Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 30 OF 2022

Mrs Sapnita Zatekar
Wife of Mr Sapnil Zatekar,
Aged 33 years,
Resident of H.No.1375/A,
Bapsora, Velim,
Salcete Goa. … Appellant

Versus

1 Mr Piedade Fernandes,
S/o Santano Fernandes,
Aged 49 years, Business,
R/o H.No.1461, Pocklivoll,
Velim, Salcete Goa.

2 United India Insurance
Company Limited,
having office at Jamnadas Building,
2nd Floor, Church Road,
Sanvordem Goa. … Respondents

Mr. Sanman Keny, Advocate for the Appellant.
Mr. A. R. S. Netravalkar, Advocate for Respondent No.2.

CORAM: M. S. SONAK, J.

DATED : 2nd MARCH 2023

ORAL JUDGMENT

1. Heard Mr S. Keny, learned counsel for the Appellant (claimant) and Mr Netravalkar, learned counsel for Respondent No.2 (Insurance Company).

2. The challenge in this appeal is to the judgment and award dated 30.10.2021 made by the Motor Accident Claims Tribunal, Margao, to the extent it has awarded compensation of only ₹72,000/- to the Appellant who sustained injuries in a vehicular accident which occurred on 05.05.2016.

3. Mr Keny submits that award of ₹30,000/- towards loss of income is inadequate because the fisherwoman Appellant could not work for almost two years or more due to injuries she sustained in a vehicular accident. He submits that the tribunal failed to make any award towards transportation even though taxi bills were produced.

4. Mr Keny submits that the tribunal made no award towards attendant/helper charges. He submits that after the initial operation, the Appellant had to undergo another operation in 2019 to remove plates. He presents that award of only ₹5000/- towards pain and suffering is inadequate.

5. Based upon the above submissions, Mr Keny submits that the Appellant could have been awarded a minimum compensation of

₹3,60,881/-. Therefore, after adjusting the award for ₹72,000/-, the Respondents must be directed to pay a further amount of ₹2,88,881/- by just compensation.

6. Mr Netravalkar submits that the tribunal erred in taking the Appellant's income at ₹10,000/- per month. He submits that since the Appellant was a housewife, her income should be taken notionally at ₹5000/- per month. He submits that even though no leave was obtained from the tribunal under Section 170 of the M. V. Act, the insurance company is entitled to argue on the issue of the quantum of compensation even without filing any cross objections. He relies on ***United India Insurance Co. Ltd., Vs Bana Devi and others***[1].

7. The rival contentions now fall for determination.

8. At the outset, Mr Netravalkar's contention is liable to be rejected. The decision he relied upon does not support the proposition he advanced. This is evident from the reading of the said judgment.

9. Be that as it may, in this case, the insurance company has not even bothered to file any cross objections assuming that such cross objections could be filed in the absence of any leave under Section 170 of the M. V. Act to challenge the finding about the Appellant's monthly income being ₹10,000/- per month. Moreover, the Appellant was a fisherwoman selling fish at the Velim market. Therefore, there is

1 2004 ACJ 1968

no error in the tribunal accepting her version of earning ₹10,000/- per month.

10. On the aspect of the Appellant not working for two years or more, evidence of the Appellant must be noted and assessed. In paragraph 9 of the affidavit, in lieu of examination in chief, she stated that due to the accident, she could not do any work for three months, causing a loss of ₹30,000/-. This is the precise amount awarded by the tribunal. Therefore, no further amount can be awarded to the Appellant towards loss of income.

11. Towards the transportation expenses, the tribunal has made no award by observing that though the taxi bills were produced, the taxi driver was not examined. Looking at the injuries sustained by the Appellant and the need to visit the hospital for post-operation follow-up and physiotherapy, the tribunal was not justified in rejecting the entire claim towards transportation. Therefore, as against the claim of ₹19,000/-, at least an amount of ₹10,000/- should have been awarded.

12. Again, towards helper/attendant charges, the tribunal has not awarded any amount. The bills were produced, but the helper or attendant was not examined. However, considering the nature of the injuries and the fact that the Appellant must have required some help, an award of ₹20,000/- appears to be just and reasonable under this head.

13. An award of only ₹5000/- towards pain and suffering seems inadequate. The evidence on record shows that the Appellant had to undergo at least two operations. In addition, the Appellant was admitted to the hospital for eight days and had to attend the hospital for follow-up and physiotherapy. Though the Appellant did not suffer any permanent disability, the Appellant suffered considerable injuries. Considering all these factors, she should have been awarded at least ₹25,000/- for pain and suffering.

14. Thus, the Appellant should have been awarded an additional amount of ₹50,000/- over and above the compensation amount of ₹72,000/- already granted by the tribunal. This would then represent just compensation.

15. Accordingly, the impugned award is modified, and the compensation amount is enhanced by a further amount of ₹50,000/-.

16. The accident, in this case, occurred on 05.05.2016. Therefore, the award of interest at the rate of 9% per annum is excessive. Therefore, this rate of interest will have to be reduced to 7% per annum. Ultimately, the Court must award just compensation.

17. Mr Keny states that even the Appellant has not yet paid the original compensation amount. If that be so, then the Respondents, including in particular the insurance company, are directed to deposit the amount of ₹1,22,000/- with interest at the rate of 7% per annum from the date of the claim petition till the date of effective payment within eight weeks from today in this Court. Due notice will have to be given to the learned counsel for the Appellant before making a deposit. If, however, the amount of ₹72,000/- is already paid, the insurance company would be entitled to make the necessary adjustment based on the amount now awarded.

18. Once the amount is deposited, the Appellant will be free to withdraw the same after furnishing bank and identification details. The registry should transfer the amount directly into the Appellant's bank account.

19. The appeal is partly allowed to the above extent without any order for costs.

M. S. SONAK, J.

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