

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 80 OF 2012

AND

FIRST APPEAL NO.103 OF 2013

FIRST APPEAL NO.80 OF 2012

Shri Sufal CH Ghorui
Age 28 years, business
Bachelor, Indian National.
H. No. 391, Adcolna,
Banastri-Goa.

Appellants
(Original
Claimant)
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V e r s u s

- 1 Shri Wilson Gilbert Viegas,
Major in age, Occupation Driver,
H. No. 50, Sirlim Mazilwada,
Salcette-Goa.
(Owner/Driver of the Vehicle
No. GA-02-T-4555,
Passenger Bus)
- 2 The New India Assurance Company
Ltd.
Jaganath Building, Loyola Road
Margao, Goa.
Policy No.141400/81/07/00023782
Policy No.141400/81/07/00022972
(Insurer of the Vehicle) Respondents.

Mr. Vallabh D. Pangam, Advocate for the Appellant.

Mr. Abhay Nachinolkar, Advocate for the Respondent
No.1.

Mr. E. Afonso, Advocate for the respondent No.2.

AND**FIRST APPEAL NO. 103 OF 2013**

- 1 Shri Wilson Gilbert Viegas,
S/o. Shri Joseph Viegas, aged 39
years, Married, Resident of
H. No. 50, Sirlim Mazilwada,
Salcete-Goa. Appellant

V e r s u s

- 1 Shri Sufal CH Ghori
Age 28 years, business
Bachelor, Indian National.
H. No. 391, Adcolna,
Banastari-Goa.
- 2 The New India Assurance Company
Ltd.
Jaganath Building, Loyola Road
Margao, Goa.
Policy No.141400/81/07/00023782 Respondents.
Policy No.141400/81/07/00022972
(Insurer of the Vehicle)

Mr. Abhay Nachinolkar, Advocate for the Appellant.

Mr. Vallabh D. Pangam, Advocate for the Respondent
No.1.

Mr. E. Afonso, Advocate for the respondent No.2

Coram :- SMT. M. S. JAWALKAR,J.

Reserved on : 6th November, 2020

Pronounced on: 4th December, 2020

JUDGMENT

1. Heard Mr. Vallabh Pangam, learned Advocate for the Appellant in First Appeal No.80 of 2012 and respondent No.1 in First Appeal No.103 of 2013, Mr. Abhay Nachinolkar, learned Advocate for the appellant in First Appeal No.103 of 2013 and respondent No.1 in First Appeal No.80 of 2012 and Mr. E. Afonso, learned Advocate for the Respondent No.2 in both the appeals.

2. The present appeals are filed being aggrieved by the judgment and award dated 18.02.2012 passed by the Motor Accident Claims Tribunal, Panaji, in Claim Petition No.7 of 2011.

3. The First Appeal No.80 of 2012 is filed by the claimant for enhancement of compensation and First Appeal No. 103 of 2013 is filed by the respondent No.1 in the claim Petition for setting aside the judgment as Insurance Company was discharged from the proceedings

prematurely and he was held liable to pay the compensation.

4. It is the case of the claimant before the Claims Tribunal, that he was 28 years old at the relevant time, in business, self employed and earning ₹15,000/- per month. On 18.12.2007, he was riding the Honda Activa scooter bearing registration No.GA-05-A-2334 and proceeding from Kundaim to Adcolina, Bhanastari. On reaching near Manaswada, Kundaim, at about 11.30 hrs., the respondent No.1 came driving the passenger bus bearing registration No.GA-02-T-4555 from behind and gave a violent dash to his scooter. The respondent No.1 was driving the bus at a very fast speed, in a rash and negligent manner and due to the impact which was sudden and forceful, he fell down on the side of the road and the front left tyre of the passenger bus went over his left leg and he suffered crushing injuries. It is also the case of the claimant that the respondent No.1 further

went and dashed against Hotel Novdurga and the house of one Zalmi. The accident had occurred due to the rashness and negligence of the respondent No.1 alone who had driven the bus in total disregard to the safety of the other users or the traffic on the road. He had undergone an operation due to the crushing injuries and his left leg had to be amputated below the knee. He had also suffered several bleeding injuries and abrasions on his face and body, as also his elbows and knee. He was in the Hospital and thereafter had suffered immense pain and agony. He was handicapped and disabled for the rest of his life due to the amputation of his left leg. He was not able to perform those activities which he used to perform prior to the accident and had become dependent on others for his day to day needs. His marriage prospects too were affected on account of these injuries. On all these counts, claimant claimed compensation to the tune of ₹20,50,000/-. The respondent No.1, as the driver cum owner, and the respondent No.2 being

Insurance Company are liable to pay the compensation.

5. After considering the pleadings, issues were framed and the learned Tribunal awarded amount of ₹10,12,500/- along with interest at the rate of 9% per annum.

6. Being aggrieved by the said Judgment and Award, appeals bearing First Appeal No.80 of 2012 came to be filed by the claimant for enhancement of compensation and 103 of 2013 is filed by respondent No.1 as he only held liable and the Insurance company was discharged on the application by the Insurance Company. A common paperbook for both the appeal is prepared.

7. The learned Counsel for the appellant Mr. Vallabh Pangam in First Appeal No.80 of 2012 submitted that while granting compensation the Claim's Tribunal has not considered evidence on record in its proper perspectives. The learned Tribunal erred in holding that the claimant is

entitled only to compensation of ₹13,50,000/- as against claim of ₹20,50,000/- and further erred in actually granting sum of only ₹10,12,500/- without any cogent and justifiable reason specifically when he answered issue Nos.1 and 2 in favour of the claimant i.e. about type of accident and grievous injury and amputation of leg. There is no basis for awarding compensation of ₹10,12,500/- specifically when he suffered 50% of permanent disability. It is further contended that the Presiding Officer erred in prematurely allowing the application of the respondent No.2 for dropping themselves as party to the said proceedings vide order dated 07/06/2011. The learned Tribunal failed to grant compensation for pain and suffering and also shortened expectation of life. The learned Tribunal also erred in holding notional income of ₹5,000/- only and also not awarding any amount towards future prospects.

8. As against this in First Appeal No.103 of 2012

learned Counsel for the appellant Mr. Abhay Nachinolkar submitted that the appellant (respondent No.1 before the Claim's Tribunal) and the respondent No.2 Insurance Company filed its written statement on 15/04/2011. It was the defence of the Insurance Company that they have not insured the vehicle involved in the accident on the date of the accident. It is a matter of record that the accident occurred on 18/12/2007 and the premium was paid on the same date and accordingly receipt was also issued. Policy is shown dated 19/12/2007. It is also a matter of record that the claim petition proceeded ex-parte against the appellant/respondent No.1 in claim. It is the contention of owner/driver of the vehicle that after service of Claim Petition the appellant approached the office of the respondent No.2 where the appellant was informed that the respondent No.2 will defend the interest of the appellant before the Claims Tribunal therefore he did not attend the matter. On receiving notice of First Appeal No.80 of 2012 on 10/08/2012 he

came to know about the Judgment and Award dated 18/02/2012. He also came to know that the respondent No.2 was discharged from the proceedings on 07/06/2011. This appeal by the respondent No.1 is filed mainly on the ground that the impugned order is bad in facts as well as in law. The Trial Court erred in holding that the respondent herein proved that the accident was due to rash and negligent driving of the present appellant. The learned Tribunal erred in holding ₹5,000/- per month notional income without there being any cogent evidence. The trial Court erred in holding that the claimant is owning a two wheeler specifically when it is not registered in his name but in the name of his brother. Application of multiplier of 18 is also wrong. It also erred in holding that the claimant suffered 50% of disability without there being any expert evidence. It also erred in granting ₹60,000/- towards loss of earning. The main ground of appeal is that the premium was paid on 18/12/2007 and deliberately policy was issued on

19/12/2007. When amount of premium is paid the policy has to take effect from that day and that too from 00.00hours unless specific time is mentioned therein.

9. Heard learned Counsels for the appellants in both the Appeals and also the learned Counsel for the Insurance Company Mr. E. Afonso. It is the contention of the Insurance Company that as they were discharged, there was no reason for them to participate in the proceedings. When the insurance policy was issued on 19/12/2007 and it is accepted that there is no liability on the part of Insurance Company of any payment in accident dated 18/12/2007. The learned Counsel Shri Afonso submitted that the said order of discharged was not challenged by other parties therefore it has attained finality.

10. As against this it is the contention of the Appellant in First Appeal No.103 of 2013 that they were not aware about passing of discharge order of Insurance

Company as they were proceeded ex-parte and they came to know only when they received notice in First Appeal No.80 of 2012. It is also contended that while challenging the appeal, other interim orders can also be challenged, if not challenged earlier. At any rate once the written statement was filed there was no reason to the Trial Court to discharge the Insurance Company specifically when the premium was paid on 18/12/2007. This fact only would have established by leading evidence. In such circumstances, the order passed by the learned Tribunal is patently erroneous and needs to be quashed and set aside. The learned Counsel drawn my attention to Section 105(1) of C.P.C. which reads as under:

"Other orders - (1) Save as otherwise expressly provided, no appeal shall lie from any order made by a Court in the exercise of its original or appellate jurisdiction: but, where a decree is appealed from, any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as a ground of

objection in the memorandum of appeal.”

11. All the parties vehemently argued in support of their respective contentions and also relied on various judgments. However, in my considered opinion the Claim's Tribunal is erred in discharging Insurance Company specifically when the written statement was filed by the Insurance Company alongwith reply to the application under Section 140 of M.V. Act on record on 15/04/2011. The application for dropping the respondent No.2 from the proceedings (Exhibit 15) also filed by the Insurance Company on 15/04/2011. It also appears that vide Exhibit 17 the claimant filed his reply to this application and opposed the same on the ground that no case is made out for dropping the respondent No.2 from the proceedings and also on the ground that the respondent No.2 is a proper and necessary party to the proceedings. The learned Tribunal on the basis of the Insurance Policy earlier issued on 17/05/2006 covering period upto 16/07/2007 and thereafter from 19/12/2007

to the midnight of 18/12/2008 held that the said period does not cover the date of accident. The learned Tribunal without considering the contention that the application is pre-matured and also not considered the fact that the written statement was on record allowed the application of discharge. In fact, the Insurance Company is a necessary party and it was very much relevant when the amount of premium is received and what would be the effect of receipt of payment towards policy. All these questions are required to be decided after parties will get opportunity of leading evidence.

12. After going through the award there is no reason whatsoever for reducing amount of ₹13,50,000/- to the tune of ₹10,12,500/-. The only reason stated is that the claimant will get the amount in lumpsum it has reduced to ₹10,12,500/- which is not at all justifiable. Addition on future prospects is also not discussed. In such circumstances, it would be proper and in the interest of

justice to remand the matter back by keeping all the contentions of all the parties left open to decide the matter afresh. It would also be necessary to set aside the order discharging the respondent No.1 (Exhibit 15) from the proceedings.

13. Accordingly, I proceed to pass the following:

O R D E R

1. The First Appeal Nos.80 of 2012 and 103 of 2013 are partly allowed.
2. The judgment and award passed in Claim Petition No.7/2011 dated 18/02/2012 is hereby set aside. The Claim's Tribunal is directed to restore the claim petition at his original number.
3. Order below Exhibit 15 dated 07/06/2011 is hereby quashed and set aside.
4. The matter is remanded back to the Claim's Tribunal for fresh hearing after granting due opportunity to all the parties.

5. All parties in both the appeals are hereby directed to remain present before the Claim's Tribunal, North Goa, Panaji on 04/01/2021 at 10.00a.m.
6. The appellant in First Appeal No.103 of 2013 is at liberty to file application for setting aside ex-parte order, if he so desire, before the Claim's Tribunal.
7. No order as to costs.
8. Both the appeals are disposed off accordingly.

M. S. JAWALKAR,J.