Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.9/2016

MR. MARUTI WADAR, s/o Hanumant Wadar, 41 years, driver, r/o. H.No.1002, Ambeudok, Sanvordem, Goa. … APPELLANT

Versus

1. MR. YAMANAPPA, s/o Kadappa Kambli, major, c/o. Domnic Antony Swami, r/o. H. No.374, Anandwadi, Sanvordem, Goa. (driver)

2. MR. NAMDEO PARSEKAR, s/o. Yesso Parsekar, r/o. H. No.374, Anandwadi, Sanvordem, Goa. (owner)

3. BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD., 112, 113, 1st Floor, Gurusai Plaza, Near Adarsh School, Pajifond, Margao-Goa. (Insurer) … RESPONDENTS

Mr. C. A. Coutinho, Advocate *for the Appellant*.
Mr. Amey Kakodkar, Advocate *for Respondent No.3*.

CORAM: M. S. SONAK, J.

DATED: 22nd September 2022

ORAL JUDGMENT:

1. Heard Mr. Coutinho for the appellant-claimant and Mr. Kakodkar for respondent no.3-insurance company.

2. The appellant-claimant challenges the impugned judgment and award dated 25.06.2015 made by the Motor Accident Claims Tribunal, South Goa at Margao (Tribunal) in Claim Petition No.130/2012 to the extent it denied the appellant-claimant the claimed compensation based on 100% functional disability and compensation under certain established heads. In short, the claimant seeks additional compensation by instituting this appeal.

3. Mr. Coutinho, learned counsel for the appellant, submits that the claimant's right leg had to be amputated as a result of the accident. He points out that the claimant was a driver; therefore, the functional disability was to the extent of 100% and not merely 75%, as held by the Tribunal. He relies on ***S. Suresh v/s. Oriental Insurance Co. Ltd. - (2010) 13 SCC 777*** and ***Lal Singh Marabi v/s. National Insurance Co. Ltd. & Ors. - (2017) 5 SCC 82*** in support of his contentions.

4. Mr. Coutinho submits that the Tribunal should have also awarded compensation of ₹50,000/- towards providing an artificial limb, ₹10,000/- for the loss incurred by the claimant during hospitalization and treatment, ₹1,00,000/- towards the future medical expenditure, ₹5,00,000/- towards pain and suffering and ₹2,00,000/- towards loss of amenities. Therefore, failing to make such awards amounts to denying just compensation.

5. Mr. Kakodkar, learned counsel for the insurance company, defends the impugned judgment and award by pointing out that the computation is in terms of the law in ***Raj Kumar v/s. Ajay Kumar And Another – (2011) 1 SCC 343*** and ***Neerupam Mohan Mathur v/s. New India Assurance Company – (2013) 14 SCC 15***. He points out that the claimant was competent to discharge other duties; therefore, the functional disability could not be taken as 100%.

6. Mr. Kakodkar submits that no further compensation becomes due and payable. In particular, he pointed out the decision in *Raj Kumar (supra)* and submitted that the compensation awarded by the Tribunal is in accord with the principles in the said decision. Mr. Kakodkar, therefore, submits that this appeal may be dismissed.

7. The rival contentions now fall for my determination.

8. The evidence on record establishes without doubt that the claimant's right leg above the knee had to be amputated as a result of the injuries sustained by him in the accident.

Accordingly, the doctors have certified the disability at 70%. The Tribunal has, however, taken the functional disability at 75%.

9. The Tribunal, in this case, has gone almost entirely by Illustration (B) in *Raj Kumar (supra)*. The Illustration, no doubt, refers to a functional disability of 75% where the hand of a driver aged 30 years was amputated. His permanent disability was assessed at 60%. The Tribunal, however, failed to notice the note after para 20 in which it was clarified that the figures adopted in Illustrations A and B were hypothetical. That apart, the illustrations dealt with amputation of a hand without specifying whether the same was the right hand or the left hand. In this case, we are concerned with the amputation of the claimant's right leg, who was admittedly working as a driver.

10. In *S. Suresh (supra)*, the issue involved was the amputation of the right leg of a driver whose disability had been certified at 60%. In this context, the Hon'ble Supreme Court held that the claimant being a lorry driver and losing his right leg *ipso facto* meant total disablement. Therefore, it ought to have been held that the lorry driver whose right leg was amputated had lost 100% of his earning capacity as a lorry driver. More so, he was disqualified from even getting a driving licence under the Motor Vehicles Act, 1988. Thus, in almost similar circumstances, the

Hon'ble Supreme Court held that the functional disability should be assessed at 100%, where the right leg of a driver had to be amputated.

11. In *Lal Singh (supra)*, the left leg of a driver had to be amputated. Though the medical disability was certified at 60%, the Hon'ble Supreme Court held that the appellant could not pursue his livelihood as a driver or daily-wage labourer with the amputated leg. Therefore the functional disability was assessed at 90%.

12. In the case of *Neerupam Mathur (supra),* relied upon by Mr. Kakodkar, the claimant had a B.Sc. Degree and Post-Graduate Diploma in Mechanical Engineering. The claimant's hand had to be amputated due to the injuries sustained in the accident. Based on this, the Hon'ble Supreme Court determined the functional disability at 70% by holding that the claimant could do other jobs, including a desk job, since he had the qualification of a B.Sc. Degree and Diploma in Mechanical Engineering. The facts in *Neerupam Mathur (supra)* are not comparable to the facts in the present case. The facts in the present case are more or less similar to those in *S. Suresh (supra)* and *Lal Singh (supra)*.

13. Since we are concerned with the amputation of the claimant's right leg, who was admittedly a driver, the functional disability should be taken at 100% and not merely 75%.

14. The Tribunal has assessed the claimant's income at ₹10,000/- per month by the following reasoning in para 30 of the impugned Judgment and Award:

> *"**30.** In his cross-examination, the claimant Shri Maruti AW1 has stated that every year there was off season for 4 months and during the off season he was paid Rs.10,000/- per month. Shri Gourish has admitted that during monsoon for a period of 4 months, no salary was paid. The claimant was, therefore, earning Rs.15,000/- per month only for a period of 8 months in a year. The claimant has not led any evidence to prove his income during the remaining 4 months. In other words, the claimant was earning only Rs.1,20,000/- per annum or in other words, Rs.10,000 per month."*

15. The above reasoning can be accepted. However, the Tribunal has failed to add 25% towards future prospects in terms of the law laid down by the Hon'ble Supreme Court in ***National Insurance Company Ltd. vs. Pranay Sethi & Ors. - (2017) 16 SCC 680***. The claimant's birth certificate shows that on the date of the accident, he was above 40 years and therefore, an addition of 25% is due towards future prospects. The claimant's income had to be taken at ₹12,500/- per month or ₹1,50,000/- per annum.

16. There is some evidence of the claimant being hospitalized for about 27 days. Therefore, the compensation of ₹10,000/- is due for loss of income during this period. The claimant would also be entitled to ₹1,00,000/-towards future medical expenses.

17. No additional compensation is due to artificial limbs, pain, suffering, or loss of amenities. There is no evidence of any artificial limb. Further, since the claimant's disability is taken at 100% and the claimant is being compensated on such a basis, there is no question of any further award towards loss of amenities.

18. In *Raj Kumar (supra)*, the Hon'ble Supreme Court has held that when compensation is awarded by treating the loss of future earning capacity as 100% or more than 50%, the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear. As a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or expectation of life; otherwise, there may be duplication in the award of compensation.

19. Based on the above computation, the just compensation, in this case, will be ₹24,10,792/-.

20. The appeal is accordingly allowed, and the compensation amount is enhanced from ₹15,25,792/- to ₹24,10,792/-. The award of interest @ 9% p.a. is also maintained.

21. The respondents, including in particular respondent no.2-insurance company, are directed to deposit the enhanced compensation amount together with interest within six weeks from today after giving due intimation to the learned counsel for the appellant-claimant. Upon deposit, the claimant will be entitled to withdraw this amount after furnishing identification and bank details. The Registry to ensure that the amount is transferred into the account of the appellant-claimant directly. The appellant-claimant will have to pay an additional court fee before withdrawing the enhanced compensation amount.

22. The appeal is disposed of without any order for costs.

M. S. SONAK, J.

SUCHITRA NANDAN SINGBAL
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