Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 1 OF 2018

Mrs. Kunda Vasant Gaude @ Pratiksha Purushottam Gawade, wife of Purushottam Gawade, aged 32 years, tailor, resident of House No.193, Vantem, Varcha Wada, Sattari-Goa. …. Appellant

Versus.

1. Vijendra Babuso Naik
son of Babuso Naik, aged 29 years, driver, resident of House No.87, Mulianbhat, Agapur-Durbhat, Ponda, Goa.

2. Mrs. Seema Gajanan Adpaikar,
wife of Gajanan Adpaikar, major in age, business, resident of House No.73, Durbhat-Agapur, Ponda, Goa.

3. IFFCO Tokio General Insurance Company Ltd., A/2, 1st Floor, Reliance House, Isidorio Baptista Road, Pajifond, Margao-Goa. ….. Respondents.

Mr. Milton Marshal, Advocate *for the Appellant.*

Mr. Clayton A. Fonseca, Advocate *for Respondent No.3.*

CORAM : M. S. SONAK, J.

DATE : 17th JUNE 2022.

ORAL JUDGMENT: -

1. Heard Mr. Milton Marshal for the Appellant and Mr. C. Fonseca for Respondent No.3-Insurance Company.

2. This Appeal is directed against the Judgment and Award dated 16th October 2017 in Claim Petition No.69/2015, by which the Motor Accident Claims Tribunal (Tribunal) has awarded the Appellant compensation of ₹1,80,300/-, with interest at the rate of 5% per annum from the date of filing of the Claim Petition, till the date of actual payment of the said compensation.

3. Mr. Milton Marshal, learned Counsel for the Appellant, submits that the Tribunal failed to make an addition of 40% to the Appellant's income on account of future prospects. He submits that the medical bills to the extent of ₹29,120/- were produced and were not considered. He submits that the compensation of at least ₹18,000/- was due towards conveyance charges. He submits that the compensation of at least ₹1,50,000/- was due to pain and suffering because the Appellant underwent two operations for the injuries sustained by her in the vehicular accident. He submits that compensation of ₹50,00/- is due towards future operations and medical expenses and ₹25,000/- towards special diet.

4. Mr. C. Fonseca submits that this is not a case of any serious injuries; therefore, there is no justification to add 40% towards future prospects. He relies on ***Kajal vs. Jagdish-Chand & Ors.*** (2020) 4 SCC 413 in support of this submission. He submits that there is no legal evidence to justify the compensation now claimed by the Appellant; therefore, this Appeal ought to be dismissed.

5. Rival contentions now fall for determination.

6. The issue of liability has been answered in favour of the Appellant, and there is no challenge from any of the Respondents to this issue. Therefore, in this case, the only issue concerns the quantum of compensation payable to the Appellant.

7. The evidence on record indicates that the Appellant was working as a tailor for Agnel Vocational Training Institute and earning a salary of ₹10,000/- per month at the time of the accident. The medical evidence establishes that the Appellant sustained a 7% permanent disability of the left upper limb according to the ALIMCO Scale, and she has terminal limitation movement of the left forearm. Being a tailor, this disability can be taken as a functional disability. The Tribunal has quite correctly held that this disability will affect her future earning capacity. However, the Tribunal failed to add 40% to her admitted income in terms of the law laid down by the Hon'ble Supreme Court in ***National Insurance Company Ltd. v. Pranay Sethi & Ors. -*** 2017 (16) SCC 68.

8. Thus, the income of the Appellant had to be taken as ₹14,000/- per month, and based on the same, the compensation had to be worked out. The compensation would, thus, come to ₹2,01,600/-.

9. There is evidence that the Appellant spent an amount of ₹29,120/- towards medical expenses – medicines, treatment, etc. Apart from oral evidence, there are bills produced justifying this claim. The Tribunal should have, therefore, awarded compensation of ₹29,120/- towards medical expenses.

10. Regards conveyance expenses, there is no legal proof adduced by the Appellant. There are bills produced, but the bills are not proved in accord with the law. Nevertheless, some compensation is due towards conveyance because it is reasonable to presume that the Appellant incurred some expenses on this count. Therefore, the Appellant can be awarded a compensation of ₹5,000/- towards conveyance/transportation.

11. The evidence on record indicates that the Appellant had to undergo two operations on account of her injuries in the vehicular accident. As a result, the Appellant has to live with a 7% permanent disability to her left upper limb. Therefore, compensation of ₹75,000/- towards pain and suffering, mental stress, and agony is in order. However, no further compensation is due towards attendant charges or the special diet because there is no evidence on record to justify such claims.

12. Mr. Milton Marshal has submitted that there is an implant in the left upper limb of the Appellant. In addition, there is evidence of two operations. Therefore, the possibility of yet another surgical intervention in the future cannot be ruled out. A compensation of ₹25,000/- can, therefore, be awarded towards future operations and medical expenses.

13. ***Kajal vs. Jagdish-Chand*** (supra), will not apply to the facts of this case, because the Appellant was a tailor by profession and the disability suffered by her is bound to affect her future earnings, being a tailor. The Appellant could have also undertaken private works, but her ability to do so will stand considerably reduced on account of the permanent disability now suffered by her on account of the vehicular accident.

14. Thus, in this case, a just compensation would amount to ₹3,35,720/-.

15. The interest of 5% per annum is also inadequate. However, in this case, the accident occurred in 2013; therefore, interest at the rate of 7% will meet the ends of justice.

16. This Appeal is, therefore, partly allowed, and the compensation amount is enhanced to ₹3,35,720/-. Even the interest component is enhanced to 7% per annum. The Respondents are jointly and severally directed to pay the enhanced compensation, together with enhanced interest after making adjustments for the amounts already paid in terms of the impugned Award.

17. Respondent No.3-Insurance Company to deposit the enhanced compensation within six weeks in this Court, after giving due notice to the learned Counsel for the Appellant. The Appellant to then furnish her bank details so that the Registry can transfer the deposited amounts directly into her bank account.

18. The Appeal is disposed of in above terms.

19. There shall be no order for costs.

M. S. SONAK, J.