

Niti

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.34 OF 2023

Shri Sagar Rohidas Naik
Son of Mr Rohidas Naik,
Aged 33 years, service, Bachelor,
resident of House No.335,
Ankelewada, Khandola-Marcel,
Ponda-Goa.

....APPELLANT

Versus

1. Mr Pandurang Nishat Joshi
Son of Mr Nishat Joshi,
Major in age, resident of
House No.5, Karpur-Marcel,
Ponda-Goa.

2. Shri Paresh Jayant Sawaikar
Son of Mr Jayant Sawaikar,
Major in age, resident of
House No.8, Kpdal, Karapur,
Bicholim – Goa.

3. Cholanmandalam General Insurance
Company Ltd., through its Manager,
Office at 203, 2nd Floor, Dempo Trade
Centre, Patto, Panaji-Goa.

....RESPONDENTS

Mr Milton Marshal, Advocate for the Appellant.

Mr James Lopes, Advocate for Respondent No.3.

CORAM: M. S. SONAK, J.

DATE : 21st MARCH 2024

ORAL JUDGMENT :

1. Heard Mr Milton Marshal for the appellant and Mr James Lopes for the third respondent (Insurance Company). The respondent nos.1 and 2 are served but neither present nor represented.

2. The appellant (claimant) challenges the judgment and award dated 16.02.2023 for not awarding the appellant the entire compensation of ₹10,00,000/- (Rupees Ten Lakhs only) as he claimed. The Tribunal has awarded the appellant compensation of only ₹1,35,000/- (Rupees One Lakh Thirty-Five Thousand only) with an interest of 6% per annum from the date of institution of the Claim Petition till the realisation of this amount.

3. The evidence on record suggests that the appellant suffered injuries on account of a vehicular accident which occurred on 06.05.2018. The certificate issued by the Associate Professor of the Department of Orthopaedics, Goa Medical College & Hospital, Bambolim-Goa, certifies that the injury suffered by the appellant was healed clinically and radiologically. However, the certificate states a decreased range of motion of the right ankle and foot and a shortening of the right lower limb by a half inch. Hence, the percentage of permanent disability according to the ALIMCO scale amounted to “Sixty Percent (60%) for right lower limb”.

4. The doctor who issued the above certificate dated 04.08.2021 was examined as AW2. He deposed that, on account of the injury, the

appellant will have problems walking and squatting throughout his life. In his cross, the doctor maintained that the injuries are already healed, but as a technician, if the appellant has to walk or squat, there will be a problem while working.

5. Mr Marshal states that no compensation has been awarded for loss of income when the appellant could not report for duties. The appellant had not led any evidence to show that he could not report for duties beyond the 16-day period when he was admitted to the hospital or that his employer, Nestle, did not pay him any wages for the period during which the appellant did not allegedly attend duties.

6. The appellant produced a salary certificate of the Senior HR Manager of Nestle India Limited dated 31.07.2018. However, no witness on behalf of the employer was examined to make good the contention now raised about the inability to report for work and the consequential loss of income. Accordingly, no compensation is payable to compensate for the loss of wages during the period of treatment.

7. Mr Marshal submitted that no compensation has been paid towards the loss of matrimonial prospects. Since the doctor has deposed about difficulties while walking and squatting throughout the life and further since the medical certificate which is duly proved also speaks about a decreased range of motion of right ankle and foot and shortening of the right lower limb by half an inch, compensation is due and payable to the appellant for the impact that this factors might have on his marriage prospects. There is evidence that the appellant was 29

years old at the time of the accident. On cumulative consideration of all these factors, an amount of ₹1,00,000/- (Rupees One Lakh only) is awarded towards loss or the impact on the matrimonial prospects.

8. The Tribunal has awarded compensation of ₹1,00,000/- (Rupees One Lakh only) towards pain and suffering. There is evidence that the appellant was admitted to the hospital for about 16 days. There is evidence that the appellant was surgically operated with an external fixator. There is evidence of a plate being inserted. There is also evidence that the appellant had to undertake physiotherapy for a considerable period. There are at least 14 bills produced concerning physiotherapy. Considering all these aspects, an additional amount of ₹50,000/- (Rupees Fifty Thousand only) is awarded towards pain and suffering.

9. Mr Marshal submitted that compensation is not awarded towards attendant charges, future medical charges and conveyance, even though no claim may have been made under these heads. On the perusal of the record and the impugned award, it is necessary to note that this is not a case of merely not claiming any amounts under these heads. There is no evidence to back such claims. In the absence of any such evidence, except perhaps on the issue of conveyance, it would not be appropriate to make any award under these heads.

10. There is evidence of a plate being inserted surgically. However, the doctor who examined the claimant was not asked any questions about future medical expenses, so there is no question of simply

presuming future medical expenses. The doctor examined by the appellant deposed that the appellant had fully recovered and his injury was healed. Again, there is no evidence of attendant charges.

11. The case of *Sidram V/s. The Divisional Manager of United India Insurance Company Limited and Anr.* makes an award towards attendant charges or future medical expenses precisely because the appellant brought evidence to this effect on record. In *Sidram* (supra), the Hon'ble Supreme Court noted that the evidence on record indicated that the claimant could not stand, walk, sit, bend his body or lift anything heavy. It is in these circumstances that attendant charges were awarded. There was clear evidence about future medical expenses deposed by the doctor who was examined on behalf of the claimant.

12. Again, there is no evidence on the aspect of conveyance allowances. However, considering that the appellant was residing at Khandola and had to attend the physiotherapy sessions at Ponda and even once in a while travel to Goa Medical College and Hospital, Bambolim, by indulging in some guesswork, compensation of ₹15,000/- (Rupees Fifteen Thousand only) is awarded towards conveyance charges.

13. For all the above reasons, this appeal is partly allowed, and the compensation is enhanced by a further amount of ₹1,65,000/- (Rupees One Lakh Sixty-Five Thousand only). Even this enhanced compensation will carry interest at the rate of 6% per annum from the

date of institution of the Claim Petition till its full realisation. The impugned award is modified to this extent.

14. Accordingly, the respondents are jointly and severally directed to pay the enhanced amount. The third respondent, the Insurance Company, must deposit the above amount in this Court within four weeks after intimating Mr Milton Marshal. Once this amount is deposited, the appellant is granted liberty to withdraw it by producing identity and bank details. The Registry must ensure that this amount is directly transferred into the appellant's bank account without his having to make a fresh application to this Court.

15. The appeal is partly allowed in the above terms without any order for costs.

M. S. SONAK, J.