

IN THE HIGH COURT OF BOMBAY AT GOA**FIRST APPEAL NO. 128 OF 2018**

Mr. Selisio Saldanha, s/o late Antonio Francis Saldanha, 55 years of age, H. No. 199/2, Near Chitra Mandir, Marcela, Chimulwada, Orgao, Ponda-Goa.

... Appellant

Versus

1. Mrs. Gauri Borkar, major in age, R/o Flat No. F1, St. Anthony Appartment, La-Campala Colony, Miramar, Panaji-Goa.
2. Mr. Ravish Suresh Kolwalker, major in age, Kamat Gardens, F-7, Near St. Xaviers College, Mapusa, Bardez, Goa. (Dropped/Deleted as per Order dated 12.08.2015)
3. Bajaj Alianz General Insurance Company Ltd., GE Plaza Airport Road, Yerwada, Pune, having its Branch Office at 3C-D, Sesa Ghor, 20, Patto Plaza, EDC Complex, Panaji, Goa.

Respondents

...

Shri Emerico Afonso, Advocate for the Appellant.

Shri Amey Kakodkar, Advocate for the Respondent No. 3.

CORAM:- C. V. BHADANG, J.

DATE: 22nd NOVEMBER, 2018

ORAL ORDER:

This is an appeal by the original claimant for enhancement of the compensation.

2. The appellant was injured in a vehicular accident on 15.07.2014 and had sustained 8% permanent disability. The appellant is working as a Guest Service Supervisor (Grade S-1) at Taj Vivanta, which is a 5 star hotel at Sinqerim and is drawing a salary of Rs.23,458/- per month. The appellant filed Claim Petition No. 13/2015, before the Motor Accident Claims Tribunal at Panaji (Tribunal, for short), seeking a compensation of Rs.5 lakhs. The Tribunal by the impugned judgment and award dated 01.02.2018 has partly allowed the petition, granting a compensation of Rs.2,90,880/- alongwith interest at the rate of 9% per annum from the date of the petition, till realisation. The respondent no. 3-Insurance Company has admittedly complied with the said award.

3. The appellant, feeling aggrieved by the quantum of the compensation granted, has filed this appeal for enhancement of the compensation.

4. I have heard Shri Afonso, the learned Counsel for the appellant and Shri Kakodkar, the learned Counsel for the respondent no. 3. Perused the impugned judgment and award passed by the Tribunal.

5. It is submitted by Shri Afonso, the learned Counsel for the appellant that the compensation granted towards pain and suffering at Rs.25,000/- is inadequate. It is submitted that the Tribunal is also in error in restricting the compensation towards travelling expenses to Rs.9,300/-, when the appellant had produced evidence that he had incurred an amount of Rs.28,500/- towards travelling expenses. It is submitted that the Tribunal ought to have granted compensation for the permanent disability sustained after appropriate addition towards future prospects, as held by the Hon'ble Supreme Court in the case of **National Insurance Company Limited Vs. Pranay Sethi & Others, AIR 2017 SC 5157**. It is submitted that the Tribunal failed to grant compensation towards loss of amenities and deprivation and has even failed to award costs.

6. On behalf of the appellant, reliance is placed on the decision of this Court in First Appeal No. 11/2013 (**Mr. Fakruddin Mulla Vs. Mr. Gangaram Ghadi**) and the companion appeals, decided on 05.09.2018, in order to submit that this Court has awarded compensation towards loss of earning capacity, when the permanent partial disability suffered was to the extent of 10%.

7. Shri Kakodkar, the learned Counsel for the respondent no. 3 has supported the impugned award. It is submitted that the compensation granted is just compensation, on the basis of the evidence as produced. It is submitted that the appellant continues to be in service and there is no loss of future prospects of promotion. It is submitted that the nature of the disability has not resulted into loss of future earning capacity.

8. I have carefully considered the circumstances and the submissions made and I do not find that any case for interference is made out.

9. The Hon'ble Supreme Court in the case of **Raj Kumar Vs. Ajay Kumar & Another, (2011) 1 SCC 343**, had an occasion to consider various heads, under which, compensation can be granted, in an injury case. This is what is held in para 6 of the judgment.

“6. The heads under which compensation is awarded in personal injury cases are the following:

Pecuniary damages (Special Damages)

(i) Expenses relating to treatment, hospitalization, 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).

In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life."

(Emphasis supplied)

It can thus be seen that, in routine injury cases, the compensation would be awarded only under the head of actual

expenses on treatment, actual loss of earning during the period of treatment and general damages on account of pain and suffering. It is only in serious cases of injury, where there is specific evidence, that compensation can be granted under any of the heads at (ii)(b), (iii), (v) and (vi) above.

10. The medical evidence as to the percentage of disability, more often than not is in relation to a limb or a part of the body and not to the whole body. That apart, the permanent partial disability (either with reference to any limb/part of the body or in relation to the whole body), may not always translate into an equivalent percentage of loss of earning capacity. The question whether, the particular disablement would result into future loss of earning capacity and if yes, the percentage thereof, would depend upon various circumstances, such as, the nature and the extent of the injury, the part of the body, which is affected and the avocation of the person injured.

11. Coming to the present case, admittedly, the appellant is in permanent service of a 5 star hotel as a Guest Service Supervisor (Grade S-1) and continues to be in service. There is absolutely no evidence that the permanent disability, as

incurred to the extent of 8%, has resulted into loss of future prospects as to promotion or otherwise. The appellant could not attend his duties for a period of ten months and the Tribunal has awarded a compensation equivalent to the salary for ten months, towards the actual loss suffered during the period of treatment. In the present case, the compensation would be admissible under the heads at para 6 (i), (ii)(a) and (iv) as above i.e. the expenses relating to the treatment of hospitalisation etc., loss of earnings during the period of treatment and the general damages for pain and suffering.

12. It is submitted by Shri Afonso, the learned Counsel for the appellant that the Tribunal ought to have granted compensation for the permanent disability and the consequent loss of earning capacity after factoring the future prospects. In my considered view, the contention cannot be accepted because it is not that in every case of permanent partial disability that it results into a corresponding loss of future earning capacity or future prospects.

13. In the present case, the Tribunal has awarded compensation towards the actual loss for the period of ten months, pain and suffering and also travelling expenses. The

Tribunal has noticed that the appellant had examined the taxi driver, who had identified ten receipts (Exhibit-55) totalling to Rs.9,300/-, which amount has been granted towards the travelling expenses. The other documentary evidence produced was not substantiated by the appellant. The contention that the general damages of Rs.25,000/- are on the lower side also cannot be accepted. Normally, the general or non pecuniary damages are of a notional nature and the grant of Rs.25,000/- under this head cannot be said to be inadequate.

14. Reliance placed on the decision in the case of **Fakruddin Mulla** (supra) to my mind is misplaced. In that case, the appellant was engaged as a Driver on a heavy commercial vehicle and had suffered shortening of one of the legs. The permanent partial disability suffered was to the extent of 10%. It was in these circumstances held that the nature of the disability i.e. shortening of one of the legs would affect his future earning capacity, which would be equivalent to the permanent partial disability suffered. It is trite that the question whether, the permanent partial disability suffered would result into loss of future earning capacity would depend upon various circumstances as indicated above and even where such a permanent partial disability results into loss of earning

capacity, the loss of earning capacity may not always be equivalent to the permanent partial disability suffered. The question squarely depends upon facts and circumstances of each case. The decision in the case of **Fakruddin Mulla** (supra) turned on its own facts.

15. In the present case, admittedly, the appellant continues to be in service on the same post and there is no evidence as to loss of earning capacity or loss of future prospects.

16. I have carefully gone through the impugned judgment and award and I do not find that the finding as to the quantum of compensation granted, suffers from any infirmity so as to require interference. The appeal is without any merit and is accordingly dismissed, however, with costs throughout. Award be drawn accordingly.

C. V. BHADANG, J.

EV