

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.70 OF 2014

WITH

FIRST APPEAL NO.81 OF 2014

FIRST APPEAL NO.70 OF 2014

Bajaj Allianz General Insurance Co. Ltd., 3C-D, Sesa Ghor, Patto Plaza, Panaji, Goa.

... Appellant

Versus

1. Shri Fotu Dhondu Sawant, alias Anil Dhindu Sawant son of Shri Dhondu Sawant, age 43 years old, resident of H.No.295, St. Jose Wada, Tivim, Bardez, Goa.

2. Shri Vishvesh Priolkar, son of Shri Vishnu Priolkar, major of age, resident of F-1, Pearl Apartments, Near Divine Hotel, Fatorda, Margao, Goa.

... Respondents

Mr. Amey Kakodkar, Advocate for the Appellant.

Mr. Shailesh Redkar, Advocate for Respondent No.1

Mr. V.G. Pai Duple, Advocate for Respondent No.2.

FIRST APPEAL NO.81 OF 2014

Shri Fotu Dhondu Sawant, alias Anil Dhondu Sawant, son of Shri Dhondu Sawant, age 38 years, resident of H.No.295, St. Jose Wada, Tivim, Bardez, Goa.

... Appellant.

Versus

1. Shri Vishvesh Priolkar, son of Shri Vishnu Priolkar, major of age, resident of F-1, Pearl Apartments, Near Divine Hotel,

Fatorda, Margao, Goa..

2. Bajaj Allianz General Insurance Co. Ltd.,
3C-D, Sesa Ghor,
Patto Plaza, Panaji, Goa.

..... Respondents.

Mr. Shailesh Redkar, Advocate for the Appellant.

Mr. V.G. Pai Duple, Advocate for Respondent No.1

Mr. Amey Kakodkar, Advocate for Respondent No.2.

CORAM: M. S. SONAK, J

DATED: 14th October 2021

ORAL JUDGEMENT

1. Heard Mr. A. Kakodkar for the appellant-Insurance Company in First Appeal No. 70/2014 and for respondent No.2 in First Appeal No.81/2014.
2. Heard Mr. S. Redkar for respondent No.1-Claimant in First Appeal No.70/2014 and for the appellant in First Appeal No.80/2014.
3. Heard Mr. V.G.P. Duple for respondent No.2 in F.A. No.70/2014 and for respondent No.1 in F.A. No.81/2014.
4. In both these appeals, the challenge is to the impugned judgment and award dated 7/5/2014 made by the Motor Accident Claims Tribunal, at Margao (Tribunal), awarding compensation of Rs.19,92,000/- to the claimant, together with interest at the rate of

9% per annum from the date of the claim till payment. The insurance company is aggrieved by the finding on negligence, as also the quantum of compensation which the company believes is excessive. The claimant is aggrieved by the quantum of compensation which he believes is neither just nor adequate. Hence, it is only appropriate that both the appeals are disposed of by a common judgment and order.

5. On the aspect of negligence, there is really no ground to interfere with the impugned award. The claimant has examined himself as AW.1 and deposed to the accident between the TATA Indica car and the Hero Honda Splendor motorcycle that he was riding. He has deposed to the speed at which the car was driven and how the car came on the wrong side, in an attempt to overtake the vehicle in front of him. This is backed by police documents like FIR, scene of the accident panchanama and the sketch.

6. The claimant also examined his wife Anjusha (AW.2), who was riding pillion along with her husband. Her evidence corroborates the version of the claimant and she has withstood the cross examination without any dent to her testimony. The claimant also examined Sitaram (AW.3) again, an eye witness to the accident.

7. The evidence of these witnesses has been analysed by the Tribunal applying the correct principles. The Tribunal has also evaluated the evidence of Vishvesh (RW.1) who stated that the

claimant was talking to the pillion rider and, therefore, the accident. The Tribunal has referred to the improvements made by this witness and gave cogent reasons why his evidence does not inspire confidence. Based on all this evidence, there is no case made out to interfere with the finding of negligence on the part of the driver of the car.

8. Mr. Kakodkar is, however, justified in objecting to the Tribunal determining the annual income of the claimant at ₹ 3,03,580/- based on tax returns filed for the first time after the date of the accident. The record indicates that the accident took place on 9.9.2010 and the income tax returns were filed only on 14/3/2011. The claimant, in his deposition, admitted that he is a civil contractor undertaking private works and yet, he had never filed income tax returns at any time before the accident. The claimant also stated that his earning are reflected in the nationalized bank account held by him. However, the pass-books or other evidence in support of such income or earnings, was not produced by the claimant.

9. In *V. Subbulakshmi and others vs. S. Lakshmi and another*¹ the Hon'ble Supreme Court disapproved the award in which the income tax returns filed after the date of the accident were excluded. Following this decision, the learned Single Judge of this Court in *Oriental Insurance Company Ltd., Lalitpur vs.*

1. (2008) 4 SCC 224

Ramilaben w/o. Jayantilal Patel and ors.² has held that the income tax returns filed after the death of the claimant in the accident, ought to be excluded from consideration.

10. The Tribunal, in this case, contrary to the aforesaid legal position, has based its determination of annual income entirely on the income tax returns filed after the date of the accident. The decision relied upon by the Tribunal deals with cases where income tax returns were filed before the accident and it is in this context that the Hon'ble Supreme Court held that such returns had to be taken into account for determining the income. Therefore, the finding that the income of the claimant was ₹ 3,03,580/-, warrants interference as based on no evidence or on evidence that ought to have been excluded from consideration.

11. Mr. Redkar submitted that Chartered Accountant was examined and there was no effective cross. This is not correct. The Chartered Accountant was cross examined and he simply replied that he cannot say anything to suggest that these returns had been filed only to support the case for compensation.

12. There is, however, evidence on record that the claimant was about 40 years old at the time of the accident and further, he was a civil contractor. In ***Kajal vs. Jaghdish Chand***³ decided by the Hon'ble Supreme Court on 5/2/2020, the income of a school going

2. 2017 (2) Mh.L.J. 822

3. Civil Appeal No.735 of 2020

child of 12 years was notionally taken at ₹ 4,846/- per month, based on the minimum wages payable to a skilled workman. To this amount, an addition of 40% was made towards future prospects, thereby determining the monthly income at ₹ 6,784.40.

13. In this case, the claimant was a civil contractor. There is evidence that he had purchased a truck by taking a bank loan. Having regard to these factors, the monthly income of the claimant can be safely determined at ₹ 10,000/- to ₹ 11,000/- per month. Having regard to the addition towards future prospects, this income can be determined at ₹ 15,000/- per month. The annual income can therefore be determined at ₹ 1,80,000/-.

14. There is no dispute that the multiplier to be applied in the present case is 15. There is also no dispute that the claimant's right leg had to be amputated in the injury sustained by him on account of the accident and the disability is certified as 60%. Based on this, the compensation amount comes to $\text{₹ } 1,80,000 \times 15 \times 60/100 = \text{₹ } 16,20,000/-$.

15. To the aforesaid amount, in addition of ₹ 27,000/- will have to be made towards the attending charges; ₹ 10,000/- towards transportation during treatment and ₹ 5,000/- towards medical treatment. There is evidence that for almost a period of one year from the accident, the claimant was taking treatment and, therefore, could not attend his works as a contractor. An amount of ₹

1,80,000/- will, therefore, have to be added. This takes the compensation amount to ₹ 18,42,000/-.

16. Mr. Redkar has relied upon *Subulaxmi vs. Managing director, Tamil Nadu State Transport Corporation and another*⁴, to submit that compensation of ₹ 1,50,000/- ought to have been granted towards pain and suffering, instead of ₹ 1,00,000/- awarded by the Tribunal. He submits that further compensation of ₹ 50,000/- is due towards future medical expenses, because presently, a prosthetic leg has been fixed, but the same will have to be replaced from time to time. He submitted that compensation of ₹ 1,50,000/- is also due towards loss of amenities because, the claimant for his future life will have to live with a prosthetic limb. He urges an addition of ₹ 4,50,000/- on these grounds.

17. According to me, an amount of ₹ 1,50,000/- is due towards pain and suffering and an additional amount of ₹ 1,00,000/- towards loss of amenities. An amount of ₹ 75,000/- can be paid towards future medical expenses. Thus, to the aforesaid amount of compensation determined, a further addition of ₹ 3,25,000/- can be made, taking the compensation figure to ₹ 21,67,000/-. This according to me, will be the just compensation payable in the present case, even after accepting the submission made by Mr. Kakodkar that there was an error on the part of the Tribunal in

4. (2012) 10 SCC 177

taking the claimant's annual income as ₹ 3,03,580/- based on the tax returns filed for the first time after the accident.

18. Both the appeals are disposed of by determining the just compensation at ₹ 21,67,000/- (Rupees twenty one lakhs, sixty thousand) instead of ₹ 19,92,000/-, determined by the Tribunal. The award of interest and other directions in the impugned judgment and award, are maintained. There shall be no order for costs.

19. The Insurance Company is directed to deposit the additional compensation in terms of this order within two months in the Registry of this Court. The respondent No.1-Claimant in First Appeal No. 70/2014 and the appellant in First Appeal No.81/2014 is allowed to withdraw the compensation already deposited, together with interest that may have accrued thereon and the compensation that may be hereafter deposited.

20. The Registry to facilitate such withdrawal, if possible, by transferring the amount to the Bank account of the claimant.

M. S. SONAK, J.