

Santosh

**IN THE HIGH COURT OF BOMBAY AT GOA  
FIRST APPEAL NO. 76 OF 2019**

1.Mr. Waman K. Nayak,  
58 years of age, Son of Krishna Nayak,  
Married, service, Indian National,  
r/o A-1-4, Opp. V.P. Reis Magos,  
Verem, Bardez Goa. .

2. Mr. Ramesh N. Nayak,  
66 years of age, Son of Narayan Nayak,  
Married, Retired, Indian National,  
r/o A-1-4, Opp. V.P. Reis Magos,  
Verem, Bardez Goa.

3. Mrs. Sangeeta W. Nayak,  
40 years of age, Wife of Waman Nayak,  
Married, service, Indian National,  
Resident of A-1-4, Opp. V.P. Reis Magos,  
Verem, Bardez Goa.

.... Appellants.

**Versus.**

1. Mr. Shivpujan Jaiswal,  
31 years of age, Son of Banarsidas Jaiswal,  
Driver, Indian National,  
R/o Gautam Nagar Central Road No. 08,  
MIDC Andheri (East) Mumbai 400093.

2. Mr. Umadsingh Chaudhary,  
Major of age, Son of Nandalal Chudhary,  
Choudhary Cranes, Shop no. 3,  
near Hotel Royal Punjab,

Farmagudi, Ponda Goa 403401.

3. The New India Assurance Co. Ltd  
Having its office at Dadaji Mansion,  
2<sup>nd</sup> Floor, Ponda, Goa. ....Respondents.

**Mr.Premanand A. Kholkar, Advocate for the Appellants.**

**Mr. Amey Kakodkar, Advocate for Respondents No. 3.**

**CORAM : M. S. SONAK, J.**

**DATE : 24 November 2022**

**ORAL JUDGMENT :-**

1. Heard Mr. Kholkar for the Appellants and Mr. Kakodkar for Respondent No.3.
2. Respondent Nos. 1 and 2, though served, had not appeared before the Motor Accident Claims Tribunal (Tribunal). They were marked *ex parte*. Since the Appeal is only on the quantum of compensation awarded, the same can proceed without insisting upon service on Respondents No.1 and 2.
3. Admit. With the consent of and at the request of the learned Counsel for the parties, heard finally.
4. The challenge in this Appeal is to the Judgment and Award dated 30 October 2018, by which the Tribunal has awarded compensation of ₹2,72,100/- to the Appellants for the damages

caused to their house and two scooters in a vehicular accident involving a JCB crane bearing registration No. GA-03-7673.

5. Mr. Kholkar submits that the Tribunal has inadequately considered the evidence of the Architect and the Valuer Shri S.A. Dhuri (AW.2). He submits that AW.2 had deposed that the expenditure of almost ₹6,50,000/- was incurred by the Appellants for repairs/reconstruction of the damaged portion of their house. Mr. Kholkar also submitted that a further expenditure of ₹8,625/- incurred by the Appellants for obtaining Architect/Valuer's report was also not awarded to the Appellants. He submits that unnecessary deductions were made from the bills produced towards repairs to the damaged vehicles. Based on all this, Mr. Kholkar submitted that an additional compensation of ₹6,50,000/- ought to have been awarded to the Appellants.

6. Mr. Kakodkar submits that Mr. M.R. Shenvi (AW.4) examined by the Appellants had deposed about the damages to the house, being ₹2,04,600/-. He submits that even this report which is exaggerated, was earliest in point of time unlike the report of AW.2-Mr. Dhuri who inspected the site almost 2 and half years after the incident. He submits that the Appellants have not produced any bills towards repairs or reconstruction of the house though, some bills were produced about the repairs of the

vehicles. Mr. Kakodkar, therefore, submits that the impugned award, which is likely on the higher side, ought not to be interfered with.

**7.** Rival contentions now fall for my determination.

**8.** The Tribunal, in this case, has deducted about 2,000-3,000/- rupees from out of the bills produced by the Appellants towards repairs of the two vehicles. There is no justification for such deductions. Therefore, to that extent, the compensation awarded is required to be enhanced by an approximate amount of ₹3,000 – 4,000/-.

**9.** So far as damages to the house are concerned, the evidence of AW.4-Mr. Shenvi is relevant. This valuer visited the site soon after the accident and witnessed the actual damage caused to the house. He gave an estimate of ₹2,04,600/- for restoring the house to its original condition. This witness deposed that the house was about 80 years old and at a T-junction. The Appellant (AW.1) has also deposed about the previous accident due to the peculiar location of the house.

**10.** Mr. Shenvi (AW.4), in his deposition before the Tribunal, tried to explain that his report was based upon depreciated

position at the site. He also tried to depose that he did not make any estimate about reconstruction.

**11.** Mr. Kholkar relies on the report of AW.2-Mr Dhuri. This witness inspected the site after about 2 and half years when the repairs/reconstruction were complete. His report is prepared based upon certain photographs shown to him of the house soon after it met with the accident. Such a report is not much reliable. Since the repairs/reconstruction were already carried out, the Appellants should have produced bills or other evidences in support of the actual expenditure incurred by them for repairs/reconstruction.

**12.** Mr. Kakodkar also pointed out that AW.2-Mr. Dhuri's report suggests that the Appellants constructed two shops with shutters and the additional expenditure claimed concerned these structures. He submitted that in any case, bills or other evidences of actual expenditure, should have been produced by the Appellants.

**13.** AW.2-Mr. Dhuri also admits that the house was about 80-100 years old. Even the evidence of AW.1-Appellant refers to the dilapidated conditions of the house.

**14.** Both, Mr. Shenvi as well as Mr. Dhuri, have stated that the house was a load bearing structure. Mr. Dhuri has, however, deposed that some RCC work had been carried out because, the load bearing structure would not suffice to a great extent. This explanation has gone unchallenged. Now that the house was damaged on account of the accident, it is quite natural that the Appellants resorted to a better technology now available, so that the repairs/restoration are not merely cosmetic in nature. To that extent, some additional compensation is due to the Appellants. Besides, the Appellants are also entitled to some compensation for the expenses incurred by them to obtain valuation reports/estimates.

**15.** Thus, for all the above reasons, the amount of compensation is enhanced by ₹30,000/-. The award of compensation of ₹2,72,100/- is now substituted by an award of ₹3,02,100/-. The interest awarded is also maintained in the peculiar facts and circumstances of the present case.

**16.** The Appeal is partly allowed in the above terms. The Respondent No.3 is now directed to deposit the enhanced component, together with interest, within eight weeks from today, after giving due intimation to the learned Counsel for the Appellants. Upon deposit, the Appellants are permitted to

withdraw the enhanced amount, together with interest, by furnishing identification and bank details. The Registry to ensure that the amounts are credited directly into the bank accounts. It will be open to the Appellants to nominate any one or two of them to receive the amount on behalf of them.

**17.** The Appeal is disposed of in the above terms, without any orders for costs.

**M. S. SONAK, J.**

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