

IN THE HIGH COURT OF BOMBAY AT GOA.

FIRST APPEAL NO.89 OF 2010

SHRI ANTHONY FERNANDES,
s/o Herminio Fernandes,
aged 27 years, r/o H.No.705,
Fradilem, Navelim,
Salcete-Goa.

Appellant

Versus

1] SHRI CHANDRAKANT NAIK,
s/o Thakir Naik, major in age,
business, r/o Near Railway Station,
Shirwad, Karwar-Karnataka.

2] MR.PRASHANT NAIK,
S/o Chandrakant Naik,
r/o Near Railway Station,
Shirwad, Karwar -Karnataka.

3] THE NEW INDIA ASSURANCE
COMPANY LTD;
Shri Prasad Building,
High Church Road,
Karwar,Karnataka.

Respondents.

...

Shri V.G. Pai Dukle, Advocate for the appellant.
Shri Ashok Mashelkar, Advocate for the respondent
no.1.

Shri Amey Kakodkar, Advocate for the respondents
no.3.

CORAM : NUTAN D.SARDESSAI, J.
RESERVED ON :08/07/2016.
PRONOUNCED ON :04/08/2016

JUDGMENT:

1] Heard Shri V.G.Pai Dukle, learned Advocate on behalf

of the appellant who submitted that the appeal was only for the enhancement of the claim from that awarded by the learned Tribunal, there being no dispute on the aspect of the rash and negligent driving at the instance of the respondent no.1. He had adverted to the records and submitted that the findings of the learned Tribunal particularly on the aspect of awarding the compensation to the appellant was flawed and, therefore, he should be granted the enhanced compensation appropriately. He relied in **Smt.Sarla Verma and Ors.Vs. Delhi Transport Corporation and another [2009(4)ALL MR 429]** and submitted that he was entitled to 30% extra compensation towards the future loss.

2] Shri Mashelkar, learned Advocate for the respondent no.1 submitted that he was supporting the judgment of the learned Tribunal which has assessed the material on the record properly and granted a reasonable compensation to the appellant. The respondent no.1 had to be therefore absolved from any pecuniary liability towards the appellant. Shri A.S.Kakodkar, learned Advocate for the respondents no.3 also referred to the evidence on record and submitted that the testimony of the witnesses relied upon by the appellant did not inspire confidence and were accordingly not considered by the learned Tribunal while disallowing the claim towards the attendant charges. The learned

Tribunal had also looked into the Certificate issued by the Doctor vis-a-vis the evidence of another Surgeon and found that the testimony of the Surgeon did not inspire confidence. There was no need for any enhanced compensation and hence the appeal had to be dismissed.

3] The present appeal is restricted to the quantum of the compensation to be awarded in the appellant's favour on various heads including that towards the loss of income and that towards the permanent disability. The appellant had examined himself and he had clearly set out his age and employment as a Welder running a Workshop and was earning a monthly income of ₹10,000/-. In the course of the accident he had suffered the injuries which were grievous in nature leading to the permanent disability. He had suffered the injuries to his eye and the fracture injuries so much so that his left eye remained open even while sleeping and he was unable to do any work. He had suffered the permanent disability and was unable to work due to the injuries suffered by him entitling him to the compensation claimed in the petition. He had produced the documents in support of his case including the photographs showing the injuries suffered by him. His testimony had borne out that though he had learnt up to 9th standard, he had completed two years practical job experience in the field of fabrication and that he was running a workshop with

five workers and having a net profit of ₹1,00,000/- approximately which was apparent from the Income Tax Returns filed by him.

4] He had examined Manuel Aw2 who had stated that his services were engaged to look after him in the hospital from 26.6.2014 till 30.11.2004 at the G.M.C. Hospital, Bombolim and thereafter his residence and the total period of such job was about 5-6 months, both in the hospital and thereafter at home. His testimony was sought to be disbelieved again in the appeal on the respondents' behalf on the premise that he was the claimant's neighbour and moreover, he was employed in Zuari Industries where the father of the claimant was employed. It was unbelievable that he would give-up his lucrative job and do that of an attendant on the claimant. However, such a truncated reading of the evidence would not suffice inasmuch as he had stated that he had passed standard 9th in April 1974 and after that he had left the school and had joined the service in Zuari Industries. He was examined some time in July 2008 unlike the accident which had taken place in June 2004 which is relevant for the appreciation of the evidence.

5] Manuel Aw2 He had also disclosed his age as 48 years in 2008. It was nowhere brought on record despite his cross- examination that he had continued to be employed in Zuari

Industries around the time of the claimant's accident. His testimony was also sought to be disbelieved on the premise that he did not remember in which Ward of the GMC hospital was the claimant admitted and he was not knowing the names of the Doctors who were treating him in the hospital. It is rather farfetched that a person with a bare education of the 9th standard should be expected to know such minor details about the ward of admission and more particularly, the doctors treating the patient since it is a common knowledge that being a Government Hospital which is also a teaching institution, there would be innumerable doctors who would be available on duty in the hospital and a layman could not be expected to keep track of their names and designations as the case may be. Even assuming at the highest that the receipt which he had produced towards the amount purportedly received by him from the claimant is taken on the higher side, there was no reason for the learned Tribunal not to award any amount to the claimant towards the services of an attendant considering the nature of the accident and the injuries suffered by him and his confinement to the hospital and thereafter at home. The appellant-claimant is, therefore, awarded a reasonable amount of ₹15,000/- towards the services of an attendant.

6] The Medico-legal Certificate too indicates that the

appellant had suffered grievous injuries which aspect cannot at all be overlooked coupled with the findings in the Case Summary and Discharge Records that he had suffered blunt abdominal trauma with liver laceration, Grade II fracture of the left humerus with fracture of the left femur shaft. The appellant had besides revealed that he had a practical job experience in the field of fabrication and his business was affected on account of his accident and the injuries arising therefrom. Dr. Velingkar, who had treated the appellant for his fracture injuries had confirmed even on his cross-examination that he would not be able to have a normal walk and or run due to the left foot drop though he could do his day to day activities.

7] The appellant had established his earnings at ₹10,000/- per month by producing the Income Tax Returns. He was young in age and considering the law settled on the point in *Sarla Verma (supra)*, he would be entitled to an increase in the earnings of 40% giving due weight-age to his age. On that premise, his earnings would work out to ₹14,000/- per month and annual amount of ₹1,68,000/-.

8] Dr. Sujoy Das Aw8 had spelt out in his evidence that the injured was unable to close his left eye lid whom he had thoroughly examined and come to a conclusion on his medical

examination that he had an incisional hernia following the operation done in a road traffic accident. He was in need of the plastic surgery for his left eye and for which he would have to engage a Plastic Surgeon to operate on his left eye lid. He had calculated the approximate expenditure towards the operation which the applicant needed and these expenses were also likely to increase. He relented during his cross-examination that he had not consulted an Eye Surgeon before calculating the approximate expenditure for the operation on the applicant's eye. At the same time, he had denied the suggestion that the injured did not need any such operation and that the rough calculations shown in the expenditure made by him were only to attract the injured to his hospital for commercial gain.

9] Shri V.G.Pai Dukle, learned Advocate for the appellant, submitted that from the evidence of the injured-claimant coupled with the medical evidence it was apparent that the injured was having a lot of difficulties even in sleeping since his eye lid would remain open throughout and which had affected him in his health and other condition over a period of time. Dr. Sujoy Das was a Surgeon and it is not as if he was just a graduate Doctor who was making the estimate about the expenses which the injured would incur. At the same time, the defence plea cannot be ruled out that his estimate was on the higher side considering

his admission that he had not consulted an Eye Surgeon particularly regarding the injuries to the left eye of the injured.

10] Be that as it may, the learned Presiding Officer of the Claims Tribunal was amply seized of the fact that he had suffered fracture injuries and had thrice undergone operations and that he was in need of an operation for his eye lid and of the abdomen for which he would require a sum of ₹75,000/-. The learned Presiding Judge was equally seized of the fact that the injured had spent an amount of ₹2,25,000/- on his medical treatment and that the injuries sustained by him had resulted in a permanent disability. However, while awarding the compensation, the learned Presiding Judge did not show the same degree of concern as evident from the manner in which he brushed aside the evidence of Dr. Sujoy Das. It is not as if the learned Presiding Judge was required to award the entire amount given by the Doctor as an estimate but he had to make a fair guess of the expenditure which the patient would incur and not deny him any compensation on that count.

11] The learned Presiding Officer where it suited him relied on the evidence of Dr. Sujoy Das that the claimant would be able to do the welding work with his hand despite the 18% permanent disability due to limitation in the elbow movement and shortening of the left leg and with the stroke of pen did not award him any

compensation under that head which is not at all justifiable. Hence, by making a rough estimate and considering the medical condition of the injured and vis-a-vis the evidence of the Surgeon Dr.Sujoy Das, the injured is awarded an amount of ₹50,000/- towards the treatment of his eye. The appellant-claimant is, therefore, awarded an amount of ₹50,000/- on the head of medical expenses towards his left eye and ₹42,480/- towards the permanent disablement which would affect him in the long run in carrying out the welding work.

12] i am constrained to hold so since the learned Presiding Judge was reluctant to believe the testimony of Dr. Sujoy Das when it came to estimate the expense towards his medical treatment for the left eye and yet lapped up his statement in the next breath regarding the capability of the injured to do welding work despite the physical disability. Thus, having considered the evidence brought on record by the appellant and on a proper appraisal in this appeal, the appellant is held entitled to the amount of ₹15,000/- towards the services of an attendant, ₹50,000/- towards the treatment of his left eye, ₹42,840/- towards the permanent disability, ₹47,446.21 towards the medical bills, ₹7800/- towards the physiotherapy, ₹4820.96 as also ₹9705.18 and ₹7252.50 towards the additional medical bills. Besides he is entitled to ₹5750/- towards the travelling,

₹50,000/- towards the future medical expense, ₹50,000/- towards the shortening of the left limb, ₹3100/ under the head of other expenses and ultimately an amount of ₹1,50,000/- towards the loss of future earnings adding up to ₹4,53,714.85 which is rounded upto ₹4,53,715/- being the just compensation. In the result, i pass the following order:-

ORDER

The appeal is allowed whereby the amount awarded by the learned MACT is enhanced to ₹4,53,715/- with interest @9% per annum from the date of the petition till payment. The amount paid under Section 140 of the Act shall be adjusted appropriately against the compensation which he shall be entitled to claim from the respondents no.1 and 3 and shall also be entitled to the costs.

NUTAN D.SARDESSAI, J

mukund