

Santosh

**IN THE HIGH COURT OF BOMBAY AT GOA
FIRST APPEAL NO. 1 OF 2022**

Maruti alias Maruthi Yellappa Kattimani
son of Yellappa Kattimani aged 53 years,
married, mason permanent resident of
Channapattana Parasapur, Magadi Gadag
Karnataka 582117 and temporary
resident of House No. 135, Kurpem-
Paroda, Salcete Goa

.... Appellant.

Versus

1. Adrino Agnelo Galdino,
Son of late Custodio Galdino,
aged 28 years, Driver of vehicle bearing
registration number GA01-S-2276
resident of House No. 143, Salemadem,
Cuncolim, Salcete Goa

2. Dattaram Shrikrishna Mayekar,
Son of Shrikrishna Mayekar, major in age
owner of vehicle bearing registration
Number GA01-S-2276,
resident of House No.2299/B, Comba
Paricotto, Cuncolim, Salcete Goa.

3. Latif Mulha,
major in age, owner and insured of
vehicle bearing registration Number
GA01-S-2276 resident of House No.23,
Housing Board Colony,

Gogol, Margao Goa

4. National Insurance Company Ltd
Insurer of vehicle bearing registration
Number GA01-S-2276, 101-107, A
Wing, 1st floor Reliance Trends Center,
Next to Grace Church,
V.V. Road, Margao Goa Respondents.

Mr. Shambhu S. Kakodkar, Advocate for the Appellant.

**Mr. L. Raghunandan, Advocate under Legal Aid Scheme
for Respondent No.2.**

**Mr. Amey Kakodkar with Mr. Akshay U. Naik,
Advocates for Respondent No.4.**

CORAM : M. S. SONAK, J.

DATE : 23rd December 2022

ORAL JUDGMENT: -

1. Heard Mr. S.S. Kakodkar for the Appellant, Mr. L. Raghunandan under Legal Aid Scheme for Respondent No.2, and Mr. Amey Kakodkar for Respondent No.4-Insurance Company.

2. Respondent No.3 has refused service and, therefore, he is deemed to be served. So also Respondent No.1 is duly served.

3. The Appellant-Claimant challenges the Judgment and Award dated 30/11/2021 made by the Motor Accident Claims Tribunal, South Goa, Margao (Tribunal) in Claim Petition No. 113/2017, awarding him compensation of only ₹1,81,632/- for the injuries and permanent disablement that he had to suffer in a vehicular accident on 5/5/2017.

4. The Tribunal has taken the Claimant's notional income at ₹6,000/- per month. The Claimant had deposed that he was a skilled mason engaged in designing. This evidence was supported by Sahadev Kadkol (CW.2) who deposed that he was also a skilled mason like the Claimant earning about ₹700-850/- per day. This witness deposed that he knows the Claimant since childhood and after disablement suffered by the Claimant how the Claimant is no longer working. This witness admitted that masons do not get work every day.

5. Sameer Pandurang Dessai (CW.3), a plumber also deposed in this matter. He stated that he knows the Claimant since the past 10 years. He stated that the Claimant was indeed a skilled mason doing designing work. He deposed that skilled masons like the Claimant earn about ₹850/- per day.

6. The evidence of the Claimant and his two witnesses was not dented during the cross-examination at least on the aspect of the Claimant being a mason or a skilled mason. The evidence also bears out that the Claimant, as a mason, would not get work every day. Mr. Kakodkar had produced before the Tribunal a notification issued by the appropriate Government concerning the minimum wages payable to a mason. The rate reflected in this notification was ₹465/- per day.

7. The Tribunal was not justified in refusing to rely upon this notification on the specious plea that the notification referred to employment in the construction or maintenance of roads or in building operators, stone breaking and stone crushing. The notification, according to the Tribunal as well concerned the masons doing work of plaster of paris walls, bricklayer, ceiling, etc. The Claimant had claimed to be a mason doing design work. Therefore, he could not have been excluded from the application of such notification.

8. Based on the evidence on record, it would be reasonable to assume that the Claimant would earn at least ₹500/- per day. At the same time, the evidence on record suggests that the Claimant was not getting work each day. Therefore, upon cumulative consideration of the evidence on record, including the

notification issued under the Minimum Wages Act, the Claimant's monthly income can be taken at ₹10,000/-.

9. Considering the law in *National Insurance Co. Ltd. vs. Pranay Sethi and ors.*, (2017) 16 SCC 680, an addition of 10% is due towards future prospects. Thus, the monthly income of the Claimant can be taken at ₹11,000/-. The multiplier applicable in this case would be 11 since there is no dispute that the Claimant was 53 years old at the time of the accident. Thus, had the Claimant not survived in the accident, the compensation towards dependency would come to ₹11,000x12x11=14,52,000/-.

10. According to the medical evidence, the Claimant had suffered a permanent disability to the extent of 14%. However, considering the law in *Raj Kumar vs. Ajay Kumar* (2011) 1 SCC 343 what is relevant in such matters is not the mere medical disability percentage, but the functional disability percentage. The Tribunal was, therefore, not justified in going by the medical disability percentage of 14%.

11. There is evidence that the Claimant's work as a mason was affected due to the disability suffered by him. Even Dr. Gauresh Vargaonkar (CW.5) who deposed in this matter, stated that the Claimant will not be able to do any overheard work and as a

mason, he will have restrictions in his work. The doctor withstood the cross-examination. Thus, considering the evidence on record, the functional disability, in this case, will have to be assessed as 50% and not a mere 14% based upon the disability certificate. Thus, towards permanent disability, including future prospects, the compensation will have to be assessed at ₹7,26,000/-, being 50% of the above amount of ₹14,52,000/-.

12. Since the Claimant's income is taken at ₹10,000/- per month and there is evidence about the Claimant's inability to work for about three months due to the accident, the Claimant would be entitled to compensation of ₹30,000/- on this account.

13. Compensation towards treatment, hospitalization, medicines, food, and miscellaneous expenditure awarded by the Tribunal comes to ₹11,664/-. This is inadequate considering that the Claimant was admitted for almost 18 days in the hospital. This compensation is enhanced to ₹25,000/-. Compensation of ₹11,088/- towards future prospects awarded by the Tribunal is deleted since the same is already taken into account for determining the compensation due to permanent disability. However, the compensation towards attendant charges, special diet, pain, and suffering is maintained. Further, the compensation of ₹4,000/- can be paid towards transport,

conveyance, etc. Accordingly, the total compensation comes to ₹8,15,000/- which would represent the just compensation, in the facts and circumstances of the present case.

14. The interest at the rate of 9% awarded by the Tribunal is excessive considering that the accident took place on 5/5/2017. Interest at the rate of 7% per annum would be appropriate.

15. This Appeal is, therefore, partly allowed. The compensation amount is enhanced from ₹1,81,632/- to ₹8,15,000/-. The rate of interest is, however, quantified at 7% per annum, instead of 9% per annum. The impugned award is modified accordingly.

16. Mr. Kakodkar for the Claimant states that the compensation in terms of the impugned award has already been paid to the Claimant. Therefore, the Respondents, including in particular Respondent No.4, are directed to deposit the enhanced component of the modified compensation and interest, within eight weeks from today in this Court. Due intimation should be given to the learned Counsel for the Claimant of such deposit. Upon deposit, the Appellant-Claimant will be entitled to withdraw the deposited amount after furnishing identification

and bank details. Registry to ensure that the amount is directly transferred in the Claimant's bank account.

17. The Appeal is disposed of in the aforesaid terms. There shall be no order for costs.

M. S. SONAK, J.

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