

Santosh

**IN THE HIGH COURT OF BOMBAY AT GOA
FIRST APPEAL NO. 66 OF 2019**

Smt. Manda Rajesh Naik,
w/o Rajesh Mukund Naik, age 49 years,
r/o H.No.333, Station Road, Margao,
Salcete, South Goa, 403601 Appellant.

Versus.

1. Mr. Rajappa Durgappa,
s/o Durgappa Dharwad, age 28 years,
r/o Old Janata Plot, Rukmini Nagar,
Belgaum-16, Karnataka (driver)
2. Mr. Raju s/o Durgappa Korwar,
age 31 years, service, r/o RR no.3864,
Raghupur Peth, Tal: Ramdurga, Dist:
Belgaum (owner)
3. The Manager, HDFC ERGO General
Insurance Co. Ltd., Plot no.13, 1st Floor,
Ganesh Empire, Near RPD Corner,
Tilakwadi, Belgaum, Karnataka, 590006 Respondents.

Mr. Shailesh Redkar with Mr. Krishna M.N. Dessai,
Advocates for the Appellant.

None *for the Respondents.*

CORAM : M. S. SONAK, J.

Reserved on : 19th August 2022

Pronounced on : 22nd August 2022.

ORAL JUDGMENT :-

1. Heard Mr. Shailesh Redkar for the Appellant. The Respondent, though served, is neither present nor represented.

2. The Appellant challenges the impugned judgment and award dated 2nd May 2018, made by the Motor Accident Claims Tribunal, South Goa, at Margao (Tribunal) in Claim Petition No. 135/2015, awarding the Appellant compensation of ₹1,20,000/- with 9% interest from the date of filing of the petition, till realization for the injuries sustained by her in a vehicular accident that took place on 14th October 2014.

3. Mr. Redkar, the learned Counsel for the Appellant submits that the compensation awarded does not correspond to "just compensation" due and payable under the Motor Vehicles Act. He submits that the Claimant had adduced oral and documentary evidence to show that her monthly income was in the range of ₹12,500/- to ₹13,000/-. He submits that three of the employers from whom the Appellant was earning this amount

had not only issued the certificates but had deposed in the matter. He presents that the Tribunal unduly discarded this evidence, which held that the Appellant's monthly income could be notionally taken at only ₹5,000/- per month.

4. Mr. Redkar submits that the Tribunal also omitted adding 25% to the monthly income towards future prospects. He submits that even where notional income is adopted, the requirement of future prospects cannot be dispensed with. Mr. Redkar stated that the compensation for pain, suffering, and loss of amenities is also inadequate. He submits that ₹1,00,000/- should have been awarded towards pain and suffering and ₹50,000/- towards loss of amenities in place of ₹8,000/- and ₹20,000/- awarded by the Tribunal.

5. Mr. Redkar, based on the above, submits that the compensation awarded by the Tribunal must be substantially enhanced.

6. Since, despite the opportunity, neither the Respondents nor their Advocate appeared in this matter, the reasoning employed by the Tribunal was taken as the Respondents' contentions in defense of the impugned judgment and award.

7. In this case, there is no dispute about the factum of the accident or that the accident was caused due to the rashness and negligence on the part of Respondent No.1 (driver of the offending but insured vehicle). As such, these issues are not required to be revisited in this Appeal in the absence of any cross-appeal or cross-objections of any of the Respondents.

8. The hurt certificate and the discharge summary placed on record by the Appellant show that she suffered a crush injury to her left foot due to the accident. Accordingly, in his certificate, Dr. S.M. Bandekar, Professor & Head, Department of Orthopaedic Surgery, GMC, has certified that the Appellant suffered a permanent disability of 20% of the left lower limb due to the stiffness of the ankle joint.

9. Dr. Bandekar deposed in this matter. In his cross-examination, Dr. Bandekar admitted that the percentage of the disability was not to the entire body but only to the left lower limb. He also deposed that the Appellant will have no difficulty sitting on a chair, but she will have difficulty squatting with the disability of 20% in the left lower limb. Furthermore, he deposed that the Appellant will have a limp while walking. But she will not have difficulty doing work by standing for long periods.

Finally, he deposed that this injury and the disability will not affect her day-to-day working as a woman.

10. The Appellant has deposed that she was working as a cleaner-cum-helper with the concern "Clairvoyant," as a part-time helper with Nalini Caterers, and as a part-time cook with Azgaonker Decorators. She has produced certificates issued by these three employers to the effect that she was earning ₹5,000/- per month from each such employer/employment. In her cross-examination, the Appellant admitted that she had prepared the above three certificates in respect of her work and obtained the signatures of her employers. Based only upon this admission, the Tribunal discarded not only the certificates, but the oral testimony of the three employers. It concluded that the certificates and, consequently, the theory of employment with the three employers were false and fabricated. The Tribunal, however, held that the Appellant could be said to have a notional income of ₹5,000/- per month and, on this basis, determined the compensation.

11. In my judgment, merely because the Appellant admitted that the three certificates were prepared by her and signatures of her employers were obtained on them, the Appellant's version

should not have been rejected, ought-right. Considering the nature of work and her type of employment, the Appellant may have drafted the certificates and obtained the signatures of her employers on them. However, what is essential is that the employers assumed the responsibility for such certificates by signing the same. Further, the employers deposed in this matter to such certificates by acknowledging their signatures and the contents of such certificates. Therefore, the Tribunal was not justified in non-suiting the Appellant on the ground that she had fabricated the certificates in question.

12. From the evidence adduced by the Appellant, both oral as well as the documentary, it transpires that the Appellant was working as a cleaner-cum-helper with Clairvoyant and part-time cook with Nalini Caterers and Azgaonker Decorators. Nalini Caterers certificate suggests that she worked part-time only from 6th January 2014 until she met with the accident on 14th October 2014. The same is the position with Azgaonker Decorators' certificate. Incidentally, the certificates issued by Nalini Caterers and Azgaonker Decorators are virtually identical.

13. Based on the certificates issued by caterers and the depositions of the caterers, at the highest, it can be said that the

Appellant had some truck with them. However, her employment as a part-time cook may not have been on some regular basis as was attempted to be portrayed. Usually, when these caterers have contracts or work, they require the services of helpers or cooks. Besides, Dr. Bandekar, the Appellant's witness, has deposed that despite the injury or the disability, the Appellant will have no difficulty doing her work by standing for long periods. He also deposed that the Appellant would have no problem sitting on a chair. He only maintained that the Appellant would have difficulties while squatting.

14. Therefore, it is impossible to accept Mr. Redkar's contention that the Appellant's disability disabled her from working as a part-time cook or a helper with the two caterers. The moderate stiffness of the ankle joint, coupled with 20% disability of the left lower limb due to such stiffness of the ankle joint, may affect her efficiency and consequently impact her income to some extent. But it would not be correct to say that the disability rendered her unfit to work as a part-time cook or a helper in catering establishments.

15. The certificate issued by Clairvoyant, which is different

and distinct from the certificates issued by the caterers, speaks of the Appellant being employed as a cleaner-cum-helper. Since the Appellant would have difficulty squatting due to her disability, Mr. Redkar is justified in contending that the disability rendered her almost unfit to work as a cleaner which might involve squatting. Thus, based on all this evidence, the Appellant's monthly income should have been taken at ₹8,000/- instead of the notional pay of ₹5,000/- per month.

16. The Appellant was aged 49 years at the time of the accident. Therefore, applying the law in *National Insurance Company Limited vs. Pranay Sethi & Ors.*¹ 25% will have to be added to her monthly income for future prospects. This means that the Appellant's monthly income can be taken at ₹10,000/-.

17. The Appellant's annual income would come to ₹1,20,000/-. The multiplier in terms of *Pranay Sethi (supra)* is 13. The medical disability, in this case, was certified at 20%. However, looking at the nature of employment of the Appellant, Mr. Redkar is justified in submitting that even the functional disability should be taken at 20%. Thus, loss of earning on account of permanent disability can be computed at ₹3,12,000/-

1. (2017) 16 SCC 680

(₹1,20,000 X 13 = 15,60,000; and 20% of this amount is ₹3,12,000/-).

18. Towards pain and suffering, the Tribunal has awarded the Appellant compensation of only ₹8,000/-. In my judgment, considering the injuries suffered by the Appellant, this amount is required to be enhanced to ₹25,000/-. Similarly, towards loss of amenities, the Tribunal has awarded ₹20,000/-, which is needed to be improved to ₹30,000/-. Though no witness was examined to prove the taxi bills, compensation of ₹20,000/- is due against the claim of ₹22,000/-. This is because the Appellant has produced several taxi bills. If the same is compared with the medical papers, then there is a broad correlation between the bill dates and the dates on which the Appellant was required to attend the hospital for follow-up, physiotherapy, etc. In any case, the compensation of ₹20,000/- towards transportation will be appropriate in the present case considering that the Appellant would have some difficulties utilizing public transport to attend the hospital for follow-up, physiotherapy, etc.

19. The Tribunal has awarded ₹20,000/- to the Appellant towards loss of earning during the treatment period, by taking her monthly income of ₹5,000/-. Now that the monthly income is

taken at ₹10,000/-, this amount will have to be enhanced to ₹40,000/-. Mr. Redkar made it clear that the Appellant had no grievance about the compensation of ₹71,206/- awarded to her towards hospitalization, medicines, etc.

20. Thus, the total compensation, in this case, will come to ₹4,98,206/-, which can be rounded off to ₹5,00,000/-.

21. In this case, the accident occurred on 14th October, 2014. Therefore, the award of interest at 9% per annum is not justified. Instead, interest at 7% per annum would be appropriate.

22. Accordingly, this Appeal is partly allowed. The compensation amount is enhanced from ₹1,20,000/- to ₹5,00,000/- with interest at the rate of 7% per annum from the date of filing of the claim petition till realization. If any amount is paid towards the no-fault liability, the same should be adjusted from the compensation now determined.

23. The Respondents, including, in particular, Respondent No.3-Insurance Company, is directed to deposit the enhanced portion of the compensation or the difference between the compensation awarded initially and what is now awarded, together with interest, within eight weeks from today in this

Court after giving due intimation to the learned Counsel for the Appellant. Upon deposit, the Appellant will be entitled to withdraw this amount by furnishing appropriate identity documents and bank details. Registry to ensure that the amounts are directly transferred to the Appellant's bank account.

24. The Appeal is disposed of in the above terms. There shall be no order for costs.

M. S. SONAK, J.

SANTOSH S MHAMAL

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