

Santosh

**IN THE HIGH COURT OF BOMBAY AT GOA
FIRST APPEAL NO.144 OF 2017**

Sunil Kumar Singh
s/o. C.B. Singh, age 37 years,
r/o. Arga, Karwar, Karnataka. Appellant.

Versus.

1. Sunil Datta Pednekar,
r/o. H.No.59, Nagorcem,
Canacona, Goa.

2. Santosh Datta Pednekar,
r./o. H.No. 59, Nagorcem,
Canacona, Goa.

3. Bajaj Allianz General Insurance
Co. Ltd.,
Sesa Ghor, 20 Patto Plaza,
EDC Complex,
Panjim, Goa. Respondents.

Mr. Shailesh Redkar, Advocate *for the Appellant.*

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

CORAM : M. S. SONAK, J.

Reserved on : 24th June 2022

Pronounced on : 27th June 2022

JUDGMENT: -

1. Heard learned Counsel for the parties.
2. The challenge in this Appeal is to the Judgment and Award dated 2/1/2017 in Claim Petition No.17/2011 made by the Motor Accident Claims Tribunal at Margao (Tribunal).
3. The Tribunal, by the impugned Judgment and Award, has dismissed the Appellant's claim petition against Respondent No.3-Insurance Company. The Tribunal determined the compensation payable by Respondents No.1 and 2 to the Appellant at ₹2,60,000/- but ultimately awarded the Appellant only ₹1,30,000/-, after holding that the Appellant contributed to the accident to the extent of 50%.
4. Mr. Redkar learned Counsel for the Appellant-Claimant submitted that the insured vehicle's driver admittedly had a license to drive a Light Motor Vehicle (LMV). Therefore, applying the law in *National Insurance Co. Ltd., vs. Miss. Endreshia Ashiana Fernandes and ors.*¹ that there was no breach of the insurance policy, and the Insurance Company could

¹ FA No.96/2017 decided on 06.05.2022

not have been exonerated in the matter. He also referred to the decision in *Mukund Dewangan vs. Oriental Insurance Company Ltd.*² and *Bajaj Alliance General Insurance Co. Ltd. vs. Rambha Devi and ors.*³ in support of his contentions.

5. Mr. Redkar submitted that the contributory negligence finding is improper and warrants inference. He submits that the evidence on record does not support the theory of contributory negligence; therefore, such a plea was never raised by any of the Respondents. He submits that the rickshaw driver did not even examine himself when an FIR was lodged against him, alleging rash and negligent driving.

6. Finally, Mr. Redkar submitted that the compensation amounts awarded by the Tribunal are too inadequate. He submitted that the Appellant ignored the permanent disability medically certified at 40%. He presents that the functional disability is almost 100%. He explains that because of the disability, the Appellant was denied an extension of 5 years. He submits that because of such disability, the Appellants' prospects

² (2017) 15 SCC 663

³ 2022 SCC OnLine SC 287

of getting employment in the Merchant Navy were marginalized. He proposes that for all these reasons, the compensation of at least ₹21,24,979/- was due and payable to the Appellant.

7. Mr. Redkar submitted that the compensation of almost ₹50,000/- for future medical expenses, ₹3,00,000/- for pain and suffering, and ₹50,000/- for loss of amenities was due and payable. He submits that the Tribunal should have awarded at least ₹15,000/- towards transportation and a further ₹15,000/- towards special diet.

8. Mr. Kakodkar, learned Counsel for the Insurance Company, defended the impugned Award based on the reasoning reflected therein. He submitted that this was a clear case of contributory negligence. He offered that the claim towards future prospectus was entirely hypothetical. He submitted that even the testimony of Shailesh Kumar Ray (CW.6) inspired no confidence and was correctly rejected by the Tribunal. He submitted that Dr. S.M. Bandekar (CW.5) had deposed that the Appellant would have no problem driving, walking, sitting cross-legged, lifting heavy objects, and doing all other activities except running. He submitted that the Appellant was not candid to the Tribunal and

has suppressed material evidence. Mr. Kakodkar submitted that there was no clear evidence about the rickshaw driver's license to drive a light motor vehicle.

9. Without prejudice, Mr. Kakodkar submitted that since the insurance policy required the driver to have a specified license, an order for pay and recovery could be made. Accordingly, Mr. Kakodkar submitted that this Appeal may be dismissed for all these reasons.

10. Rival contentions now fall for determination.

11. On the first aspect of exoneration of the insurance company, Mr. Redkar is on a firm wicket regarding the law laid down in *Mukund Dewangan* (supra) and *Rambha Devi* (supra). Both the decisions considered in *Miss. Endreshia Ashiana Fernandes* (supra) held that a driver with a license to drive a Light Motor Vehicle (LMV) could also drive a transport vehicle. In the present case, there is evidence that the rickshaw driver (insured vehicle) had a license to operate a light motor vehicle. Therefore, applying the law laid down in the above decisions, the finding recorded by the Tribunal to the contrary will have to be

reversed, and the Insurance Company will have to be held liable jointly and severally, along with the owner and the driver of the insured vehicle.

12. On the aspect of contributory negligence, the evidence on record shows that the Appellant was driving on the right (correct) side with his wife and minor child. The rickshaw attempted to reverse and, without due care and caution, hit the Appellant's back, throwing the Appellant, his wife, and the minor child. The Appellant examined himself and deposed to the genesis of the accident. The Appellant also examined Shashi Pagui (AW.3), an independent eyewitness to the accident. However, the rickshaw driver did not even bother to step into the witness box even though in the FIR lodged, it was alleged that his negligence had caused the accident.

13. The Tribunal drew incorrect inferences from the testimony of AW.3, who deposed that before the accident, he had stopped his vehicle on the left side of the road as the reversing rickshaw blocked the road. From this, the Tribunal suggested that even the Appellant could have done the same. To my mind, this cannot be the basis for inferring any contributory negligence. Therefore,

even the finding of the contributory negligence recorded by the Tribunal is liable to be reversed.

14. Now coming to the aspect of just compensation, the Tribunal has awarded compensation of ₹9,030/- towards transportation. Mr. Redkar submitted that considering the material on record, at least ₹15,000/- was due. There are bills sufficient to sustain an Award of ₹15,000. Such bills should not have been rejected on the specious plea that further proof was necessary about the Appellant having to take treatment at the Goa Medical College. Accordingly, ₹15,000/- is awarded towards transportation in place of the earlier Award of ₹9,030/-. Similarly, compensation of ₹15,000/- as proposed by Mr. Redkar is due towards a special diet. There is evidence to sustain such an award, and the Tribunal should not have restricted this claim to only ₹11,530/-.

15. The Tribunal has awarded compensation of ₹1,47,568/- towards loss of earning during the treatment period. Accordingly, Mr. Redkar has no grievance on this score; therefore, this Award is not modified or increased.

16. The Tribunal has made no award towards future medical expenses. However, considering the evidence on record suggests that some future treatment would be necessary. Therefore, rupees 25,000/- are awarded towards future medical expenses.

17. The Tribunal has awarded ₹1,00,000/- towards pain and suffering. Considering the evidence on record, there is no case made out to interfere with this Award. Though the Appellant may have suffered permanent disability to 40%, Dr. Bandekar (CW.5) has deposed that the Appellant will not have any problems walking, driving, lifting heavy objects, etc. This was a case of fracture and dislocation. An emergency procedure had to be undertaken, and even skeletal fraction had to be applied. In the circumstances, compensation of ₹1,00,000/- towards pain and suffering will amount to adequate compensation.

18. The Tribunal has failed to make any award towards loss of amenities. However, an award of ₹50,000/- is due on this count because the medical evidence establishes permanent disability to the extent of 40% of the right lower limb as there was a terminal limitation of movements of the right hip joint. The Appellant was thus deprived of the use of an important amenity.

19. On the aspect of future earnings loss, reference can be made to the ruling of the Supreme Court in *Pappu Deo Yadav vs. Naresh Kumar & ors.*⁴. In this case, Hon'ble Supreme Court has held that even in cases of permanent disablement, an assessment has to be made about future prospects, and suitable compensation must be awarded to the claimant. The Court has also held that certification medically per se is not the most relevant factor, but what is crucial is a functional disability.

20. In this case, the medical disability and functional disability can be regarded as the same because Dr. Bandekar (CW.5), who has assessed the disability, has, in terms, deposed that the Appellant will not have any problems driving a vehicle, walking, to sit cross-legged and to lift heavy objects. Furthermore, he deposed that the Appellant can stand for a long time and will have no difficulty working as a Mechanical Engineer on the ship.

21. The Tribunal has awarded the Appellant a lump sum compensation of ₹ 5,00,000/- towards future prospects. However, this appears to be quite inadequate. There is evidence that the

4 AIR 2020 SC 4424

Appellant worked for almost 33 months with the Merchant Navy. Even after he recovered, he continues to suffer disablement of 40%. Upon completing 15 years of commission, the Appellant retired from the Navy in the Medical category S3A2 (permanent).

22. Retirement of the Appellant under the Medical category S3A2 (permanent) was because the Appellant did not get a further five-year extension due to his medical condition. The evidence on record suggests that though the Navy is not bound to extend commission by additional five years, such extension is rarely considered where the incumbent has a medical condition. Therefore, some compensation is due to the Appellant's loss of the benefit of extended service with the Navy.

23. The evidence on record shows that the Appellant was drawing a salary of ₹18,446/- at the time of the accident. Considering the law in *Pappu Deo Yadav* (supra), up to 40% must be added. Thus, the Appellants monthly salary can be taken at ₹18,446 + 9223 = 27,669. Thus, the yearly salary of the Appellant can be taken at ₹ 3,32,018/-.

24. Loss caused to the Appellant towards his future earnings

will then come to ₹16,60,140/-. However, this entire Amount cannot be awarded to the Appellant who is assessed to suffer permanent disability and functional disability of only 40%. Moreover, the medical evidence shows that there were several activities that he could have undertaken without significant difficulty. Therefore, towards loss of his future income will come to 40% of the said Amount, i.e., ₹6,64,056/-.

25. There is no evidence about the Appellant having some commitment to employment in Merchant Navy. At the highest, the Appellant may have had some expectations of this kind of employment. Considering that Dr. Bandekar (CW.5) has deposed that the Appellant would have no difficulty in working as a Mechanical Engineer on a ship and the circumstance that the Appellant, even after suffering permanent disablement, worked for 33 months on the ship with the Navy, no further compensation is due for the alleged loss of opportunity to work and earn in the Merchant Navy. At the highest, some addition can be made to the above Amount of ₹6,64,056/- and the same can be rounded off to ₹7,00,000/-.

26. Thus, the total compensation, in this case, can be worked

out to ₹10,52,568/-. Therefore, this compensation would represent the just compensation in the facts and circumstances of the present case.

27. The Appeal is, therefore, disposed of by making the following order :

(A) The dismissal of the Claim Petition against Respondent No.3-Insurance Company is set aside. The insurance company is also held to be jointly and severally liable to pay the compensation to the Appellant;

(B) The Respondents are jointly and severally held liable and directed to pay the Appellant compensation of ₹ 10,52,568/-, together with interest at the rate of 9% per annum from the date of filing of the Claim Petition, i.e., 13/1/2011 till payment of this Amount or deposit of this Amount in this Court;

(C) Respondents No.1, 2, and 3, including in particular Respondent No.3, should deposit the substituted compensation amount together with interest, after adjusting earlier payments, in this Court within two months from today, after giving notice to the learned Counsel for the Appellant;

(D) Upon deposit, the Appellant will be entitled to withdraw this Amount after furnishing identification

papers and bank details in the Registry of this Court. Registry ensures that these amounts are directly paid into the Appellant's bank account.

(E) Respondents 1, 2, and 3 will be entitled to adjust the amounts already paid by them, if any, in computing and depositing the compensation amount in this Court.

28. There shall be no orders for costs.

M. S. SONAK, J.

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