Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 7 OF 2022

Mr. Ramesh Gaudar,
S/o Lachappa Gaudar,
Aged about 57 years, R/o H. No. 155, Near Ayappa Temple, Birla, Zuarinagar, Goa …. Appellant.

Versus

1. Mr. Sanjyet Bhandari,
s/o Govind Bhandari, aged about 47 years, r/o H. No. 198, - Pulwaddo, Benaulim, Salcete, Goa.

2. United India Insurance Co.
Salgaonkar Chambers, Next to Margao Residency, Margao, Goa. (Dropped as per order dated 04/08/2018)

….. Respondents.

Mr Sanman R. Keny, Advocate appointed under the Legal Aid Scheme *for the Appellant.*

Mr Amey Jagdish Sinai Kakodkar, with Mr Pankaj M. Shirodkar, Advocates *for Respondent No.1.*

CROSS OBJECTION NO. 2379 OF 2022(F)
IN
FIRST APPEAL NO. 7 OF 2022

Mr. Sanjyet Bhandari,
s/o Govind Bhandari,
aged about 50 years, residing at

H.No.198, Pulwaddo,
Benaulim, Salcete, Goa. …. Appellant.

AND

Mr. Ramesh Gaudar,
S/o Lachappa Gaudar,
Aged about 60 years,
R/o H. No. 155, Near Ayappa Temple,
Birla, Zuarinagar, Goa ……. Appellant/ Claimant.

Versus

1. Mr. Sanjyet Bhandari,
s/o Govind Bhandari,
aged about 50 years, residing at
H. No. 198,
Pulwado, Benaulim, Salcete, Goa.

2. United India Insurance Co.
Salgaonkar Chambers,
Next to Margao Residency,
Margao, Goa. ….. Respondents.

Mr Amey Jagdish Sinai Kakodkar, with Mr Pankaj M. Shirodkar, Advocates *for the Appellant -Cross Objector.*

Mr Sanman R. Keny, Advocate appointed under the Legal Aid Scheme *for the Appellant-Claimant.*

FIRST APPEAL NO. 79 OF 2022
WITH
CIVIL APPLICATION NO. 76 OF 2022

Mr. Sanjyet Bhandari,
s/o Govind Bhandari,
aged about 50 years, residing at

H.No.198, Pulwaddo,
Benaulim, Salcete, Goa. …. Appellant.

Versus

Mr. Ramesh Gaudar,
S/o Lachappa Gaudhar,
Aged about 60 years,
R/o H. No. 155, Near Ayappa Temple,
Birla, Zuarinagar, Goa

2. United India Insurance Co.
Salgaonkar Chambers,
Next to Margao Residency,
Margao, Goa. ….. Respondents.

Mr Amey Jagdish Sinai Kakodkar, with Mr Pankaj M. Shirodkar, Advocates *for the Appellant.*

Mr Sanman R. Keny, Advocate appointed under the Legal Aid Scheme *for Respondent No.1.*

CORAM : M. S. SONAK, J.

DATE : 23rd February 2023.

ORAL JUDGMENT:-

1. This Appeal is directed against the Judgment and Award dated 17th September 2019 made by the Motor Accident Claims Tribunal at Margao (Tribunal), dismissing the Claim Petition No.12/2018.

2. Mr Sanman Keny, the learned Counsel appearing for the Appellant-Claimant under the Legal Aid Scheme, submits that when the Claim Petition was filed, no period of limitation was prescribed. He submits that even otherwise, the delay, if any was sufficiently explained. He submits that due to the injuries sustained by the Claimant, he was required to obtain treatment and, therefore, could not file the Claim Petition earlier.

3. Mr Keny submits that though criminal prosecution was launched against the Appellant, the same was compounded in so far as the offence under Section 337 of the I.P.C. was concerned. He submits that criminal prosecution is not quite relevant in any case because the standard of proof before the Claims Tribunal was that of the preponderance of probabilities.

4. Mr Keny submits that there is evidence of grievous injuries suffered by the Appellant and the treatment at Goa Medical College. He submits that even after the Appellant was discharged, he had to attend O.P.D. He was also readmitted for further treatment. He submits that there is evidence that the Appellant suffered a permanent disability of 25% of the right lower limb. He submits that there is evidence that the Appellant could not join duty or work for gain due to the said injuries during the treatment period. He submits that the Appellant incurred a considerable expenditure for purchasing medicines and transport.

5. Based on the above submissions, Mr Keny submits that the Tribunal to the Appellant should have awarded suitable compensation.

6. Mr Kakodkar, learned Counsel for Respondent No.1-driver, submits that the Claim Petition was filed as an afterthought after almost 12 years from the accident date. He relies on ***Jagannath Hiroji Rawool and anr. vs. C.J. Jogy***[1] to submit that even though no limitation was prescribed, a claim petition should be lodged within a reasonable period. Mr Kakodkar submits that prosecution was launched against the Appellant, and there is no evidence of any negligence on the part of Respondent No.1. Instead, the evidence on record establishes negligence on the part of the Appellant.

7. Mr Kakodkar submits that there is no evidence about expenditure for medicines, transportation, etc. He submits that treatment was obtained at Government Medical College. He pointed out that the driver's father, who owned the vehicle, had paid an amount of ₹1947/- in favour of United Indian Insurance Company vide cheque No.936683 drawn on Bank of India. He

1. 2022 SCC OnLine Bom 1067

submits that this amount was credited into the Insurance Company's account on 30/11/2005. He states that this amount was towards the premium for insuring the Maruti 800 car bearing registration No. GA-02/J-2433, which was alleged to be involved in the accident. He states that the Appellant-Claimant, without a reasonable cause, deleted the Insurance Company from the array of Respondents in the Claim Petition.

8. Mr Kakodkar points out that Respondent No.1's father, who owned the Maruti, has since expired. Although there is some evidence about premium payment, Respondent No.1 cannot depose to this fact nor could locate the insurance policy, if issued. He submits that prejudice is writ large and, therefore, the Tribunal was justified in non-suiting the Appellant on the ground of inordinate and unexplained delay.

9. Mr Kakodkar submits that cross-objections have been filed by Respondent No.1 in this Appeal. He points out that the driver has also filed a substantive First Appeal No.79/2022 to question the award made under Section 140 of the Motor Vehicles Act.

10. Mr Kakodkar, on instructions and without prejudice, states that the driver would not press the Appeal questioning the Award under Section 140 of the Motor Vehicles Act and, further, pay the

Appellant as a humanitarian gesture, a further amount of ₹25,000/-.

11. The rival contentions now fall for my determination.

12. The accident, in respect of which the Claim Petition was instituted, occurred on 13/09/2006. However, the Claim Petition was instituted only on 15/12/2017. Thus, the Claim Petition was instituted almost 11-12 years after the accident.

13. Although, at that time, there was no limit prescribed for instituting a claim petition, the position in this regard has been clarified and explained by the Hon'ble Supreme Court in the case of ***Purohit & Company Vs. Khatoonbee & Anr.***[2]**.** The larger bench in *Purohit & Company* (supra) also considered and distinguished the decisions of the Division Bench in *Dhannalal Vs. D.P. Vijayvargiya & Ors.* - 1996 (4) SCC 652 and *The New India Assurance Company Ltd. Vs. C. Padma & Anr.* 1997 (1) CTC 761 and finally held the following in paragraphs 15, 16, and 17:-

> *"15. We are satisfied, that the submission advanced at the hands of the learned Counsel for the Appellant merits acceptance. The judgments on which the High Court had relied, and on which the respondents have emphasized, in our considered view, are not an impediment, to the*

2. (2017) 4 SCC 783

acceptance of the submission canvassed on behalf of the Appellant. We say so, because in Dhannalal's case (supra) the question of inordinate delay in approaching the Motor Accident Claims Tribunal, was not considered. In the second judgment in C.Padma's case (supra), it was considered. And in the C.Padma's case, the first conclusion drawn in paragraph 12 was "... if otherwise the claim is found genuine...". We are of the considered view, that a claim raised before the Motor Accident Claims Tribunal, can be considered to be genuine, so long as it is a live and surviving claim. We are satisfied in accepting the declared position of Law, expressed in the judgments relied upon by the learned Counsel for the Appellant. It is not as if, it can be open to all and sundry, to approach a Motor Accident Claims Tribunal, to raise a claim for compensation, at any juncture, after the accident had taken place. The individual concerned, must approach the Tribunal within a reasonable time.

16. The question of reasonability would naturally depend on the facts and circumstances of each case. We are however, satisfied, that a delay of 28 years, even without reference to any other fact, cannot be considered as a prima facie reasonable period, for approaching the Motor Accident Claims Tribunal. The only justification indicated by the respondents, for initiating proceedings after a lapse of 28 years, emerges from paragraph 4, contained in the application for condonation of delay, filed by the claimants, before the Tribunal. Paragraph 4 aforementioned is extracted hereunder:

> *"4. That the Petitioners is poor persons and they have no knowledge about the Law. Also the Respondent has not pay the single pie towards any compensation."*
>
> *17. Having given our thoughtful consideration to the justification expressed at the behest of the respondents, for approaching the Tribunal, after a period of 28 years, we are of the view, that the explanation tendered, cannot be accepted. Undoubtedly, the claim (pertaining to an accident which had occurred on 02.02.1977), in the facts and circumstances of the instant case, was stale, and ought to have been treated as a dead claim, at the point of time, when the respondents approached the Tribunal by filing a claim petition, on 23.02.2005."*

14. Considering the Law in *Purohit & Company* (supra), one of the points to be determined in this matter is whether the claim petition, which was instituted almost 11-12 years after the accident, could be said to have been instituted within a reasonable period.

15. The only explanation offered by the Appellant is that he was taking treatment for the injuries sustained by him in the accident. The record, however, shows that the Appellant was discharged from Goa Medical College in 2006. In addition, there is some evidence about the Appellant attending the O.P.D. and even being admitted on one occasion for further treatment. Finally, there is some evidence about the Appellant suffering permanent disability, assessed at 25% of the right lower limb. However, all this material does not explain the delay of almost 12 years in instituting the claim petition.

16. Besides, the Tribunal has observed that the Appellant was attending the criminal case, where he was being prosecuted for his alleged negligence in causing this very accident. Only after the Appellant succeeded in compounding one of the offences the Claim Petition was filed. Thus, it does appear that the Claim Petition was not filed because the Appellant was facing criminal prosecution for negligence and was not confident about its outcome. Mr Kakodkar is also justified in contending that the delay in this matter, despite being inordinate and unexplained, has caused serious prejudice to Respondent No.1. The driver's father, who owned the vehicle, has expired. There is a receipt referring to a possible insurance premium, but further evidence is difficult at this point.

17. Considering the above circumstances and the Law in *Purohit & Company* (supra), which was followed in J*aganath Hiroji Rawool* (supra), the findings of the Tribunal that the Claim Petition was barred by delay and laches, warrants to interference.

18. Even on the issue of negligence, there is not much evidence to link Respondent No.1. As noted earlier, the neutral authorities had found that prima facie, it was the Appellant who was negligent. Even the criminal prosecution had been launched against the Appellant. Nothing on record suggests that the Appellant had protested the lodging of the F.I.R. and the subsequent prosecution. Instead, the record shows that the Appellant compounded the offence under Section 337 of the I.P.C. Such compounding, no doubt, results in acquittal. However, that can hardly be regarded as an acquittal on merits.

19. The evidence on record does not make out a case of negligence on the part of Respondent No.1. Apart from that, for no good reason, the Appellant dropped the Insurance Company as a party before the Tribunal.

20. For all the above reasons, the Appeal is liable to be dismissed.

21. Since the Appeal is being dismissed, cross objections are not pressed.

22. Mr Kakodkar has already stated that the Appeal against the Award under Section 140 of the Motor Vehicles Act will not be pressed. He submits that an amount of ₹18,500/- is already paid and the balance of ₹12,500/- deposited before this Court. Accordingly, the Appellant is permitted to withdraw this amount of ₹12,500/- and the interest that shall have accrued on this amount.

23. Mr Kakodkar states that, as a humanitarian gesture, he will deposit an amount of ₹25,000/- in this Court within two weeks. Once this is deposited, the Appellant is also at liberty to withdraw this amount.

24. Registry to ensure that the amounts are directly deposited in the Appellant's bank account after he submits the identification proof and bank details.

25. The two appeals and the cross objections are disposed of in the above terms. Civil Applications, if any, are also disposed of.

26. There shall be no order for costs.

M. S. SONAK, J.

SANTOSH S MHAMAL Digitally signed by SANTOSH S MHAMAL Date: 2023.02.27 10:39:50 +05'30'