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IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.86 OF 2019

United India Insurance Company Ltd.,
Ashirwad Gaunekar Bldg.,
Tisk Ponda, Goa.
Presently represented through its
Senior Divisional Manager.

...Appellant

Versus

1. Shri Devidas Bablo Naik,
aged 55 years, r/o. H.No.178,
Fontainhas, Panaji, Goa.

2. Shri Hanumantappa Gudihindin
Major of age,
r/o. Jalihal Kustagi,
Dist. Koppas, Gadag,
Karnataka, driver.

3. Shri Khushali Bablo Naik,
Major of age,
R/o. H.No.166,
Undir Bandora,
Ponda, Goa (the owner).

...Respondents

Mr. Suraj Naik, Advocate for the Appellant.

**Mr. R.G. Ramani, Senior Advocate with Mr. P. Kakodkar,
Advocate for Respondent No.1.**

Mr. Milton Marshal, Advocate for the Respondent No.3.

AND

**STAMP NUMBER (APPLN) NO.4269 OF 2019
(FILING NO.)**

Shri Devidas Bablo Naik,
Major of age, r/o. H.No.178,

Fontainhas, Panaji, Goa.

.... Applicant

Versus

1. United India Insurance Co. Ltd.,
Ashirwad Gaunekar Bldg.,
Tisk, Ponda, Goa.
Represented through its
Sr. Divisional Manager.

2. Shri Hanumantappa Gudihindin
r/o. Jalihal Kustagi,
Dist. Koppas, Gadag,
Karnataka, driver.

3. Shri Khushali Bablo Naik,
Major of age, R/o. H.No.166,
Undir Bandora, Ponda, Goa.

....Respondents

Mr. R.G. Ramani, Senior Advocate with Mr. P. Kakodkar,
Advocate for the Applicant.

Mr. Suraj Naik, Advocate for the Respondent No.1.

Mr. Milton Marshal, Advocate for Respondent No.2.

CORAM: M. S. SONAK, J.

DATED: 17th MARCH 2022

ORAL JUDGMENT :

1. Heard Mr. Suraj Naik, learned Counsel for the appellant, Mr. R.G. Ramani, learned Senior Counsel, who appears along with Mr. P. Kakodkar, learned Counsel for respondent no.1(claimant), and Mr. Milton Marshal, learned Counsel for respondent no.3.

2. This is an appeal by the Insurance Company. There is no dispute that no leave under Section 170(b) of the MV Act was obtained by the Insurance Company before the Tribunal.

3. If the grounds in the memorandum of appeal are perused then it is apparent that the Insurance Company seeks to question the quantum of compensation awarded by the Tribunal vide the impugned award. Having regard to the law laid down by the Division Bench of this Court in *I.C.I.C.I. Lombard General Insurance Co. Ltd., Amravati V/s. Surekha w/o. Prakash Ghurde and ors.*¹, this appeal will have to be dismissed as not maintainable.

4. Mr. Suraj Naik, however, pointed out that, in this case, the Insurance Company was marked ex-parte by the Tribunal and though the Insurance Company applied for setting aside this order, the Tribunal by further order dated 10.02.2015 dismissed such application. Mr. Naik relied upon ground 11 in the memo of appeal to submit that appellant is also challenging the order dated 10.02.2015.

5. At least *prima facie* in the absence of any leave under Section 170(b) of the MV Act, the appeal even on this ground

¹ (2020) 2 Bom. CR 465

would not be maintainable because this ground is not one of the statutory defenses otherwise permissible to the Insurance Company.

6. Be that as it may, I have considered Mr. Naik's submissions on the legality of the Tribunal's order dated 10.02.2015. However, I am not convinced that the order dated 10.02.2015 warrants interference. The Tribunal has given detailed reasons in paragraphs 3 to 6 as to how the Insurance Company or its advocate were very much aware of the matter, but yet no steps were taken to contest the same. Even the Advocate for the claimants filed an affidavit about how he had informed the Advocate for the Insurance Company about the present proceedings in April 2014 itself when an amendment application was filed to the claim statement and even notice was issued by the Tribunal.

7. The order dated 10.02.2015 sets out in detail how despite several opportunities no steps were taken by the Insurance Company to contest the matter. Having regard to all these factors, no case is made out to interfere with the order dated 10.02.2015 even assuming that this appeal may be held to be maintainable to consider this limited ground.

8. For all the aforesaid reasons, this appeal is required to be dismissed and the same is hereby dismissed. This shall, however, not preclude the appellant from taking out any other proceedings if maintainable in law.

9. Mr. Ramani learned Senior Counsel states that a part of the amount has already been withdrawn. The respondent/claimant is now permitted to withdraw the balance amount together with the interest that may have accrued thereon after four weeks unless, in the meanwhile, the Insurance Company secures some restraint order.

10. Now coming to cross-objections filed by the claimants, reference is required to be made to the answers to the findings returned by the Tribunal on issue no.4, which are to be found in paragraphs 20 and 21. These paragraphs read as follows :

*“20. **Issue no.4:** Initially the claimant claimed an amount of ₹8,00,000/- by way of compensation but subsequently by way of the amendment it was enhanced to ₹12,00,000/- on the ground of subsequent surgeries and assessment of permanent disability. The birth certificate of the claimant is placed on record which is at Exh.38 and thus it shows that he was 52 years old at the relevant time having a permanent disability of 40%. Considering his age, a multiplier of 11 is taken into account as per the case of **Sarla Verma V/s. Delhi Transport***

Corporation & Anr. (2009 (2) TAC 677). Thus the pecuniary loss towards the disability is calculated as under :

Pecuniary loss:-

1) *Loss of earning :*

$$\text{₹}2400 \times 12 \times 11$$

$$\text{₹}31,68,000/40\% = 12,67,200/-$$

2) *Loss of earning during*

$$\text{Treatment } 24000 \times 12 = 2,88,000/-$$

$$3) \text{ Medicines} = 28,486/-$$

$$\text{-----}$$

$$15,83,686/-$$

B – Non – pecuniary loss:-

$$1) \text{ Pain \& suffering} = 1,00,000/-$$

$$2) \text{ Food \& nourishment} = 50,000/-$$

$$3) \text{ Loss of expectations in life} = 1,00,000/-$$

$$\text{-----}$$

$$\text{Total} = 2,50,000/-$$

$$\text{Grand Total} = \underline{\underline{18,33,686/-}}$$

21. Since the claimant is claiming an amount of ₹12,00,000/- and therefore his claim is restricted to ₹12,00,000/- as discussed above. Hence, Issue no.4 is answered in affirmative.”

11. The Tribunal, in this case, has determined the just compensation at ₹18,33,686/- but declined to award the same to the claimant simply because the claimant in his claim petition

had claimed compensation of only ₹12,00,000/-. According to me, this is not a correct approach. The Tribunal must award the just compensation and the Tribunal is certainly competent to award the compensation over what is claimed in the application under Section 166 of the MV Act.

12. In *Nagappa V/s. Gurudayal Singh*², the Hon'ble Supreme Court held that Section 168 empowers the Claims Tribunal to 'make an award determining the amount of compensation which appears to it to be just'. Therefore, the only requirement for determining the compensation is that it must be 'just'. There is no other limitation or restriction on its power for awarding just compensation. This principle was followed in the later decision in *Oriental Insurance Co. Ltd. V/s. Mohd. Nasir*³ and *Ningamma V/s. United India Insurance Co. Ltd.*⁴.

13. In *Rajesh & Ors. V/s. Rajbir Singh & Ors.*⁵, the Hon'ble Supreme Court, once again following the aforesaid decisions, held that the underlying principle discussed in the said decisions is about the duty of the Court to fix a just compensation and it has now become settled law that the Court should not succumb in

2 (2003) 2 SCC 274

3 (2009) 6 SCC 280

4 (2009) 13 SCC 710

5 (2013) 9 SCC 54

niceties or technicalities, in such matters. An attempt of the Court should be to equate, as far as possible, the misery on account of the accident with the compensation so that the injured/the dependents should not face the vagaries of life on account of the discontinuance of the income earned by the victim. Further, in paragraphs 12 to 17, the Hon'ble Supreme Court after considering the provisions of Section 158(6) and 166(4) of the MV Act has explained why the Tribunals must award just compensation irrespective of whether or not the same is claimed by the claimant or not.

14. Based on the aforesaid, the claimant is certainly entitled to compensation of ₹18,33,686/- in the least, and this compensation amount could not have been restricted to ₹12,00,000/- simply because the claimant, in his claim petition, had claimed only ₹12,00,000/-.

15. Mr. Ramani, further submits that, in this case, the claimant was a taxi driver/motorcycle taxi driver and, therefore, compensation should not have been determined going by 40% disability reflected in the medical certificate. He submitted that this disability, though medically 40%, rendered the claimant unfit from taking up his previous occupation as a taxi driver.

16. Now, in this case, the doctor was never examined. The evidence, at the highest, suggests that the claimant owned a motorcycle taxi as well as a tourist taxi. The claimant deposed that he used to drive the motorcycle taxi and had the business of operating a tourist taxi which was owned by him. The claimant was almost 52 years old at the time of the accident. Even the income of ₹24,000/- per month determined by the Tribunal appears to be on the higher side considering that the accident took place in the year 2010.

17. Be that as it may, there is no clear evidence about the claimant being rendered unfit to undertake the occupation that he was involved in before the accident. At the highest, the claimant may have held some difficulties in himself riding the motorcycle taxi. The tourist taxi business would still have been continued by the claimant without any serious difficulties.

18. Therefore, considered from the above perspective, there is no case made out for grant of any further enhancement.

19. Resultantly, this appeal is dismissed with liberty as aforesaid. However, the cross-objections are allowed and the appellant/Insurance Company is directed to pay compensation of ₹18,33,686/- together with interest at the rate of 9% per annum

after adjusting the amount already deposited/paid by the appellant/Insurance Company. The appellant/Insurance Company to deposit the enhanced amount in this Court within two months from today together with accrued interest. Upon deposit, the respondent/claimant will be entitled to withdraw the same on the above terms.

20. The appeal and cross-objections are disposed of accordingly.

M. S. SONAK, J.

NITI K
HALDANKAR

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