

Niti

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.76 OF 2011

MR. VARAD VASUDEV POLJI,
25 years of age,
Son of Shri Vasudev Polji,
r/o H. No. 131, Shirgal,
Dhargal, Pednem Goa.

...Appellant

Versus

1. MR. TRINIDADE LOUIS CASTELIN,
Major of age, r/o B/3, Gracious Co-op
Housing Society (E), Mahakali Caves Road,
Andheri (W), Greater Mumbai — 93,
Maharashtra.

2. MR. PAUL ROZA CASTELINO,
Major of age, r/o B/3, Gracious Co-op
Housing Society (E), Mahakali Caves Road,
Andheri (W), Greater Mumbai - 93,
Maharashtra.

3. NEW INDIA ASSURANCE COMPANY
LTD.,
Through its Manager, New India Center, 3rd
Floor, Velho Filhos Building, Panaji-Goa.

...Respondents

Mr. Chirag Angle, Advocate *for the Appellant.*

CORAM: M. S. SONAK, J.

DATED: 3rd January 2022

ORAL JUDGMENT :

1. Heard Mr. Chirag Angle, learned Counsel for the appellant.
2. Though the respondents are served, they are neither present nor represented.
3. The claimant-appellant challenges the judgment and award dated 05.04.2011 made by the MACT (Tribunal) in Claim Petition No.60 of 2008 to the extent it awards the appellant compensation of only ₹40,000/- as against the claimed amount of ₹8,00,000/- or thereabouts.
4. Mr. Angle, learned Counsel for the appellant submits that in this case the appellant suffered permanent disability on account of the accident and this aspect has been ignored by the Tribunal. He submits that the compensation awarded, even otherwise, is extremely meager and without good reason, the evidence led by and on behalf of the appellant has been discarded. He submits that sufficient discretion is vested in the Tribunal when it comes to award on non-pecuniary damages and such discretion has not been exercised in accord with the law. He relied on *R.D.*

*Hattangadi V/s. Pest Control India Private Limited*¹ in support of his submissions. Finally, he submits that this is a fit case where compensation of ₹8,00,000/- as claimed is required to be awarded.

5. With the assistance of Mr. Angle, I have perused the impugned award as also the evidence, both oral as well as documentary, that is available on record. In my judgment, the appellant has made out a case for enhancement of compensation from ₹40,000/- to ₹87,5000/- which will represent the just compensation in the facts of the present case. The reasons for this are set out hereafter.

6. On the aspect of permanent disability, the Tribunal has quite correctly relied on the evidence of Dr. Zilio (AW6). This doctor has issued a disability certificate indicating that the permanent disability incurred by the appellant was “nil”. AW6 has also testified that the appellant was examined on 04.08.2009 when in fact the accident took place on 22.07.2008 and AW6 found the appellant to be fully fit with full functional recovery of the fractured bones. Having regard to this clear and cogent evidence, the submission of Mr. Angle about the appellant having suffered permanent disability cannot be accepted.

¹ 1995 DGLS (soft) 18

7. There is evidence, however, that the appellant, as a result of the accident suffered a fracture to his tibia and fibula of his right leg. Further, the appellant was treated by open reduction and internal fixation with plate and screws. For this purpose, the appellant had to be hospitalized from 22.07.2008 to 28.07.2008. Even AW6 has deposed that the appellant had to attend the hospital for follow-up treatment. There is also evidence on record that the appellant was a driver by profession and was employed as such by AW3. AW3 has deposed that the appellant used to drive the tourist taxi on a contract basis for Ticlo Resorts and was paid a consolidated salary of ₹15,000/- inclusive of perks and outstation charges when the vehicle operated outside Goa. In cross-examination, AW3, however, stated that the appellant was engaged on a monthly salary of ₹9,000/- but the appellant earned ₹6,000/- by way of tips.

8. Having regard to the aforesaid evidence on record, the just compensation, in this case, will have to be determined.

9. Towards pecuniary damages, the Tribunal has awarded compensation of ₹8263.26 (medical expenses); ₹5,950/- (travel expenses); and ₹22,500/- towards loss of salary and other emoluments.

10. The Tribunal has failed to take into account that the appellant had to incur expenses towards follow-up and, therefore, it was not sufficient to award the appellant compensation of only ₹8263.26 under this sub-head simply because bills in respect of this amount were produced by the appellant on record. In my assessment, compensation of ₹15,000/- is due towards medical expenses. Similarly, the award of only ₹5950/- towards travel expenses is not proper and even this amount is required to be enhanced to ₹10,000/- because it is reasonable to proceed on the basis that the appellant had to hire a taxi or other transportation for medical treatment and follow up.

11. On the aspect of loss of salary, the Tribunal has held that since there was no documentary evidence about tips, the appellant's salary had to be taken as only ₹9,000/- per month. Now, normally when it comes to tips there may not be any documentary evidence. In the peculiar facts of this case, however, there was nothing unreasonable in the appellant's claim about his earning ₹15,000/- per month inclusive of a monthly salary of ₹9,000/- per month. There is evidence on record that the appellant could not attend to his duties for about 10 weeks on account of the injuries sustained in the accident. Upon consideration of these factors, the compensation amount under this sub-head requires to be enhanced from ₹22,500/- to

₹37,500/-. Thus, towards pecuniary damages, the appellant is entitled to compensation of ₹62,500/-.

12. The Tribunal has awarded compensation of only ₹3,000/- towards pain and suffering and further made no award in respect of loss of amenities of life, loss of expectation of life, discomfort, and inconvenience in life. This means that towards non-pecuniary damages the Tribunal has made an award of only ₹3,000/-.

13. As noticed earlier, the evidence on record suggests that the appellant sustained fractures for which he was required to be operated. The operation involved implanting screws and metal plates. There is evidence about the medical treatment and follow-up. There is evidence that the appellant was a driver and it is reasonable to proceed on the basis that this injury would have caused him inconvenience and discomfort. The injury would also have some effect, though minimal, on the appellant's longevity of life. Having regard to all these factors as well as the law laid down in the case of *R.D. Hattangadi* (supra), the compensation of ₹3,000/- towards non-pecuniary damages is required to be enhanced to ₹25,000/-.

14. Thus, the total compensation towards pecuniary and non-pecuniary damages would come to ₹87,500/- in the present case.

15. The appeal is, therefore, partly allowed and the compensation amount is enhanced from ₹40,000/- to ₹87,500/-. The directions for payment of interest, etc. are not disturbed.

16. Respondent no.3 - Insurance Company is directed to deposit the enhanced compensation amount in this Court within two months from the date the appellant submits a certified copy of this judgment and award to it. If this is not done then, without prejudice to any other remedy that the appellant might have, the appellant will be entitled to execute the impugned award as now modified by this Court. If the appellant is forced to take out executing proceedings, the executing Court should consider whether substantial costs should be imposed on the Insurance Company.

M. S. SONAK, J.

NITI K
HALDANKAR

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