

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.77/2022

MR. RAJU CHANDRAKANT
PARWAR, son of Mr
Chandrakant Parwar, aged 34
years, unemployed, resident of
H.No.525, Kamarbhat, Talaulim,
Ponda Goa.

... APPELLANT

Versus

1. MR. SANTO RAYA GAUDE,
son of Mr. Raya Gaude, aged 42
years, driver/owner, resident of
H. No.1184, Pokdem, Near
Bhagvati Alluminium, Veling-
Priol, Ponda Goa.

2. BAJAJ ALLIANZ GENERAL
INSURANCE COMPANY
LTD., 3C-D, Sesa Ghor, Patto
Plaza, Panaji-Goa.

... RESPONDENTS

Mr Milton Marshal, Advocate for the Appellants.

Mr Amey Kakodkar with Mr Pankaj Shiroadkar, Advocate for
Respondent No.2.

CORAM: M. S. SONAK, J.

DATED: 12th January 2023

ORAL JUDGMENT:

1. Heard Mr Milton Marshal for the appellant and Mr Amey Kakodkar, who appears along with Mr Pankaj Shirodkar for respondent no.2-insurance company.
2. The challenge in this appeal is to the Judgment and Award dated 30.10.2019 in Claim Petition No.37/2016, by which the appellant (claimant) has been awarded compensation of only ₹4,83,000/- with interest @ 6% p.a. from the date of the claim petition.
3. Mr Marshal, the learned counsel for the appellant, submits that the Tribunal failed to appreciate that the functional disability, in this case, was much more than the medical disability of 15% deposed to by the doctors. He submits that the functional disability was at least 50%. He submits that AW2's evidence about the appellant losing his job after the Tribunal did not adequately evaluate the accident. He submits that no compensation is awarded towards future medical expenses when there is evidence about the implants and screws in the appellant's both hands. He submits that the compensation towards pain and suffering is also inadequate, and no award has been made towards the loss of amenities and loss of expectation of life. For all these

reasons Mr marshal submits that the claim of ₹20 lakhs should be allowed.

4. Mr Kakodkar defends the impugned award based on the reasoning reflected therein. He points out that the job loss was due to the appellant's unfitness. He submits that there is no evidence about how the 15% disability has affected the appellant's work as a Merchandiser. There is no evidence about the work that the appellant used to carry out as a Merchandiser. He submits that more than adequate compensation has been awarded; therefore, this appeal should be dismissed.

5. The rival contentions now fall for my determination.

6. In *Raj Kumar v/s. Ajay Kumar – (2011) 1 SCC 343* the Hon'ble Supreme Court has held that the heads under which the compensation is awarded in personal injury cases are the following:

"Pecuniary damages (Special damages)

(1) Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

- (a) Loss of earning during the period of treatment;*
- (b) Loss of future earnings on account of permanent disability.*

(iii) Future medical expenses.

Non-pecuniary damages (General damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries,

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity)."

7. Further, the Hon'ble Supreme Court has held that what is relevant is a functional disability, not a mere medical disability. For assessing the functional disability, the claimant has to establish the nature of duties he was discharged before the accident and the impact of the accident on such duties. In the present case, there is no clear evidence on this aspect. Neither the appellant nor Kiran Suryavanshi (AW3), the H.R. Manager at Professional Marketing Service where the appellant was employed, have given any details about the nature of activities that the appellant would undertake before the accident.

8. Dr Edwin Gomes (AW2), the Chairman of the Medical Board deposed to the 15% medical disability. However, he stated

that the fractured shaft and intertrochanteric right femur and fractured shaft left femur with the implant in situ (PFN and ILN) have united. He deposed that the appellant has a full functional recovery of the left lower limb and both the wrist joints with terminal limitation of movement of the right hip joint. He deposed that the appellant has a 15% permanent disability of the right lower limb according to ALIMCO Scale due to mild stiffness of the right hip joint. Now even this witness has not deposed to the impact of these injuries and disabilities on the appellant's work as a Merchandiser.

9. Considering the state of evidence, the Tribunal cannot be faulted for equating the medical disability with the functional disability. Independent of the Tribunal's finding and upon fresh evaluation of the material on record, it does appear that the functional disability suffered by the appellant would not exceed 15%. Though there is a reference to the appellant losing his job, the witness deposed to the unfitness not attributable only to the injuries sustained in the accident. Considering this perspective, the award of compensation of ₹3,71,790/- towards the disability and loss of earnings due to the permanent disability cannot be faulted.

10. The Tribunal has made no award towards future medical expenses. Again, there is not much evidence on this aspect. However, considering that the appellant underwent an operation and there are implants and screws in both his wrists and hips, compensation of ₹25,000/- can be awarded under this head. Similarly, the Tribunal has made no award towards loss of expectation of life. Again, though there is not much evidence on this specific issue, considering the overall impact that the permanent disablement of 15% would have on the appellant's life, compensation of ₹25,000/- can be awarded to the appellant.

11. On the aspect of pain and suffering as a consequence of the injuries, the Tribunal has awarded compensation of only ₹25,000/-. There is evidence that the appellant had to be admitted to the hospital for almost a month and, after that, had to be treated as an outdoor patient. The appellant underwent one operation involving implants and screws in his wrists and hips. Considering this fact, the compensation towards pain and suffering will have to be enhanced from ₹25,000/- to ₹1 lakh.

12. Accordingly, the appellant would be entitled to an additional compensation of ₹1,25,000/-. The impugned award is modified by enhancing the compensation by ₹1,25,000/-. The award of interest is also enhanced from 6% p.a. to 7% p.a.,

considering that the accident occurred on 26.08.2015. The award towards costs is maintained.

13. The appeal is therefore allowed. The respondent no.2-insurance company, is now directed to deposit the enhanced amount in this Court within two months from today, after giving due intimation to the learned counsel for the appellant.

14. Upon deposit, the appellant will be entitled to withdraw the amount by furnishing identity and bank details. The Registry to ensure that the amount is directly deposited into the appellant's bank account. The appeal is disposed of in the above terms.

M. S. SONAK, J.

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