are sustained, there is no cause to interfere with the compensation of ₹60,48,000/- determined by the Tribunal. Moreover, once these basic parameters are accepted, which is only a matter of calculations, there was no suggestion of any error in the mathematical calculations.

34. The Tribunal has awarded 3,00,000/- to the claimant towards loss of income. This is in the context of the income which the claimant was deprived of when he was undergoing treatment which involved several surgeries, physiotherapy, and processes. Again, since the finding on income is upheld, there is no case made to interfere with this portion of the award.

35. On the aspect of ₹3,82,580/- towards medicines, medical treatment, and hospitalization, there is ample documentary evidence on record, and very reasonably, even Mr. Netravalkar did not contest this position.

36. On the aspect of award of 1,40,000/- towards the services of an attendant, Mr. Netravalkar submitted that there are no receipts on record. But there is evidence on record, and even this amount is quite reasonable considering the nature of injuries sustained by the claimant and the length of time for which he was required to take treatment. The award of ₹10,000/- towards transportation or ₹75,000/- towards special diet is not contested, and, even otherwise, there is no reason to disturb these awards.

37. The Tribunal has awarded ₹2,00,000/- towards losing marital prospects, which is relatively less. However, Mr. Netravalkar reasonably agreed that this amount should be enhanced to ₹2,50,000/-. But, in my judgment, proper enhancement should be up to ₹4,00,000/- so that the compensation under this head aligns with just compensation.

38. Towards pain and suffering, the Tribunal has awarded ₹2,00,000/- which again is relatively meager and does not align with the just compensation. In *Sri. Benson George* (supra), the

Hon'ble Supreme Court took cognizance of multiple surgeries and prolonged hospitalization and enhanced the compensation from ₹2,00,000/- to ₹10,00,000/- in the case before it. In that case, however, the claimant was in a coma and bedridden. The claimant's position in the present case is not that bad, but at the same time, the position *per se* is not very good either. Therefore, compensation for pain and suffering should be ₹5,00,000/- and not merely 2,00,000/-.

39. The Tribunal, in this case, has failed to make any award towards future medical expenses. *Raj Kumar* (supra), in paragraph 6, lists the head under which compensation is awarded in personal injury cases. One of the heads is towards future medical expenses. Looking to the nature of injuries sustained and the permanent disablement suffered by the claimant, further medical expenses are a reality. Some provisions were required to be made towards the same. No provisions have been made. However, substantial amounts of ₹60,48,000/- have been awarded towards permanent disability, and this amount will earn considerable interest if used or invested wisely. The interests of justice will suffice if an award of ₹3,00,000/- is made towards future medical expenses.

40. Again there is no award made for loss of expectation of life with the shortening of average longevity. Considering the nature of injuries suffered by the claimant, the impact on his average longevity has to be considered and compensated. Compensation of ₹3,00,000/- is due on this head as well.

41. Thus, for the compensation to align as just compensation, a further amount of ₹11,00,000/- will have to be added to the amount of ₹73,55,580/- determined by the Tribunal. Thus, in this case, just compensation will have to be determined at ₹84,55,580/-.

42. Recently, in *Papu Deo* (supra), the Hon'ble Supreme Court underlined that the Court should be mindful that a serious injury permanently imposes physical limitations and disabilities and too often inflicts deep mental and emotional scars upon the victim. The attendant trauma of the victim's having to live in a world entirely different from the one she or he is born into, as an invalid, and with degrees of dependence on others, robbed of complete personal choice or autonomy, should forever be in the judge's mind, whenever tasked to adjudge compensation claims. Severe limitations inflicted due to such injuries undermine the dignity (which is now recognized as an intrinsic component of the right to life under Article 21) of the individual, thus depriving the

person of the essence of the right to a wholesome life which she or he had lived, hitherto. From the world of the able-bodied, the victim is thrust into the world of the disabled, itself most discomfiting and unsettling. If courts nit-pick and award niggardly amounts oblivious of these circumstances, there is a resultant affront to the injured victim.

43. In *Surekha & Ors.* (supra), the Hon'ble Supreme Court has held that it is well settled that in the matter of insurance claim compensation about the motor accidents, the Court should not take a hyper-technical approach and ensure that just compensation is awarded to the affected persons or the claimants even though such claimants may not institute any cross-appeal or cross-objections. Even otherwise, it is well settled that the Tribunals and the Appellate Court have to determine just compensation irrespective of the computation by the claimants themselves.

44. For all the above reasons, the contentions of the appellant-Insurance Company are rejected. But the impugned award is modified by determining compensation at ₹84,55,580/-. Considering that the accident took place in the year 2010, even the interest awarded by the Tribunal calls for no interference,

45. Mr. Netravalkar points out that the Tribunal already made a pay and recovery order in this case. Therefore, this order stands, and there is no question of interference with this order, particularly because the driver and the owner have not appended the award.

46. Mr. Nerevalkar also points out that the Insurance Company has deposited the entire amount in this Court, out of which the amount of ₹10,00,000/- has already been withdrawn by the claimant. Now, the claimant will be entitled to withdraw the balance amount together with interest after furnishing the necessary identity documents and bank details. The Registry to ensure that the amounts should directly be remitted into the claimant's bank account.

47. The appellant-Insurance Company is now directed to deposit the additional compensation amount now determined within eight weeks from today after due intimation to the learned Counsel for the claimant. Once this is done, the claimant will be entitled to withdraw this additional amount on the above terms. However, the principle of pay and recover will apply even to this additional amount.

48. The appeal is disposed of in the terms above without any order for costs. The misc. Application no longer survives and is disposed of.

M. S. SONAK, J.

NITI K
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