

IN THE HIGH COURT OF BOMBAY AT GOA**FIRST APPEAL NO. 55 OF 2011**

Shri Laxman Janna Bhandari, s/o Janna
Ganesh Bhandari, permanent r/o Post Divgi,
Taluka Kumta, Karwar.

Presently residing at H. No. 40/1, 1st floor,
Ekdanta, 1st Main Maruti Nagar, Nagarbavi,
Main Road, Bangalore.

.... Appellant

Versus

1. Public Works Department, Asst.
Engineer, Sub Div. III, Works Division
X, Govt. of Goa, Tonca, Caranzalem,
Tiswadi, Goa.

2. Mr. Sadanand Y. Kankonkar, r/o Curca,
Santan, Ilhas - Goa.

.... Respondents

Shri Nigel Da Costa Frias with Ms. Laxmi Sawant Advocates for
the Appellant.

Ms. Susan Linhares, Additional Government Advocate for the
Respondent No. 1.

CORAM:- C. V. BHADANG, J.

DATE:- 6th MARCH 2018

ORAL JUDGMENT:

By this appeal, the appellant, who is the original
claimant, is seeking enhancement of the compensation granted by
the Motor Accident Claims Tribunal at Panaji (Tribunal, for short)
in Claims Petition No. 11/2008.

2. The brief facts are that, the appellant suffered a vehicular accident on 04.03.2007, when he had gone for evening walk at Kenkre Estate at about 19:15 hours. The Tanker involved in the accident belongs to the respondent no. 1 and bears registration No. GA-01/G-7614. The driver of the tanker in an attempt to overtake another vehicle, dashed the appellant, resulting into grievous injuries to the appellant.

The appellant was admitted in Goa Medical College, Bambolim (GMC) for treatment and was discharged on 15.03.2007. According to the appellant, he was further required to take treatment at Diwakar Orthopedic Hospital and Trauma Centre, Hubli, where he had undergone a surgery to the shoulder and was referred to Wockhardt Hospital, Bangalore.

The appellant had suffered grievous injury to his head and a "closed comminuted fracture" to the mid shaft right femur and a fracture to his right shoulder amongst other injuries. The injuries suffered by the appellant have resulted into 15% permanent disability.

3. At the time of the accident, the appellant was 59 years of age. The appellant was earlier working in the Police

Department and had since retired. At the time of the accident, the appellant was working as a Security Officer at Bangalore and was earning a salary of Rs.5,350/- per month. The appellant filed the claims petition, seeking compensation of Rs.6 lakhs under various heads.

4. The respondent no. 1 did not dispute the ownership of the vehicle and the occurrence of the accident. It was contended that the accident took place due to the fault of the appellant, who came on the road all of a sudden, while under the influence of alcohol. The claim as to the quantum of compensation was disputed by the respondent no. 1.

5. On the basis of the rival pleadings, the Tribunal framed issues. The appellant examined in all five witnesses. There was no evidence led on behalf of the respondents.

6. The Tribunal by a judgment and order dated 09.03.2011 came to the conclusion that the accident occurred due to rash and negligent driving of the respondent no. 2 and partly allowed the petition, granting compensation of Rs.87,290/- along

with interest at the rate of 9% from the date of the petition till the date of the award. Feeling dissatisfied, by the quantum of the compensation granted, the appellant is before this Court.

7. I have heard Shri Frias, the learned Counsel for the appellant and Ms. Linhares, the learned Additional Government Advocate for the respondent no. 1. With the assistance of the learned Counsel for the parties, I have gone through the record and the impugned judgment of the learned Tribunal.

8. Shri Frias, the learned Counsel for the appellant has taken me through the various heads of compensation, granted by the Tribunal in order to submit that the compensation granted is on the lower side and is inadequate. It is submitted that under Section 166 of the Motor Vehicles Act, 1988 (Act, for short), the Tribunal is required to assess and grant just compensation. It is submitted that although, it has come on record that the appellant was earning Rs.5,350/- per month, while working as a Security Officer, the Tribunal has reckoned the income at Rs.3,500/- per month. It is submitted that the compensation granted towards the expenses incurred on medical treatment, including purchase of

medicines is also inadequate. The learned Counsel submitted that grant of Rs.10,000/- towards compensation for pain and suffering and Rs.17,500/- towards actual loss of income, are grossly inadequate and are required to be enhanced.

9. The learned Counsel has referred to a certificate dated 17.08.2011 from the Fortis Hospital, in order to show that the appellant was advised surgery for removal of IL nail from the right femur, as early as possible and the estimated cost of the surgery was Rs.40,000/- in the multi bed category. It is submitted that although, this document was produced during the pendency of the appeal, this Court can take note of the same and can grant additional compensation of Rs.40,000/- towards expenses for future treatment.

10. On the contrary, it is submitted by Ms. Linhares, the learned Additional Government Advocate for the respondent no. 1 that the compensation claimed is exorbitant. It is submitted that the appellant has not made out as to how, he is entitled to compensation of Rs.6 lakhs. It is submitted that the appellant was working in the Police Department and has admitted that he was

getting pension. The learned Additional Public Prosecutor pointed out that the appellant was also entitled to medical reimbursement and as such, the claim towards the expenses for medical treatment and medicines, as also for future medical treatment, cannot be granted.

11. I have carefully considered the rival circumstances and the submissions made. It is now well settled that under Section 166 of the Act, the Tribunal has to determine and grant just compensation. The compensation so determined, can neither be meager or inadequate nor can it be exorbitant. The question as to what is just compensation, however, would depend upon facts and circumstances of each case.

12. Although, in the petition filed by the appellant, under Section 166 of the Act, the compensation of Rs. 6 lakhs was claimed, the appellant has not set out the various heads and the compensation claimed under each of such heads. However, during the course of the arguments at bar, the learned Counsel for the appellant has produced a computation, which is as under:

1. Loss of income from 04.03.2007 to 01.01.2008 at the rate of Rs.5,350/- per month, being the last drawn salary of the appellant. : Rs. 53,496/-
2. The actual medical expenses as per the bills and documents produced. (including the future medical expenses of Rs.40,000/-). : Rs. 84,298/-
3. Compensation on account of future loss of earning capacity, considering the permanent disability of 15% and taking a multiplier of 5 : Rs. 48,150/-
4. Compensation towards travelling and other incidental expenses : Rs. 50,000/-
5. Compensation towards pain and suffering : Rs.1,00,000/-

13. Let us now consider the compensation that would be admissible under each of the five heads. It has come on record that the petitioner after his retirement was working as a Security Officer at Bangalore and was earning Rs.5,350/- per month, at the time of the accident. It has also come on record that the appellant on account of his prolonged treatment was unable to work as a Security Officer for the period from 04.03.2007 to 01.01.2008 and thus, would be entitled to compensation of Rs.53,500/- i.e. for a period of ten months. Thus, the appellant would be entitled to compensation of Rs.53,500/- towards actual loss of income.

14. Insofar as the medical expenses are concerned, the petitioner has produced on record bills and vouchers, totalling to Rs.43,000/-. Additional amount of Rs.40,000/- is claimed towards future medical treatment as estimated by Fortis Hospital. This document was produced during the pendency of the appeal. The learned Additional Government Advocate submitted that the same is not proved by examining the concerned Medical Officer, who has issued the said certificate. It is submitted that the document cannot be considered or relied upon.

15. A perusal of the certificate dated 17.08.2011 shows that in the year 2011, the appellant was advised removal of the IL nail, "as early as possible", as it was already four years since the IL nail was implanted and looking to the fact that the appellant was a diabetic. It can thus be seen that the surgery for the removal of the IL nail was of emergent nature. There is nothing on record to show whether, till date the appellant has undergone such surgery and if yes, when and where. Although, the Tribunal in an appropriate case can grant reasonable compensation towards the expenses for future treatment, there has to be clear

and acceptable evidence as to the necessity and the cause of such treatment. Considering the nature of the surgery, it cannot be accepted that the appellant could have waited for another seven years from undergoing the treatment for removal of the IL nail. Although, the strict rules of evidence may not apply to the proceedings before the Tribunal, there must be some acceptable evidence on which the Tribunal/Court can act. Here is a case where the appellant has produced on record a certificate issued by the Fortis Hospital, Bangalore, way back in the year 2011 making out the necessity of emergent treatment of removal of IL nail, with no evidence as to what happened thereafter. Nonetheless, considering the overall circumstances, I find that an amount of Rs.25,000/- can be allowed towards future medical treatment.

16. It has come on record that the appellant has suffered 15% permanent disability. Considering the annual income of the appellant at Rs.5,350/- and applying the multiplier of 5 (as the appellant was 59 years of age, at the time of the accident), the compensation for future loss towards earning capacity would come to Rs.48,150/-.

17. Insofar as the travelling and other incidental expenses are concerned, the Tribunal has awarded Rs.10,000/-. According to the appellant, he was required to go to Bangalore twice for undergoing the treatment. In my considered view, looking to the nature of the treatment undergone by the appellant and a need for a special nutritious diet and other incidental expenses, an amount of Rs.25,000/- can be allowed under this head.

18. This takes me to the last head, namely, the non-pecuniary damages of Rs.1,00,000/-, claimed towards pain and suffering. Normally, the general/non-pecuniary damages are granted on a notional basis, as they cannot be assessed or quantified in terms of money, by any degree of precession. The Tribunal/Court has to take an overall view of the matter, considering the nature of the injuries sustained, the extent and the nature of the permanent disability, the period of invalidity and the future disadvantages suffered or inconvenience encountered in attending to daily chores, while determining the compensation under this head. In the present case, the appellant has suffered 15% permanent disability and was under treatment for about ten months.

19. Shri Costa, the learned Counsel for the appellant has placed reliance on the decision of the Supreme Court in the case of **Govind Yadav Vs. New India Insurance Company Limited, 2011 (10) SCC 683, K. Suresh Vs. New India Assurance Company Limited & Another, (2012) 12 SCC 274, V. Mekala Vs. M. Malathi & Another, (2014) 11 SCC 178** and the decision of this Court in the case of **Mr. Shaikh Farooq Mohammad Gaouse Vs. The Transport Manager, (2013) 3 ALL MR 509** in order to submit that the appellant needs to be compensated for his inability to lead his full life and his inability to do normal work.

In my considered view, the cases on which reliance is placed turned on their own facts. For instance, in the case of **Govind Yadav** (supra) and **V. Mekala** (supra), the claimant suffered disability to the extent of 70%. Again in the case of **K. Suresh** (supra), the disability was to the extent of 75%. Lastly in the case of **Shaikh Farooq Mohammad Gaouse** (supra), the disability was assessed to the extent of 100%. The claimant had two rods put inside his spine and was unable to walk, sit and stand and was put on catheter and was confined to wheel chair due to paraplegia.

20. Coming back to the present case, I find that the non-pecuniary damages towards pain and suffering can be notionally granted at Rs.15,000/-. The total compensation would be as under:

TOTAL COMPENSATION

1. Towards actual loss of earning : (Rs.5,350 x 10 months)	Rs. 53,500/-
2. Towards future medical : treatment	Rs. 25,000/-
3. Future loss of earning capacity :	Rs. 48,150/-
4. Towards special nutritious diet : and other incidental expenses	Rs. 25,000/-
5. Non pecuniary damages : towards pain and suffering	Rs. 15,000/-
TOTAL :	Rs.1,66,650/-

21. In the result, the following order is passed:

- (a) The Appeal is partly allowed.
- (b) The impugned judgment and award, passed by the Tribunal is hereby modified.
- (c) The appellant shall be entitled to compensation of Rs. ~~1,66,650/-~~ along with interest at the rate **2,09,650/-**

of 9% from the date of the petition, till realisation. This shall be inclusive of the compensation under Section 140 of the Act.

- (d) In the circumstances, there shall be no order as to costs.
- (e) Award be drawn accordingly.

C. V. BHADANG, J.

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