

Jose

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.123 OF 2023

Mr. Blasco Sandy Moraes,
Son of Mr. Baptista Moraes,
Aged 36 years, service,
Resident of B.No.208, Bomada,
Chinchinim, Salcete,
Goa 403715

... Appellant

Versus

1. Shri. Sandeep Arondekar (Owner)
Son of Prabhakar Arondekar,
Major of age,
Resident of H.No.159, Bhd.
Ghanashyam Hotel, Sada,
Mormugao, Goa 403803.

2. Shri. Hamod M. Chodankar, (Driver)
Son of Madhukar Chodankar,
Major of age,
Resident of H.No.33-D,
Ward II, Sada, Mormugao,
Goa-403803.

3. HDFC Ergo General
Insurance Co. Ltd.,
106, Kamat Grand, Behind
Caculo Mall, St. Inez, Panaji
Goa 403001.

... Respondents

Mr Jatin Ramaiya, Advocate *for the Appellant.*

CORAM: M.S. SONAK, J.

DATED: 5th April 2024.

ORAL JUDGMENT:

1. Heard Mr Jatin Ramaiya for the Appellant. The Respondents, though served, were neither present nor represented.

2. This appeal is directed against the impugned Judgment and Award dated 06.07.2023 dismissing Claim Petition No.36/2020.

3. The Tribunal has accepted the Appellant's case that his car was damaged in an accident that occurred on 25.01.2020 due to rashness and negligence of the 2nd Respondent, i.e., the driver of the offending motor vehicle bearing Registration No. GA-06-T-5256. However, the Tribunal held that since the Appellant Claimant produced only an estimate but no evidence about having incurred an expenditure of ₹35,669.60 towards repairs, no amount could be awarded to the Appellant.

4. The record does show that the Appellant only produced an estimate that an expenditure of ₹35,669.60 would be required to repair his vehicle. No evidence was produced regarding the Appellant incurring this expenditure to repair his vehicle.

5. Still, the Tribunal failed to appreciate that the Appellant, in his deposition on oath, stated that he had incurred an expenditure of ₹35,669.60 to repair his car. He also stated that due to the accident, the bumper had a dent and a crack. He also deposed that he had incurred

expenditures to the tune of ₹5,000/- for miscellaneous expenses for using a hired car. In cross-examination, all these statements were not challenged.

6. Though the above statements were not challenged, they cannot be taken at face value. Admittedly, the damage was only a dent and a crack in the bumper. Besides, if an expenditure of ₹35,669.60 was indeed incurred, there should have been no difficulty whatsoever in producing any documents or receipts for payment of this amount to the garage or the agency. Similarly, if some other vehicles were hired, there would always be evidence that could have been produced.

7. Still, considering that there was an accident due to the rash and negligent driving of the 2nd Respondent, and further, there is evidence of a dent and a crack to the bumper, compensation of ₹20,000/- could be reasonably awarded to the Appellant. In such matters, some element of guesswork is permissible. Considering the evidence on record and the fact that there was no serious cross-examination, coupled with the circumstance that the accident did take place due to the negligence of the 2nd Respondent, compensation of ₹20,000/- is hereby determined and awarded to the Appellant.

8. This Appeal is accordingly partly allowed. Respondents are directed to jointly and severally pay the Appellant compensation of ₹20,000/- with 6% interest from the date of the Claim Petition till actual payment. Since there was no dispute that the offending vehicle was

insured with the 3rd Respondent, the 3rd Respondent is now directed to deposit the amount of ₹20,000/- with interest @6% per annum from the date of the Claim Petition in this Court within six weeks from the receipt of an authenticated copy of this Judgment and Order. Mr Ramaiya states that an authenticated copy of this Judgment and Order will be supplied to the 3rd Respondent within a week.

9. The amount should be deposited with due intimation to Mr Ramaiya. Once the amount is deposited, the Registry must transfer the said amount into the Appellant's bank account based on the identity and bank details to be supplied by Mr Ramaiya.

10. This Appeal is disposed of in the above terms. There shall be no order for costs.

M.S. SONAK, J.

JOSE
FRANCISCO
DSOUZA

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