

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA
FIRST APPEAL NO.85 OF 2012

Shri Santosh J. Borkar
son of Jagannath Borkar
Major, married, service
r/o Kulupwadi Borivali (East)
Mumbai, Maharashtra

... Appellant

Versus

1. Shri Mallinath Son of Dundappa Hunshyal
major, aged about 22 years,
driver of vehicle No.GA-06-A- 3491
r/o H.No.691, Zuari nagar Sancoale,
Marmugoa Goa.
2. Shri Siddnna Dudappa Khed
major of age, owner of vehicle
No.GA-06-A-3491.
r/o H.No.691, Zuari nagar, Sancoale,
Marmugoa Goa.
3. The National Insurance Co. Ltd.,
IInd Floor, Marchon building
Varde Vallaulikar Road
Opp. Lohiya Maidhan
Margao Goa.

...Respondents

AND
FIRST APPEAL NO.87 OF 2012

Shri Ramesh S. Kanekar
son of Sitaram B. Kanekar
major, aged 67 years, married, businessman,
r/o Lekhraj Villa,
Opposite Tiger Apts.,
Yashwant Nagar
Ponda Goa.

...Appellant

Versus

1. Shri Mallinath Son of Dundappa Hunshyal
major, aged about 22 years,
driver of vehicle No.GA-06-A- 3491
r/o H.No.691, Zuari nagar Sancoale,
Marmugoa Goa.

2. Shri Siddnna Dudappa Khed
major of age, owner of vehicle
No.GA-06-A-3491.
r/o H.No.691, Zuari nagar, Sancoale,
Marmugoa Goa.

3. The National Insurance Co. Ltd.,
IInd Floor, Marchon building
Varde Vallaulikar Road
Opp. Lohiya Maidhan
Margao Goa.

...Respondents

Mr. Rohan Desai, Advocate for the appellants.

Mr. E. Afonso, Advocate for respondent No.3-insurance company.

CORAM:

M. S. SONAK, J

Reserved on :

18th January 2022

Pronounced on:

20th January 2022

JUDGMENT. :

1. Heard Mr. Rohan Desai, learned counsel for the appellants,
and Mr. E. Afonso learned counsel for the insurance company in
both these appeals.

2. The learned counsel for the parties submit that both these
appeals can be disposed of by a common judgment and order as

even otherwise both these appeals had been clubbed together. They point out that both these appeals arise out of claims from the accident which took place on 17.08.2007 at Toll Naka of Borim. In this accident both the appellants sustained injuries giving rise to their respective claim petitions.

3. In First Appeal No.85 of 2012, the Motor Accident Claims Tribunal has made the judgment and award dated 21.10.2011 disposing of the Claim Petition No.153 of 2008 by awarding the claimant the compensation of Rs.1,93,446/- along with interest at the rate of 8% per annum from the date of filing of the claim petition till the final payment. This is as against the claim of Rs.17,47,559/-. Hence, First Appeal No.85 of 2012.

4. In First Appeal No.87 of 2012, the tribunal vide impugned judgment and order dated 21.10.2011 disposed of Claim Petition No.152 of 2008 awarding compensation of Rs.1,78,018/- along with interest at the rate of 8% per annum from the date of filing of the petition till the final payment. This was as against the claim for Rs.14,19,000/-. Hence, First Appeal No.87 of 2012.

5. Mr. R. Desai, learned counsel for the appellants submits that the compensation amount awarded by the tribunal in both the impugned judgments and awards does not represent just

compensation. He pointed out that there was no proper appreciation of the evidence on record and the tribunal also failed to apply the correct principle when it came to the determination of compensation. He, therefore, submits that both the appeals be allowed.

6. Mr. Afonso defended the impugned awards based on the reasoning reflected therein. He submitted that there was no serious loss of income and the compensation has been arrived at by adverting to the correct principles as applicable. He, therefore, submitted that these appeals be dismissed.

7. The rival contentions now fall for my determination.

8. In First Appeal No.85 of 2012, there is evidence that the appellant (claimant) sustained serious injuries in the accident and was required to be treated at Goa Medical College at Bambolim and even in Bombay hospital and Medical Research Centre at Mumbai. From the evidence of appellant (AW1), it is clear that on account of the injuries sustained by him in the accident he was diagnosed with left optic compression due to zygoma and maxilla surgery of endonasal optic nerve decompression and craniofacial fixation of type II Lefort. There is evidence that the appellant was admitted to Aditya Jyot Eye Hospital Pvt. Ltd., Mumbai on

18.09.2007 where he underwent Vit PFCL, FGE, SOI, EL, Scleral tear repair, Gyo under guarded visual progress in the left eye and then again admitted to the same hospital on 18.12.2007 and operated for orbit floor repair with medpore implantation in the left eye and then again admitted to Bombay hospital and Medical Research Centre, Mumbai on 10.03.2008 where he underwent Endoscopic surgery for lacrimal sac abscess.

9. AW1 has also produced a disability certificate issued to him by Dr. Pradeep Naik (AW5) in which it is stated that the appellant had a permanent visual disability to the extent of 30% to his left eye.

10. The appellant, AW1 also produced a disability certificate issued by Dr. H. C. Goes (AW6). This doctor (AW6) has deposed that the appellant was found to have 100% loss of sense of smell and this loss was permanent.

11. According to me, the aforesaid evidence clinchingly establishes the nature of injuries and disability suffered by the appellant on account of the accident.

12. There is evidence about income that the appellant was drawing but at the same time, the evidence indicates that on

account of injuries and disability suffered by the appellant there was no serious reduction in the income during the period for which he could not attend his duties. The tribunal to that extent may have been justified in not making an award for loss of income.

13. The tribunal has accepted that the claimant suffered permanent visual disability to the left eye to the extent of 30%. Though the tribunal has held that this disability will not affect the work of the appellant, the tribunal has accepted that on account of this disability, the appellant will be rendered unfit to drive his vehicle. Besides, there is evidence that suggests that this visual disability will affect the work of the appellant, particularly when it comes to reading or working on the computer. The tribunal was therefore not justified in awarding compensation of only Rs.50,000/- on account of this disability to the left eye. In my judgment, the tribunal should have awarded compensation of at least Rs.2,00,000/- under this head.

14. Similarly, towards 100% loss of sense of smell, the tribunal erred in awarding compensation of only Rs.30,000/-. In my judgment, the tribunal should have awarded compensation of at least Rs.75,000/-. The tribunal has accepted that such a disability

is a vital disability that would affect the appellant in his day-to-day life and would cause him hardship and discomfort.

15. The tribunal, in this case, has awarded compensation of only Rs.27,652/- towards traveling expenses from Goa to Bombay. This is as against the claim of Rs.40,152/- for which the bills have been produced. The bills indeed refer to the tickets of not only the appellant but some other persons. Therefore, the tribunal may have been justified in restricting the claim towards tickets of Rs.27,652/-. However, it must be remembered that traveling to Bombay involves other incidental expenses both in the journey as well as in Bombay itself. There are expenses towards taxi charges etc., for which bills are always not available. There is evidence about the appellant traveling to Bombay for medical treatment. Having regard to all this evidence, the tribunal should have awarded Rs.50,000/- towards travel and incidental expenses.

16. The tribunal in this case has quite correctly awarded compensation of Rs.70,793.96 towards medicines and hospital expenses. In making this award, the tribunal has taken into account the reimbursement received by the appellant.

17. The tribunal in this case has awarded only Rs.20,000/- towards pain and suffering and loss of amenities in life and Rs.20,000/- towards other miscellaneous expenses. This amount is inadequate. Having regard to the injuries suffered by the appellant the operation to which he has to undergo and the disability with which he has to live throughout his life the compensation of at least Rs.2,00,000/- was due to the pain and sufferings, loss of amenities in life and other miscellaneous expenses.

18. Thus, the total compensation, in this case, would come to Rs.5,95,793.96. This would represent just compensation to the appellant in First Appeal No.85 of 2012.

19. In First Appeal No.87 of 2012, the appellant was 66 years of old at the time of the accident and his monthly income was Rs.26,000/-. There is evidence that the appellant sustained injuries on account of the accident and had to be admitted to the GMC, hospital at Bambolim. The appellant also had to take further treatment at Bombay hospital and Medical Research Centre in Mumbai.

20. The appellant has produced a permanent disability certificate from Goa Dental College and a disability certificate

from GMC. The percentage of disability in terms of the certificate issued by the Goa Dental College is 7.5% and visual disability incurred by the appellant is 20%. There is evidence on all these aspects and the same has been accepted by the tribunal.

21. There is evidence on record that on account of injuries the appellant is not in a position to drive the vehicle effectively. The evidence on record suggests that the injuries would affect the work which the appellant was undertaking at the time of the accident.

22. The tribunal on account of disfigurement of the appellant due to the injuries sustained by him as certified by the doctor of Goa Dental College has awarded the appellant compensation of only Rs.40,000/-. This is after accepting the evidence on record that the appellant, due to this disability was suffering from facial asymmetry and that such disfigurement would cause mental agony and would lose confidence. In my judgment, the tribunal should have awarded compensation of at least Rs.1,00,000/- towards this disability to which the appellant will have to live throughout his life.

23. The tribunal has awarded compensation of only Rs.45,000/- towards visual disability of 20% suffered by the

appellant. Again, this is quite inadequate and in my judgment, even this compensation is required to be enhanced to Rs.1,00,000/-. Admittedly, the disability is quite serious and as a result of this disability, the appellant will not be in a position to drive the vehicle effectively and undertake the work which he was undertaking at the time of the accident.

24. The tribunal has awarded an amount of Rs.28,017.9 towards the medical bills after taking into account the reimbursement received by the appellant. This is as against the claim of Rs.3,00,000/- towards medical expenses. According to me, the medical bills have been produced on record and the appellant has also candidly disclosed reimbursement received by him. The appellant has also deposed that it was always possible to have all the bills having regard to the medical expenses incurred both at Goa, Mumbai, and Chennai. There is evidence about the appellant receiving treatment at all these places. Having regard to all these aspects the compensation of Rs.50,000/- is due towards medical expenses even after taking into account the reimbursement received by the appellant.

25. Towards transportation, the tribunal has awarded Rs.25,000/- and another Rs.20,000/- towards miscellaneous expenses. In this case, there is evidence that the appellant had to

travel from Goa to Bombay and thereafter Goa to Chennai for his treatment. Certain air tickets have been produced and the learned counsel for the appellant is right in contending that it is not possible to produce bills towards taxi and other miscellaneous expenses which are inherited during such travel. According to me, towards travel and miscellaneous expenses, the tribunal should have awarded at least Rs.75,000/- to the appellant.

26. Towards loss of income, the tribunal has made no award in favor of the appellant. Though from the income tax returns, there is indeed nothing to indicate the extent of the loss, according to me, the compensation of at least Rs.50,000/- should have been paid to the appellant. Admittedly, due to the accident, the appellant had to take treatment at Goa, Bombay, and Chennai. Due to the accident, the appellant suffered injuries leading to disfigurement and also visual disability. All this will certainly affect his work of operating Ice Cream Parlour. Therefore, the compensation of Rs.50,000/- is due towards pain and suffering and towards loss of amenities, the compensation of at least Rs.75,000/- should have been awarded by the tribunal.

27. This means that the total compensation of Rs.4,50,000/- should have been awarded by the tribunal to the appellant instead

of only Rs.2,03,018/-. First Appeal No.87 of 2012 is liable to be allowed by enhancing compensation to Rs.4,50,000/-.

28. Thus, First Appeal No.85 of 2012 is hereby allowed and the compensation amount is enhanced to Rs.5,95,793.96. The directions for payment of interest etc. are maintained. The respondents including, in particular, the insurance company will have to pay/deposit this enhanced compensation amount after adjusting the payment already made within two months from today. If the amount is deposited in this Court then the registry to ensure that the said amount is paid into the accounts of the appellant at the earliest.

29. First Appeal No.87 of 2012 is also partly allowed and the compensation is enhanced to Rs.4,50,000/-. The directions for payment of interest etc. are maintained. The respondents including, in particular, the insurance company will have to pay/deposit this enhanced compensation amount after adjusting the payment already made within two months from today. If the amount is deposited in this Court then the registry to ensure that the said amount is paid into the accounts of the appellant at the earliest.

30. Both the appeals are disposed of in the aforesaid terms.
There shall be no order for costs.

M. S. SONAK, J

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