

Niti

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.81 OF 2022

AND

MISC. CIVIL APPLICATION NO.421 OF 2023

Prakash Velip
S/o. Thulo Velip,
age 37 years, married, service,
resident of H.No.396,
Vagon Cola, Canacona-Goa.Appellant

Versus

1. Servito Fausto
s/o. Benedito Gomes
age 53 years,
residing at H.No.119,
Paricotto Comba,
Cuncolim, Salcete – Goa.

2. Mrs. Rena Gomes
W/o. Servito Gomes,
r/o. H.No.119,
Paricotto Comba,
Cuncolim, Salcete-Goa.

3. ICICI Lombard General Insurance
Co. Ltd. Fatorda,
Margao, Salcete Goa.Respondents

Mr Pankaj Shiroadkar, Advocate for the Appellant.

Mr James Lopes, Advocate for Respondent No.3.

CORAM : M. S. SONAK, J.

DATE : 22nd FEBRUARY 2023

ORAL JUDGMENT :

1. Heard Mr Shirodkar for the Appellant and Mr Lopes for respondent no.3 – Insurance Company.
2. This appeal seeks enhancement of compensation over the amount awarded by the Tribunal in its judgment and award dated 21.03.2022 in Claim Petition No.24/2019.
3. Mr Shirodkar presents Misc. Civil Application No.421/2023(F) seeking leave to produce additional evidence. With consent, this Misc. Civil Application is also taken up for consideration.
4. Mr Shirodkar submits that there is evidence that the Appellant incurred an expenditure of almost ₹69,000/- towards travelling expenses. He submits that this amount should have been awarded to the Appellant. Further, he submits that the award towards pain and suffering is inadequate. He proposes that some amount should have been awarded towards life expectancy loss or reduction. Finally, he presents that there was a 20% disability which will affect the Appellant's earning capacity, which the Tribunal also does not consider.
5. Mr Lopes submits that the transportation bills were not proved by examining any witnesses. He points out that Salary Certificate

produced was of January 2019 when the accident took place on 26.07.2018. He submits that the Tribunal has incorrectly considered this Salary Certificate and taken the Appellant's income at ₹43,304/- when the income could not have been more than ₹22,043/-. He submits that adequate compensation has been awarded towards pain and suffering. He submits that the Appellant was a Government servant in the Police Department and there is no evidence of any reduction in his income or that the injuries sustained by him have affected promotional avenues. Mr Lopes submits that the compensation awarded is already in excess of the just compensation payable to the Appellant. Therefore, this appeal may be dismissed.

6. The rival contentions now fall for my determination.

7. In terms of the transportation expenses, the bills have not been proved. Even then, it is reasonable to presume that the Appellant must have incurred some expenses for transportation, considering the nature of injuries he suffered to both his legs. The Appellant has taken treatment at Goa Medical College, Babmolim or Margao. The Appellant resides at Canacona. Considering these circumstances, an award of ₹30,000/- could have been made towards transportation expenses.

8. The Tribunal has awarded ₹25,000/- towards pain and suffering. This appears to be inadequate considering the fact that the

Appellant underwent two surgeries and was taking treatment for a considerable period. Therefore, the total amount of ₹50,000/- could have been awarded towards pain and suffering.

9. By the Application for producing additional evidence, the Appellant seeks to place on record a doctor's certificate obtained on 20.01.2023. It suggests that the Appellant might have to undergo further surgeries. The doctor has given an estimate of these expenses. However, from the perusal of the certificate, which is issued by a private doctor, with due respect, it appears that this certificate has been issued only to help the Appellant, who is in the Police Department. Therefore, such evidence cannot be admitted by resorting to Order 41 Rule 27 of CPC.

10. The Appellant was granted a full opportunity to lead evidence before the Tribunal. The Appellant has not explained why no evidence was given on future medical expenses. No doctor was examined. Based on a certificate with some estimates, no award can be made for future medical expenses.

11. Therefore, the compensation, in this case, could have been enhanced by ₹55,000/- (₹30,000/- + ₹25,000/-). However, there is substance in the contention of Mr Lopes that the Tribunal incorrectly took into account a Salary Certificate for the period beyond the date of the accident. If the correct medical certificate were to be taken into

account, then the compensation would be about 40% lower than what is awarded by the Tribunal. The award might have been made to make up for the failure on the Appellant's part to prove the transportation bills.

12. Therefore, even after considering some compensation amount towards transportation, pain and suffering and even some amount towards loss of life expectancy, no case is made out for enhancement in the peculiar facts of the present case. Besides, there is no evidence that the Appellant suffered some reduction in the pay post the accident or post the injury sustained in the accident. Furthermore, there is no evidence that the promotional avenues being hampered due to the accident.

13. Therefore, considering all the above factors cumulatively, no case is made out to interfere with the impugned award or rather no case is made out to interfere with the compensation awarded in the impugned award.

14. For all the above reasons, this appeal and the Misc. Civil application are dismissed. There shall be no order for costs.

M. S. SONAK, J.

NITI K
HALDANKAR

Digitally signed by NITI K HALDANKAR
Date: 2023.02.23 12:18:02 +05'30'