

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.18 OF 2021

1 Mr. Narsinvrao S. Chawan @ Swapnil,
Son of Shyamrao Chawan,
Age 19 years, student, Indian National,
r/o Flat No.S1, 2nd Floor,
Near Microwave Station,
Monte-Hill, Margao Goa.

2 Mrs. Ranjana Chawan
wife of Shyamrao Chawan,
aged 48 years,
married, Indian National,
r/o Flat No.S1, 2nd Floor,
Near Microwave Station,
Monte-Hill, Margao Goa.

... Appellants

Versus

Mr. Janu Babuso Naik,
s/o Mr. Babuso Naik,
age 43 years, Service,
r/o H.No.226, Near Mahalaxmi Temple,
Bandora, Ponda Goa.

... Respondent

Mr. J. A. Lobo, Advocate for the Appellants.
Mr. Vaman Kurtikar, Advocate for the Respondent.

CORAM: M. S. SONAK, J.

DATED : 20th OCTOBER 2022

ORAL JUDGMENT

1. Heard the learned counsel for the parties.
2. This appeal is directed against the judgment and award dated 30.10.2019 in Claim Petition No.86/2014 made by the Motor Accident Claims Tribunal, North Goa, Ponda Goa (Tribunal), awarding the Respondent/Claimant the compensation of ₹3,27,000/- with interest at the rate of 6% per annum for the injuries and consequent 8% disablement due to his involvement in a vehicular accident on 22.06.2013.
3. Mr Lobo, at the outset, submitted that denial of opportunity to the Appellants to argue the matter finally was not proper. He submitted that on most occasions, the adjournments were applied for by the Respondent, which were granted. Therefore, the Appellants should have been given the additional opportunity to argue the matter orally after remand.
4. Mr Lobo, learned counsel for the Appellants, submits that there is no evidence to sustain the finding of rashness and negligence on the Appellants' part. He submits that there was Nil panchanama drawn by the Investigating Agencies, meaning that they could not lay any blame on the Appellant rider. He submits that the Appellant rider has been honourably acquitted in the prosecution that was eventually launched. He submits that from the sketch (accident spot panchanama), it is apparent that the Appellant rider was riding his Pulsar Motor Cycle on

the correct side of the road. The Appellant rider was on the highway and, therefore, had the right of way. The Claimant came to the main road from the side road; therefore, due care expected from the Claimant was much greater. Based on all these factors, Mr Lobo submitted that there was no rashness and negligence on the part of the Appellant rider. Instead, the accident was due to rashness and negligence on the Claimant's part.

5. Without prejudice, Mr Lobo submitted that the compensation awarded is a bonanza. He submits that in case of a claim for injuries due to personal disablement, there is no question of making any addition towards future prospects. Therefore, the addition of 40% towards future prospects was incorrect. He relies on *Shobha Raikar Vs Anil Shinde*, in First Appeal No. 39 of 2015, decided on 22.04.2022 in support of this proposition.

6. Mr Lobo submits that even otherwise, the Claimant was in Government service, and there is no evidence of his losing any salary even during the period when he received treatment. In such circumstances, there was no warrant to make any addition towards future prospects. Mr Lobo, however, stated that the Appellant was not disputing the medical bills, taxi bills, or even the award towards pain and suffering.

7. Based on the above submissions, Mr Lobo urged that this appeal be allowed, or in any case, the compensation amount be reduced.

8. Mr Kurtikar, learned counsel for the Claimant, defended the impugned award on the finding of rashness and negligence. However, he submitted that no sufficient award was made towards pain and suffering and loss of amenities of life. Accordingly, he submitted that the compensation of an additional amount of ₹75,000/- is due on this count.

9. The rival contentions now fall for determination.

10. To consider the first point raised by Mr Lobo, reference will have to be made to the Roznama before the Tribunal. Although it is true that on 11.07.2019, 25.07.2019, 21.08.2019, and 27.09.2019, the lawyer for Respondent (Claimant) was not present, it is not as if on all these dates, the matter was adjourned only for this reason. For example, the case was adjourned to 27.09.2019 because the Presiding Judge had gone for training in Uttan. Besides, on 25.07.2019, none of the parties or their Advocates were present; therefore, the Tribunal adjourned the matter. On 21.08.2019 though the Advocate for the Claimant was absent, the opportunity was granted to Respondent No.2, i.e. the Appellant herein, to argue the matter. However, the Advocate for the Appellant prayed for time on the ground that the Advocate who was to argue the case was sick and unable to attend the Court. Therefore, the Court granted an additional opportunity for final arguments.

11. Significantly on 17.10.2019, Advocate Ms J. Fernandes was present for the Appellant. Accordingly, the final arguments on behalf

of the Claimant were heard on the said date. There is no record of Ms J. Fernandes on behalf of the Appellant seeking any adjournment. Still, the Tribunal granted the Appellant liberty to file written arguments before the next hearing date with a copy to the other side. Accordingly, the matter was adjourned to 30.10.2019.

12. Considering the above circumstances, there was no denial of adequate opportunity to the Appellant. The decision in the case of *Antonio Jose da Silva Vs M/s. Horizon Realtors* in Second Appeal No.149 of 2013, decided on 04.07.2014, was rendered in facts that are not comparable to the present case's facts. Therefore, the first contention raised by Mr Lobo will have to be rejected.

13. On the aspect of rashness and negligence, there is a material that the first Appellant was riding a Pulsar motorcycle when the accident occurred. There is also evidence, or rather it was not disputed by Mr Lobo, that the first Appellant was about 17 years old and had a learner's licence. This position was admitted by the first Appellant in his statement under Section 313 of the Criminal Procedure Code when he was prosecuted for the offence of rash and negligent riding.

14. Mr Lobo did submit that there was a pillion rider who had a valid driving licence. However, neither in the written statement nor in his evidence the Appellant No.1 ever spoke about any pillion rider having a valid licence. In the written statement, the Appellant chose to deny practically everything that the Claimant pleaded. The Appellant

was not candid even in admitting Appellant No.1's involvement in the accident. Almost everything was denied.

15. There were no specific pleadings about a learner's licence or a pillion rider having any valid licence. Appellant No.1 stepped into the witness box to depose but deposed nothing whatsoever about the genesis of the accident. He only produced the certified copy of the judgment and order dated 11.05.2016, by which he was acquitted of the offence punishable under Sections 279 and 338 of the Indian Penal Code and Section 3 of the Motor Vehicles Act. In cross-examination, Appellant No.1 admitted that he had not filed any FIR/complaint against the Claimant even though it was the first Appellant's case that the accident occurred due to rashness on the Claimant's part. The so-called pillion rider was also not examined by the Appellants.

16. The record also bears out that the Investigating Authorities, after initially filing Nil panchanama, chose to file a charge sheet against the first Appellant and prosecute him. The fact that the first Appellant was ultimately acquitted in the criminal trial is not of much significance because the standard of proof in a criminal trial and before the Tribunal adjudicating an accident claim is quite different. However, the circumstance that neutral authorities, like the police, chose to prosecute the first Appellant is significant. Furthermore, the circumstance that the first Appellant chose not to file any FIR/complaint against the Claimant for alleged rash and negligent

riding is also relevant. Finally, the circumstance that the first Appellant did not depose anything about the genesis of the accident or examine the alleged pillion rider is also significant.

17. The Tribunal has relied upon the Claimant's evidence and another eyewitness to the accident. All this material is sufficient to sustain the finding of rashness and negligence by the standard of preponderance of probability. Therefore, even the second point will have to be answered against the Appellants.

18. On the third point about an addition towards future prospects, the ruling in *Shobha Raikar* (supra) nowhere lays down that such an addition is impermissible in a claim arising out of permanent disablement sustained by the Claimant in a vehicular accident. Instead, a reference can be usefully made to *Pappu Deo Yadav Vs Naresh Kumar and others*¹, in which the Hon'ble Supreme Court has held that in a case of permanent disablement incurred as a result of a motor accident, the Claimant can seek, apart from compensation for future loss of income, amounts for future prospects too. The Hon'ble Supreme Court relied upon several earlier precedents in which it was held that future prospects must be considered even in such a case. Therefore, even the third point raised by Mr Lobo will have to be decided against the Appellants.

19. Mr Kurtikar's contention about additional compensation towards pain and suffering or towards loss of amenities of life cannot

¹ 2020 ALL SCR 1760

be accepted in the facts and circumstances of the present case. The Tribunal has already made an award of ₹25,000/- towards pain and suffering, which appears to be adequate in the facts and circumstances. There is no evidence justifying the award of further compensation under other heads. As it is, towards the permanent disability, the Tribunal has awarded ₹2,79,377/-. All this represents just compensation based on the evidence on record.

20. The accident, in this case, occurred on 22.06.2013. Therefore, the interest at the rate of at least 7% per annum should have been awarded by the Tribunal and not merely 6% per annum.

21. Accordingly, this appeal is dismissed, but the interest rate is enhanced from 6% to 7% per annum.

22. Mr Lobo submitted that the awarded amount is already deposited in this Court. However, on account of the increase in the interest rate, if any, the Appellants must deposit a further amount. The Appellants will do so within six weeks after giving due intimation to the learned counsel for the Claimant. The Claimant will be entitled to withdraw the deposited amount together with interest which shall accrue thereupon. After the enhanced compensation is deposited, the Claimant shall also be entitled to withdraw the same. The Claimant must furnish the identification documents and bank details so the registry can directly transfer the amount into the Claimant's account.

23. The appeal is disposed of in the above terms. Accordingly, there shall be no order for costs.

24. The Civil Application No.32 of 2021 does not survive with the disposal of the appeal, and the same is disposed of accordingly.

M. S. SONAK, J.

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