

Amrut

**IN THE HIGH COURT OF BOMBAY AT GOA
FIRST APPEAL NO.60 OF 2023**

Mr Cholu Jiu Bhomkar @
Cholu Jivu Gaude, Son of
Mr Jiu Nonu Gaude, aged
50 years, married, resident
Of House No.261, Gaudewada,
Bhoma – Goa. Appellant

Versus

1 Mr Bhramanand Poonia Singh,
Son of Mr Dalele Singh, major in age,
Driver, resident of Awanti Hotel,
Ruade-Oriem, Panaji Goa, &
Presently c/o Shri Shyam Road Carrier,
IDC, Kundaim Goa.

2 Mr Vinod Chaudhary,
Son of Mr Pawan Kumar Chaudhary,
House No.2641/FB-2, Shantaram Nagar,
Bordem, Bicholim Goa.

3 United India Insurance Company Ltd.,
Panaji-Branch, Panaji Goa. Respondents

Mr Milton Marshal, Advocate for the Appellant.
Mr A. R. S. Netravalkar, Advocate for the Respondents.

CORAM: M. S. SONAK, J.

DATED: 8th FEBRUARY 2024

ORAL JUDGMENT

1. Heard Mr M. Marshal, learned counsel for the Appellant and Mr Netravalkar, learned counsel for the Respondents.

2. This appeal is directed against the judgment and award dated 13.04.2023 made by the Motor Accident Claims Tribunal (Tribunal) in Claim Petition No.86/2017. The Tribunal has awarded the Appellant the compensation of ₹35,000/- for the injuries sustained by him in a vehicular accident as against the Appellant's claim of ₹1,00,000/-. Hence, this appeal for enhanced compensation.

3. Mr Marshal states that the Tribunal erred in taking the Appellant's monthly earnings only at ₹7,800/- per month. He submits that there is evidence on record and law that the Appellant's earnings should be taken at a minimum of ₹10,000/- per month.

4. Mr Marshal submits that Para 23 has a calculation error since the compensation for loss of monthly earnings is calculated for three months instead of four months, though this Para refers to four months.

5. Mr Marshal submits that the compensation towards pain and suffering is also inadequate, and the same should be at least ₹25,000/- in the facts of the present case.

6. Mr Marshal relies on *Clain Julie and others Vs Oriental Insurance Co. Ltd.*,¹ and *Shivakumar M. Vs Managing Director, Bengaluru*², to support his contentions.

¹ 2022(3) T.A.C.725 (S.C.)

² (2017) 5 SCC 79

7. Mr Netravalkar counters Mr Marshal's arguments. He submits that the monthly income should have been taken only at ₹5000/- in terms of the law laid down in *Rani and others Vs National Insurance Company Ltd., and others*³. He submitted that there was no evidence about the Appellant's earnings. He also referred to Para 20 of the impugned award to submit that the compensation was due only for three months, not four months. He submitted that even the compensation towards pain and suffering is more than adequate. Accordingly, Mr Netravalkar submitted that this appeal may be dismissed.

8. On perusing the evidence on record, I am satisfied that the Appellant's income should have been taken at least at ₹10,000/- per month. This is because there is evidence that the Appellant was a carpenter and mason. Accordingly, there was no reason for the Tribunal to only go by the Government Notification prescribing the minimum wages.

9. In Para 20 of the impugned award, the Tribunal has held that the Appellant could be said to have missed his work for about three months. In Para 23, the Tribunal has referred to missing work for four months. Considering that the expression used in Para 20 is "about three months", it is only appropriate that the compensation should be determined for four months and not just three months. Even otherwise, the evidence on record

³ Civil Appeal Nos. 9078-9079 of 2017 decided on 31.07.2018

suggests that the Appellant would have required about three to four months to resume his normal work.

10. On the above basis, the compensation towards loss of income in the present case can be safely assessed at ₹40,000/- instead of ₹23,400/- determined by the Tribunal.

11. As against the pain and suffering, because the Appellant suffered a fracture which required about three to four months to heal, the compensation of ₹15,000/- instead of ₹10,000/- can be awarded.

12. The impugned award is accordingly modified, and the compensation amount is determined at ₹56,509/- which is rounded to ₹57,000/- instead of ₹35,000/-.

13. The appeal is partly allowed in the terms above, but there shall be no costs for this appeal.

14. The Insurance Company is directed to deposit the enhanced compensation component with proportionate interest within six weeks from today after due intimation to Mr Marshal, learned counsel for the Appellant. Liberty is granted to the Appellant to withdraw the compensation once it is deposited by furnishing bank details so that the registry can directly transfer this amount into his bank account.

M. S. SONAK, J.