Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.59/2023

MR SURAJ ULHAS NAIK, son of Mr Ulhas Naik, age 35 years, r/o H.No.45, PDA Colony, Corlim, Tiswadi-Goa. ... APPELLANT

Versus

1. MR. SUNILDUTTA NARAYAN FADTE, son of Mr. Narayan Fadte, r/o H. No. 396 Tariwada, Marcel, Ponda-Goa.

2. BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD., GE plaza, Airport road, Yerwada, Pune - 411006, and having its branch office at 3C & D, Sesa Ghor, 20 EDC Complex, Doctor Alvaro Costa Road, Patto Centre, Panaji-Goa 403001. ... RESPONDENTS

Mr Sagar Dhargalkar, Advocate for the Appellant.
Mr Amey Kakodkar with Mr Pankaj Shirodkar, Advocate for Respondent No.2.

CORAM: M. S. SONAK, J.

DATED: 16th FEBRUARY 2024

ORAL JUDGMENT:

1. Heard Mr Sagar Dhargalkar for the Appellant and Mr Amey Kakodkar with Mr Pankaj Shirodkar for Respondent No.2.

2. This appeal is directed against the Judgment and Award dated 13.04.2023 in Claim Petition No.27 of 2018, by which the Tribunal awarded the appellant/claimant compensation of ₹8,87,382/- with interest @ 6% p.a. from the date of the claim petition till final payment as against the claim of ₹25 lakhs.

3. Mr Dhargalkar submits that the Tribunal erred in denying any compensation towards loss of future earnings due to the disability incurred by the claimant. He points out that the evidence in such matters is required to be liberally construed, and further, the Courts must not be niggardly in awarding compensation. He submits that the measure of compensation must reflect a genuine attempt of the law to restore the dignity of the injured claimant.

4. Mr Dhargalkar submits that the medical evidence clearly showed that the claimant would have difficulty squatting. He referred to the claimant's detailed evidence, pointing out how, as an antenna mechanic, the claimant would have considerable difficulty in pursuing his vocation. Based on all this, he submitted that functional disability should have been taken at least 10% and the compensation awarded for loss of future earnings. Mr Dhargalkar submitted that even the compensation awarded under various heads was too low. He pointed out that no compensation was awarded towards litigation expenses. For all these reasons, he submitted that the compensation amount should be suitably enhanced.

5. Mr Kakodkar and Mr Shirodkar learned counsel for the Insurance Company, defended the impugned award based on the reasoning therein. Rather, they submitted that the Tribunal has been generous in awarding compensation even though the doctor had deposed that the disability was mild and the claimant could not only walk but also run. They submitted that since compensation of more than what was due has been awarded under some of the heads, no further compensation should be awarded to the claimant. Accordingly, they submitted that this appeal may be dismissed because the compensation awarded by the Tribunal was "*just compensation*".

6. The rival contentions now fall for my determination.

7. The record shows that the petitioner was involved in a vehicular accident, as a result of which he suffered injuries. The doctors assessed the disability at 10%.

8. The claimant examined Dr Shivanand Bandekar, the Dean of Goa Medical College and the Head of the Orthopaedic Department, as AW3. This doctor produced a certificate issued by the Board certifying that the claimant's case was of compound fracture to mid-shaft (right) femur without distal neurovascular deficit for which he was operated. The certificate records that the claimant healed clinically and radiologically. The certificate records that the percentage of permanent disability suffered by the claimant is 10% (Ten Percent).

9. For denying loss of future earnings, the Tribunal relied upon certain statements from Dr Bandekar's deposition. Dr Bandekar stood by the certificate issued and further pointed out that the fracture was treated with an interlocking nail inserted into the bone. He pointed out that the implant was still in the leg of the claimant. In his cross-examination, the doctor stated that with this type of permanent disability, the claimant will have difficulties in squatting, but he can walk, climb stairs and run. The doctor denied the suggestion that the claimant had not suffered any kind of permanent disability. But he added that the claimant could do all types of work to earn a living even with such disability as the disability was mild.

10. The doctor's evidence has to be read along with the detailed affidavit in evidence filed by the claimant in this case. The claimant was a skilled Dish Antenna Technician. In paragraph 15 he has deposed in great detail, not only to his earnings but also the nature of the work carried on by him. In paragraph 16 of his affidavit in evidence, the claimant has deposed about the substantial restriction of movement of his right leg/limb due to the injury suffered by him in the accident.

11. Paragraphs 15 and 16 of the affidavit in evidence are transcribed below for convenience of reference:-

> *"**15.** I say that I am a skilled Dish Antenna technician and prior to the accident I was undertaking the work of repairing the all types of Dish Antenna and was also in the business of selling the required material connected to dish*

Antenna like LNB (signal receiver), cable, connectors, jointers etc to the customers who used to hire my services. I have a working experience of almost 7 years in this field of Dish Antenna repair work and I am specialised in my work. Prior to this accident I was very popular among the public and among my customers for my aforesaid job and for my services and as such I was always in good demand. I used to charge Rs.300/- per job of dish Antenna repair in addition to the profit I used to make by selling the equipments related to dish antenna. I used to do at least 6 to 7 jobs of repairs per day. I say that my daily income from my aforesaid profession/business of Dish Antenna Technician and of providing allied services was Rs. 2000/- per day prior to the date of the accident. Owing to the grievous injury suffered in this accident, which has resulted in permanent disability I am now completely unable to carry on with this profession of Dish Antenna technician anymore as due to this accident I cannot sit, squat, walk, climb stairs, ladders and bend in the same manner and perform my work as I was capable of doing the same prior to the accident and this has consequently resulted in total loss of my income. I say that the work of repairing Dish Antenna is a tedious work and a very hard job, which involves the activity like climbing the ladders, trees close to the building, the stairs to go on the roof, standing on the edge of the balcony, lifting the dish Antenna and other objects by bending the knees etc. This work needs the strong physique with the ability to stand, bend and sit for long time. Though the *prior to the accident I had employed two persons under me to assist me, however they are not expert and specialised in this field and therefore I could not continue with this business with the help of these two persons after this accident. In any case these two persons/staff after they saw that I was unable to do the work of repairs of Dish antennas after the accident, they left my work soon after the accident. Due to the permanent disability suffered by me on my right leg, I cannot bend my knees properly, cannot climb the stairs, cannot climb the ladders and cannot bend and lift the objects and also cannot stand, sit and walk continuously for a long time and therefore I am rendered totally unfit to do this job because of this accident. I say that therefore the I had to completely stop my business of repair works of Dish Antennas. Consequently the allied business of selling the items connected to this job is also stopped as there are no repairs works done by me anymore. Therefore there is a total closure of my business of Dish Antenna Repairing. I say that owing to this accident I was completely bed ridden for almost six months and thus have lost all my income for that period and even thereafter. During the period I was bed ridden, I have lost my entire business and I am currently unemployed with no source of income. I say that my wife is also unemployed. I along with my wife lives in a rented premises, which place is hired on a rent of Rs. 6000/- per month. All my savings is spent on my treatment and rent of the house. I had to take loan from my friends to meet the* *day to day expenditure of mine and my wife due to the unemployment created by this accident. Thus the aforesaid accident has resulted in huge loss of income to me and my family and we are still suffering due to total loss of my earning capacity. Thus I was self employed and was earning decent income from this business prior to the accident.*

16. *I say that there is a substantial restriction of movement of my right leg/limb owing to the injury suffered in this accident. I am tenth fail, not highly educated and I am solely dependent on my skill of repairing Dish Antenna to earn my livelihood. I cannot perform all my duties and bodily functions in the same manner as I was capable of prior to the accident. I am therefore unable to engage myself in any gainful activity. I say that owing to this total permanent disability suffered in this accident I am unable to perform any kind of employment, work or avocation and as the result of this I am rendered unfit for any job or employment, which has consequently resulted in closure of all source of income to me. I say that all the employment options available for the persons who are less qualified, requires a person with good physique and healthy body with no physical disability. However I have suffered a total permanent disability due to this accident and therefore cannot do any activity which requires physical exertions. Therefore I am at this young age owing to this accident has been rendered unfit for all kind of jobs available for the persons with such a low academic qualifications. I say that my movements have been restricted to a large extent that* *too at a young age, where I have a responsibility to maintain myself and my wife. There is a definite loss of my total earning capacity due to this accident and therefore I am entitle for a fair compensation with the adoption of multiplier method. My hardships are not yet over as I have to undergo atleast two more surgery after this for fixing of the broken screws and then removal of the rod put in my thigh. I say that my marital life has also suffered very badly due to the accident I am unable to give all the happiness and joy to my wife as she is entitle to. Thus I am deprived of happiness and enjoyment of personal life besides the loss of amenities. I have due to this accident suffered restrictions in folding the knees and I am suffering from a severe pain even while walking. I cannot even use the Indian toilet. I have undergone and I am still undergoing through substantial pain and suffering due to accident which has rendered my right leg dysfunctional. I am rendered to such a stage that I am unable to do even my routine work without subjecting Myself to pain, suffering, agony and discomfort. I am totally disabled for any kind of work. My longevity is also shortened owing to this accident. I say that I cannot do any manual labour work. I say that my permanent disablement of my right leg/limb suffered in the accident has badly affected on the functioning of my entire body. Thus the permanent disability has resulted in my functional disability. I am thus because of this accident right now is suffering from permanent disability as because* *of these grievous injuries suffered in the accident I cannot perform any occupation or employment."*

12. The advocate for the insured vehicle's owner and the insurance company's advocate cross-examined the claimant. In cross-examinations, mere suggestions were put to the claimant. No dent was made to the claimant's detailed testimony on the nature of his work and his problems. Though there is some amount of exaggeration on the part of the claimant, in my judgment, the evidence on record was sufficient to conclude that the claimant suffered not only medical disability of 10% but also functional disability of 10% on account of the injuries suffered by him in the vehicular accident.

13. The Tribunal was therefore not justified in completely denying the claim towards loss of future earnings due to the disability incurred by the claimant arising out of the injuries in the vehicular accident. Such denial is inconsistent with the law in ***Yadava Kumar v/s. Divisional Manager, National Insurance Co. Ltd. & Anr. - (2010) 10 SCC 341*** and ***Raj Kumar v/s. Ajay Kumar And Anr. - (2011) 1 SCC 343***.

14. Mr Dhargalkar relied upon several other decisions like ***Nagarajappa v/s. Divisional Manager, Oriental Insurance co. Ltd. - (2011) 13 SCC 323***, ***Rekha Jain v/s. National Insurance Company Ltd. and Ors. - (2013) 8 SCC 389, M. Mani v/s. Divisional Manager, New India Assurance Co. Ltd. & Anr. - (2013) 11 SCC 444, Basappa v/s. T. Ramesh And Anr. - (2017) 3 SCC 351, Govind Yadav v/s. New India Insurance Company Ltd.***

and Ors. - (2011) 10 SCC 683 and ***Sidram v/s. Divisional Manager, United India Insurance Co. Ltd. & Anr. - (2023) 3 SCC 439*** in support of his contentions. All these decisions more or less lay down the same principle, though the facts in these cases differ from each other and also from the facts in this case. However, *Sidram (supra)* is quite relevant.

15. The Tribunal has held that the monthly income of the claimant was ₹46,154/-. This finding is based on the income tax returns placed on record by the claimant. The claimant was 30 years old at the time of the accident, so the appropriate multiplier in this case would be 17. Based on this, the claimant should have been awarded compensation of ₹9,41,558 (₹46,154/- x 12 (months) x 17 (multiplier) x 10% (functional disability) = ₹9,41,558/-). In this case, as noted above, the physical disability and the functional disability coincide. This is after accounting for the doctor's statement that the disability was mild, and except for the difficulty in squatting, the claimant could undertake other activities like walking, running, climbing stairs, etc.

16. Mr Shirodkar argued that if any compensation was being awarded towards loss of future earnings, the compensation already awarded for loss of earnings during the treatment of one year of ₹5,53,858/- should be deducted/adjusted. This argument cannot be accepted because this compensation of ₹5,53,858/- is to reimburse the claimant for the actual loss suffered by him for about one year, during which he was taking treatment and could not attend to his work at all. Therefore, the compensation of

₹9,41,558/- towards loss of future earnings is over and above the compensation of ₹5,53,858/- towards loss of earnings during the treatment for the period of one year when the claimant could not work at all.

17. From the evaluation of the impugned award, though the Tribunal has been a little conservative in awarding compensation towards transportation costs, medical expenses and other miscellaneous expenses, the Tribunal has been quite generous when it comes to the awards for attendant charges and loss of amenities. Thus, overall, it cannot be said that the Tribunal has been niggardly in determining compensation. The Tribunal has, however, made no award towards litigation charges, and in the facts of this case, at least ₹25,000/- should have been awarded towards litigation charges.

18. Mr Dhargalkar pointed out that there is no award towards the loss of future prospects. Now that the compensation is awarded towards loss of future earnings, this is not a fit case for making a separate award towards loss of future prospects. Besides, there is evidence that the claimant was engaging two attendants to help him even before the accident. Considering all these aspects no case is made out for making any separate award towards loss of future prospects in the peculiar facts of this case.

19. The claimant, accordingly, is entitled to additional compensation of ₹9,66,558/-. Even this amount will carry interest @ 6% p.a. from the date of the claim petition till its actual payment.

20. Accordingly, this appeal is partly allowed by enhancing the compensation by ₹9,66,558/- with interest @ 6% p.a. from the date of the claim petition till its effective payment. The tribunal's impugned award is modified accordingly.

21. The respondent insurance company is to deposit this enhanced amount together with interest in this Court within two months from today after giving necessary intimation to Mr Dhargalkar. Upon such deposit, the Registry must transfer this amount to the claimant's bank account upon furnish of identity and bank details by the claimant.

22. The appeal is disposed of with no order for costs in the above terms.

M. S. SONAK, J.

SUCHITRA NANDAN SINGBAL
Digitally signed by SUCHITRA NANDAN SINGBAL
Date: 2024.02.20 10:55:27 +05'30'