

Niti

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.112 OF 2017

Mr. Hari Chirayarukil
Padmarajan
S/o. Chirayarukil V.
Padmarajan, age 32 years,
working in father's business,
R/o. H.No.A4, Jai Jui
Apartment, Opp. Tilak Maidan,
Vasco, Mormugao, Goa.

... Appellant

Versus

1. Mr. Anand A. Naik
(deceased),
survived by his wife,
1(a) Smt. Madhuri Anand Naik,
Major, widow of Anand A.
Naik, R/o. H.No.597, Gadio,
Cortalim, Mormugao – Goa.

2. Mr. Shaan Usman,
S/o. Shri K.V. Usman,
Age about 32 years,
R/o. H.No.105, Opp. NSD
(Naval Store Depot), Dabolim,
Vasco, Mormugao Goa.

3. Mrs. Aisha Usman,
W/o. Shri K.V. Usman,
housewife, major,
R/o. H.No.105, Opp. NSD
(Naval Store Depot), Dabolim,
Vasco, Mormugao, Goa.

4. The New India Assurance
Co. Ltd., Santa Palagia Bldg., 1st

floor, Opp. Khalap Mansion,
Vasco, Mormugao, Goa.
403802.

... Respondents

Mr. E.J. Fernandes, Advocate for the Appellant – absent.

Mr. Amey Kakodkar, Advocate for Respondent No.4.

CORAM: M. S. SONAK, J.

DATED: 23rd June 2022

ORAL JUDGMENT :

1. None for the Appellant. Mr. Amey Kakodkar appears for respondent no.4.

2. On 17.06.2022, this Court made the following order :

“P.C.:

1. None for the Appellant. Mr. Pankaj Shirodkar appears for respondent no.4.

2. There is an order that the appeal has abated as against respondent no.1A.

3. Accordingly, this appeal is posted on 24.06.2022. However, if there is no appearance on behalf of the Appellant then this Court will be constrained to consider whether this appeal has to be dismissed for non-prosecution.”

3. Today, when the matter is called out, again, neither the Appellant nor his advocate appears in this matter.

4. Instead of dismissing this appeal for non-prosecution, in the peculiar facts of this case, the same was considered.

5. The challenge in this appeal is to the judgment and award dated 05.07.2017 made by the Motor Accident Claims Tribunal awarding the Appellant – claimant compensation of ₹3,85,735/- together with interest at the rate of 9% p.a. from the date of the filing of the petition till the date of payment.

6. The record indicates that earlier vide judgment and award dated 11.08.2015, the Tribunal had awarded the appellant compensation of ₹3,31,735/-. However, in the appeal filed by the Appellant, he pointed out that respondent no.1 (owner) had expired, and the award was made against a dead person. Based on this, the Appellant secured remand. After remand, however, no further evidence was led.

7. The Tribunal noted that an amount of ₹54,000/- towards attendant charges was not added to the compensation amount determined, though the earlier award evinced clear intention to award the same. Accordingly, the impugned award now adopts the reasoning in the earlier award dated 11.08.2015 but adds compensation of ₹54,000/-.

8. I have perused the grounds of appeal and also evaluated the record.

9. The Tribunal has awarded compensation of ₹50,000/- towards pain and suffering to the Appellant. The record shows that the Appellant sustained grave and severe injuries in the accident. The medical evidence bears out that the femur had not healed for 19 months because there was a non-union of the fracture. There is medical evidence that the rods were inserted in the leg of the claimant and that there was external fixation. There was a surgical intervention for the removal of the external fixation.

10. Considering the above, the award of ₹50,000/- towards pain and suffering appears to be inadequate, and this is required to be enhanced to ₹1.00 lakh.

11. Towards loss of amenities, an award of only ₹10,000/- has been made. However, the medical evidence suggests that the Appellant will have difficulty in bending, running, squatting, and jumping. These are important amenities to the integrity of the body. Therefore, at least ₹25,000/- should have been awarded.

12. The impugned award is thus enhanced by an amount of ₹65,000/-.

13. The appeal is partly allowed, and the respondents, including, in particular, respondent no.4, are directed to pay the Appellant enhanced compensation of ₹65,000/- within six weeks from today. The enhanced compensation will have to be paid together with interest as determined in the impugned award.

14. The respondents, including, in particular, respondent no.4, to deposit the enhanced compensation amount together with interest in this Court within six weeks with due intimation to the Appellant or his advocate. After that, the Appellant will be entitled to withdraw this amount by furnishing bank details so that the Registry can transfer the amount directly into the account.

15. The appeal is partly allowed.

16. There shall be no orders for costs.

M. S. SONAK, J.