

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
FIRST APPEAL NO.73 OF 2015
WITH
MISC. CIVIL APPLICATION NO.12 OF 2022

Roy Marcus Anthony De Souza,
son of late John Amiano de Souza, aged
45 years, service, bachelor, resident of
House No.375, Umbra, Salvador Do
Mundo, Betim, Bardez, Goa. Appellant.

Versus.

1. Luis Anthony Teles,
son of Domingos M.A. Teles, major in
age, Driver, resident of House No.334,
Bonsulowado, Penha De Franca,
Britona, Bardez, Goa.

2. Domingos M.A. Teles,
major in age, married, resident of
House No.334, Bonsulowado, Penha
De Franca, Britona, Bardez, Goa.

3. Bajaj Allianz General Insurance
Company Ltd.,
3C-D, "Sesa Ghor", 20 Patto Plaza,
Panaji, Goa. Respondents.

Mr. Milton Marshal, Advocate for the Appellant.

None for the Respondents.

CORAM : M. S. SONAK, J.

DATE : 8th July 2022

ORAL JUDGMENT: -

1. Heard Mr. Milton Marshal for the Appellant.
2. The Respondents, though served, are absent.
3. The Appellant-Claimant challenges the Judgment and Award dated 10th June 2015, made by the Motor Accident Claims Tribunal at Mapusa (Tribunal) in Claim Petition No.64/2011, awarding the Appellant compensation of ₹2,79,900/- with simple interest at the rate of 9 % from the date of the claim petition till final payment and costs.
4. According to the Appellant, the Tribunal should have awarded at least ₹9,76,666/- by just compensation.
5. In the present case, there is no dispute that the Appellant suffered injuries in an accident on 16th March 2010 as he was proceeding home from Malim-Betim towards Salvador-do-Mundo by his motorcycle. When he reached Britona, Respondent No.1, who was driving a Maruti Zen car, came from the opposite direction in a rash and negligent manner and dashed the Appellant's motorcycle. As a result, the Appellant was admitted to

the Goa Medical College Hospital on 16th March 2010 and discharged on 25th March 2010.

6. The Tribunal has analyzed the evidence on record and concluded that the accident occurred due to the rash and negligent driving by Respondent No.1. There is also evidence that Respondent No.1 was prosecuted for rash and negligent driving. However, this prosecution ultimately ended in an acquittal. The Tribunal had correctly held that such acquittal is quite irrelevant, considering that the standard of proof before the Tribunal was that of a preponderance of probabilities. The Tribunal has analyzed the evidence properly and answered the first issue concerning rash and negligence in favour of the Appellant/ Claimant.

7. The Tribunal has, however, disbelieved the Appellant's case that he was employed on a cruise liner, drawing a monthly salary of \$ 725. In addition, the Tribunal questioned the Appellant's agent's testimony and faulted the Appellant for not producing employment documents.

8. The Appellant had produced documents of employment like salary certificates. He had also produced his passport with the necessary stamps, which was indicative of his employment on a

cruise liner. However, the Tribunal chose not to accept these documents. The Tribunal, ultimately, held that the Appellant was drawing a notional income of ₹3,000/- per month and, on that basis, awarded the Appellant compensation of ₹2,79,000/-.

9. The Tribunal, however, accepted that the Appellant had incurred a 20 % permanent disability because of several injuries he sustained in the accident. Even otherwise, there is sufficient evidence on record about the various injuries suffered by the Appellant and the consequent 20 % permanent disability he suffered.

10. In addition to the above evidence produced on record by the Appellant before the Tribunal, the Appellant has now taken out an application under Order 41, Rule 27 C.P.C. seeking to produce the following documentary evidence :

- (a) Seaman's Employment Contract, dated 15-04-2009.
- (b) Seaman's Record Book, dated 12-09-2003,
- (c) Manning Agreement from 9th March 2006 to 8th March 2009, and
- (d) Recruitment & Placement Service Licence, dated 3rd January 2008, issued by Ministry of Shipping, Road Transport & Highways, Government of India.

11. Mr. Marshal had explained that these documents were unavailable with the Appellant when the matter was proceeding before the Tribunal. He has explained that the Appellant could procure these documents through the efforts of his crew agent. He submits that such records are not only relevant and essential but necessary for deciding this matter, assuming without admitting that the documents produced by the Appellant before the Tribunal were insufficient.

12. In my judgment, the Tribunal was not justified in disbelieving the Appellant's claim that he was working on a cruise liner in 2009 or even before 2009. The Appellant had produced a salary certificate on record. The Appellant had also produced his passport, which corroborated the Appellant's oral evidence. Even the evidence of the crew agent should not have been rejected or styled as suspicious merely because the witness may have fumbled on some occasions.

13. Be that as it may, a case has been made to allow the Application under Order 41, Rule 27 C.P.C., particularly because the documents now produced are consistent with what the Appellant had deposed before the Tribunal. These documents are compatible with the salary certificate produced by the Appellant

before the Tribunal, claiming that he was earning a monthly salary of \$725. The entries in the passport also corroborate the documents which are now sought to be produced. These documents are necessary for properly deciding the matter.

14. Based on the documents produced before the Tribunal and the documents now accepted as evidence, it is apparent that the Appellant was employed as a Seaman on a cruise liner and, in terms of his contract dated 15th April 2009, was drawing a monthly salary of \$725/-. However, the evidence on record also bears out that the Appellant used to be employed for only 6 months in a year. Accordingly, this position is accepted by Mr. Marshal, learned Counsel for the Appellant.

15. There is no dispute about the Appellant's age being 42 years at the time of the accident. Consequently, the multiplier applicable would be 14. Mr. Marshal also conceded that the addition towards future prospects would be only 25% and not 30% as taken by the Tribunal.

16. Based on the Appellant's income of \$725/- per month, Mr. Marshal has submitted a calculation and claimed compensation of ₹9,76,666/-. For this purpose, the dollar

exchange rate is taken at ₹49.85166 INR. The calculation offered by Mr. Marshal reads as follows :

(a) ₹36,141 + 9035 [25% future prospects]	= ₹ 45,176
(b) ₹45,176 X 6 X 14	= ₹ 37,94,784
(c) ₹ 37,94,784 X 20% [disability] ÷100	= ₹ 7,58,956
(d) Pain & sufferings	= ₹ 2,00,000
(e) Medical bills	= ₹ 8,710
(f) Transport bills	= ₹ 9,000
Total	₹ 9,76,666

17. Although the principles adopted in the above calculation deserve to be accepted, the analysis may not be accurate. This is because the average dollar exchange rate in 2010 was ₹45.7064 INR. This is evident from the details available on the internet. Therefore, based on this exchange rate, the Appellant would be entitled to a compensation of ₹6,54,675/- towards disability and future earnings.

18. Towards pain and suffering, the Appellant has been awarded ₹1,00,000/-, which amount appears to be fair and just considering the evidence on record. In addition, the Appellant will also be entitled to reimbursement of medical bills of ₹8,710/-

and transport bills of ₹9,000/-. Thus, the total compensation due and payable to the Appellant can be assessed at ₹7,72,385/-.

19. This Appeal is, therefore, allowed, and the compensation amount is enhanced from ₹2,79,900/- to ₹7,72,385/-. However, the award of interest is maintained.

20. The Respondents are jointly and severally liable to pay the Appellant the above-enhanced amount. Accordingly, the Respondents, including Respondent No.3, must deposit the enhanced amount in this Court within two months from an authenticated copy of this Judgment and Order.

21. Mr. Marshal states that he will supply authenticated copies of this Judgment and Order to the Respondents, including Respondent No.3, and file a necessary affidavit of service along with an endorsement of receipt in this Court.

22. Once the amount is deposited, the Appellant is permitted to withdraw the same after furnishing identification papers and bank details. The Registry to transfer the deposited amount into the Appellant's bank account directly.

23. Mr. Marshal states that the amount awarded by the Tribunal is deposited before the Tribunal. Accordingly, the Tribunal should now permit the Appellant to withdraw the said

amount and the interest that shall have accrued on the said amount.

24. The Appeal and the Misc. Civil Application stand disposed of. No order for costs.

M. S. SONAK, J.

SANTOSH S MHAMAL  Digitally signed by SANTOSH S MHAMAL
Date: 2022.07.11 10:48:23 +05'30'