

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.11/2018

MR. DEVIDAS MAHADEV
GAUDE, son of late Mr.
Mahadev Sitaram Gaud, aged 33
years, bachelor, business, resident
of House No.1197/1, Apewal-
Priol, Ponda-Goa.

... APPELLANT

Versus

1. MR. RAHEEMUDDIN SHA,
son of Mr. Karamti Sha, aged 26
years, driver, resident of Village-
Parhatkhas, Taluka-Patti, Post
Office Amargarh, District-
Pratapgarh, Uttar-Pradesh.

2. MR. PRAKASH BHOSLE,
House No.113/1, near Railway
Bridge, New Vaddem, Vasco,
Vasco-da-Gama, Goa.

3. IFFCO-TOKIO GENERAL
INSURANCE CO. LTD.,
Campal Trade Centre, behind
Military Hospital, Panaji-Goa.

... RESPONDENTS

Mr. Milton Marshal, Advocate for the Appellant.
Mr. Clayton Fonseca, Advocate for the Respondent No.3.

CORAM: M. S. SONAK, J.

DATED: 22nd December 2022

JUDGMENT:

1. Heard Mr. Marshal for the appellant and Mr. Fonseca for respondent no.3.
2. The challenge in this appeal is to the Judgment and Award dated 16.10.2017 made by the Motor Accident Claims Tribunal, North Goa (Tribunal) in Claim Petition No.34/2016, awarding the claimant compensation of only ₹1,00,000/- without interest for damages sustained by him to his house/shop due to the offending truck ramming into the structure on 14.09.2015.
3. Mr. Marshal, the learned counsel for the claimant, submits that compensation of at least ₹3,00,000/- should have been awarded in this case. He offers that the contractor AW3 had only submitted an estimate of ₹1,74,110/-. Considering the damages to the roof, an amount of at least ₹50,000/- to ₹60,000/- should have been added to this estimate of ₹1,74,110/-. He submits that there was evidence about damage to goods to the extent of at least ₹1,00,000/-. He points out that the claimant has certain visual disabilities and due to the damage to his house/shop, the claimant suffered immensely. He therefore submits that the awarded amount be enhanced to ₹3,00,000/- with interest and costs.

4. Mr. Fonseca submits that AW3, the contractor engaged by the claimant, submitted an exaggerated estimate. There is no evidence of damage to any goods. He, therefore, submits that the amount of ₹1,00,000/- awarded by the Tribunal is excessive, and this appeal may be dismissed.

5. The rival contentions now fall for my determination.

6. The claimant, besides examining himself, also examined AW3, the contractor. The contractor, in his deposition, justified the estimate of ₹1,74,110/- that the claimant would require to repair the damages caused to his house/shop due to the accident. The Tribunal has assigned no good reason to reject this evidence and estimate of the contractor-AW3. Therefore, towards repairs of the house/shop, the Tribunal should have awarded ₹1,74,110/- to the claimant.

7. Though there is no evidence of the destruction of the goods, there is evidence that the claimant was operating a shop from his house. The trade license has also been produced on record. The Panchanama also refers to the shop in the house. Accordingly, it is reasonable to proceed because some goods/merchandise from the shop would have been destroyed. Further,

the claimant's business will also be affected for some time because of the accident and the consequent damages.

8. Considering the above aspects, it is only appropriate that a further compensation of approximately ₹25,000/- is awarded to the claimant. As a result, the total compensation payable to the claimant can be rounded up to ₹2,00,000/- considering the position of the evidence on record.

9. The claimant, ideally, should have been paid this amount within a reasonable period from the accident. However, since the same was not paid, the claimant would be entitled to interest on the said amount @ 7% p.a. considering that the accident occurred on 14.09.2015.

10. Accordingly, the impugned award is modified. The compensation amount is enhanced from ₹1,00,000/- to ₹2,00,000/-. This enhanced amount will carry interest @ 7% p.a. from filing the claim petition till effective payment. Besides, the claimant will be entitled to costs typically drawn in the award under the Motor Vehicles Act.

11. The respondents, including respondent no.3-insurance company, are directed to deposit the enhanced component with interest within six weeks from today after due intimation to the

learned counsel for the appellant. Upon deposit, the appellant can withdraw the said amount after furnishing identification and bank details. The Registry to ensure that the amount is directly deposited in the appellant's bank account.

12. The appeal is partly allowed with costs in the above terms.

M. S. SONAK, J.