

Rakul/Sachitra

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.46 OF 2023

1. MR. OSWALD CALDEIRA, Son of Francisco Caldeira, occupation assistant cook, presently unemployed, resident of H. No. 116, Jaycee Nagar, Ponda around 39 years of age, Goa, represented by mother as a natural guardian, SMT. CLARA EUGENIA CALDEIRA, daughter of Late Bernardo Dias, about 80 years in age, resident of H. No. 116, Jaycee Nagar, Ponda - Goa.

... APPELLANT

Versus

1. DEVANDRA NAIK, Son of Ganpat Naik, resident of Torshem, Naikwada, Pernem Goa.

2. M/S. V. S. DUKLE AND SONS, Business concern of Mr. Dukle, having their Office at Mala, Panaji - Goa.

3. UNITED INDIA INSURANCE COMPANY, A Company under the relevant provisions of Indian Companies Act, having their Office at 2nd Floor, Mascarenhas Building, M. G. Road, Panaji - Goa.

... RESPONDENTS

Mr Jatin Ramaiya, Advocate for the Appellant.

Mr A.R.S. Netravalkar, Advocate for the Respondent No. ~~No. 1, 2 and 3~~.

*Corrections carried
out on my order
Jdl. 26.04.2024
in mca no.113(2024) (P).*

CORAM: M. S. SONAK, J.

Reserved on: 1st FEBRUARY 2024

Pronounced on: 12th FEBRUARY 2024

JUDGMENT:

1. Heard Mr Jatin Ramaiya, learned counsel for the Appellant,
and Mr A. R. S. Netravalkar learned counsel for Respondent No. 1, 2
*Corrected
carried out as
per order dt.
26.04.2024 in
MCA No. 115/2024 (P)*
and 3. Though served, none for Respondents No. 1 and 2.
2. This appeal is directed against the Judgement and Award passed by the learned Motor Accident Claims Tribunal, North Goa, Panaji, sitting at Ponda (Tribunal) dated 09.03.2023 in Claim Petition No. 49/2012 (impugned judgment), by which the Tribunal dismissed the Claim Petition on the ground that the Appellant had failed to prove that the accident was caused due to the negligence of Respondent No.1.
3. However, after recording this finding, the Tribunal did not bother to record any finding on other issues, particularly on the quantum of compensation. In doing so, the Tribunal acted in breach of several rulings of the Hon'ble Supreme Court, and this Court requiring the Courts and Tribunals to avoid shortcuts and decide all issues that fall for determination.

4. In *Bimlesh v. New India Assurance Company Limited*¹ in paragraphs 7, 8 & 9, the Hon'ble Supreme Court has held that the Tribunal has to follow the summary procedure subject to any rules that may be made in this behalf. The Civil Procedure Code, 1908, is not strictly applicable to the proceedings before the Claims Tribunal except to the extent provided in Section 169 (2) of the MV Act and the Rules made thereunder. The whole object of the summary procedure is to ensure that the Claim Petition is heard and decided expeditiously by the Claims Tribunal. In paragraph 9, the Hon'ble Supreme Court has held that the Claims Tribunal must dispose of all issues one way or the other while deciding the claim petition.

5. Therefore, the Tribunals should not dispose of the Claim Petitions based on some preliminary issue, usually raised by the Insurance Company about maintainability or otherwise. So also, even after holding that rashness and negligence are not proven, the Tribunals should not neglect to decide on other issues, including the issue of the quantum of compensation. The Hon'ble Supreme Court has held that since all the issues (points for determination) are required to be considered by the Claims Tribunal together in the light of the evidence that may be led in by the parties and not

¹ (2010) 8 SCC 591

piecemeal, often matters are required to be remanded. Accordingly, in *Bimlesh (supra)*, the matter had to be remanded because not all issues were decided in one go.

6. Recently, even in the *Agricultural Produce Marketing Committee, Bangalore v. The State of Karnataka*², the Hon'ble Supreme Court has reiterated that the Courts must avoid shortcuts and decide all issues that fall for their determination.

7. This court in *Santolina Josephina Sebastao Fernandes v. Inacio Xavier Fernandes*³, *Narcivha Chari v. Joao Faria* (First Appeal No. 34 Of 2017, decided on 04.03.2022), *Benidita Jose Olieveiro v. Naven Costancio Cardozo*⁴, *Sarita Agarwal v. Felecia Coelho* (First Appeal No. 59 of 2017, decided on 29.04.2022), *Franky Carvalho alias Neves Franky Carvalho v. Raju Jaswant Singh* (First Appeal No. 109 of 2017 decided on 01.07.2022), amongst others, has made it clear that the Tribunal is bound to decide all issues before it, that the law mandates that no shortcuts are adopted by avoiding the determination of some issue for the sake of convenience.

8. Yet it is seen that the Tribunal has adopted a shortcut and did not decide upon the other issues, such as the quantum of

² (2022) SCC OnLine SC 342

³ (2023) SCC OnLine Bom 44

⁴ (2022) SCC OnLine Bom 819

compensation; Mr Ramaiya submits that this was even though some of this Court's judgments were cited in this matter.

9. The Principal District Judges of the North and South Goa districts are now requested to circulate this judgment to the tribunals so there is no repetition.

10. Counsel's Submissions

11. Mr Ramaiya submitted that the delay in instituting the Claim Petition was not egregious given the totality of circumstances. He submitted that the Tribunal had failed to appreciate that the Claimant had suffered physical disability to the extent of 95.3% as a result of the head injuries due to which was being taken care of by his mother, a senior citizen and in light of these trying circumstances the delay could not be considered fatal to the Appellant's case.

12. Mr Ramaiya submitted that the Appellant, due to the accident, had been rendered completely disabled and incapacitated, further that he is completely reliant upon his widowed mother, who is a senior citizen herself. The mother was eighty years of age at the time this appeal was instituted. He submitted that these circumstances caused the Appellant and his aged mother to be totally dependent upon others, preventing them from approaching the Tribunal any sooner. He submitted that they had approached

the Tribunal within a reasonable time, given the totality of the adverse circumstances and the fact that no period of limitation was provided for instituting a claim petition.

13. Mr Ramaiya submitted that the evidence on record sufficiently proves that Respondent No. 1's rash and negligent driving caused the accident by dashing the Appellant's Vespa scooter while overtaking a bus. Further, the Tribunal had erroneously concluded that such rash and negligence had not been proved and that such a finding was contrary to law and the evidence on record.

14. Mr Ramaiya submitted that the Tribunal had erroneously disbelieved the evidence from AW2 (Babyn Rodrigues) and AW4 (Sanjay Naik) because their names were not reflected in the list of witnesses. Mr Ramaiya submitted that the Tribunal gave this fact undue importance and that it was open to the Appellant to leave out from the 'list of witnesses' any witness where they did not require the assistance of the court to secure said witness' presence.

15. Mr Ramaiya also submitted that the fact that AW2 and AW4 had not complained to the police regarding the accident could not have been held against them when considering their evidence. He submitted that a witness to an accident is naturally reticent to involve themselves and that such behaviour could not be

considered aberrant. Mr Ramaiya submitted that the evidence on record is sufficient to prove the loss of dependency and disability and that the Appellant was due Rs.32,32,840/- in total as compensation under pecuniary and non-pecuniary compensation heads.

16. Mr Netravalkar learned counsel for Respondent No. 3 submitted that the Appellant had failed to prove any negligence on the part of Respondent No.1, that instead, the accident was caused by the rashness and negligence of the Appellant. He submitted that the tribunal had correctly considered the evidence on record to conclude that a case for rashness and negligence had not been made against Respondent No.1 and rightly dismissed the petition. He relied upon *Minu B. Mehta and Another v. Balkrishna Ramchandra Nayan and another*⁵, for the proposition that proof of negligence is necessary before the owner or insurance company could be held liable.

17. Mr Netravalkar submitted that AW2 and AW4 were got-up witnesses and that their evidence could not be relied upon; he submitted that this was borne out from the fact that they were left out from the ‘list of witnesses’; he submitted that were they true witnesses they would not have been so casually omitted. He also

⁵ AIR 1977 SC 1248

submitted that the delay in instituting the claim supports the contention that the witnesses got up only later to extract compensation from the Respondents incorrectly despite Respondent No. 1 not acting negligently and not causing the accident that caused the Appellant's injuries.

18. Mr Netravalkar submitted that the Panchanama produced by the Appellant was manipulated to implicate Respondent No.1 but that the unmanipulated panchanama secured by Respondent No. 3 under the RTI Act showed the scratch marks on the road proving that the scooter being ridden by the appellant had fallen without any impact from the pick-up driven by Respondent No.1, but that the Appellant had lost control of his scooter after braking. He submitted that the panchanama could not be brushed aside because it was secured under the RTI Act.

19. Further, Mr Netravalkar submitted that the Accident Summary Report prepared by the PI showed that the PI had endorsed that a 'pure accident summary' was recommended, as there was no negligence on behalf of the tempo driver, supporting the Respondent's case that there was no rashness or negligence on his part.

20. Mr Netravalkar submitted that the disability certificate was produced by the Appellant without the examination having been

directed by the Tribunal and that, as such, it could not be relied upon to prove the disability suffered by the appellant.

21. Based on the above contentions, Mr Netravalkar submitted that this appeal be dismissed with costs.

22. Considering the rival contentions, the following three points for determination arise in this Appeal :

(A) Did the Appellant approach the tribunal within a reasonable period of time?

(B) Is the Tribunal's finding on rashness and negligence legal and proper?

(C) If rashness and negligence are established, what is the quantum of compensation payable to the Appellant?

23. The rival Contentions now fall for my determination.

DELAY AND LACHES IN INSTITUTING THE CLAIM PETITION.

24. The contention that the Claim Petition ought to be dismissed on account of delay cannot be accepted because the appellant has shown sufficient cause. Besides, apart from urging the issue of delay, none of the Respondents have pleaded or proved that they suffered any serious prejudice due to this delay. The claim petition was not barred by delay and laches for reasons discussed

hereafter. Admittedly, no limitation period was prescribed for instituting such a petition, and the petition was instituted within a reasonable time considering the tragic circumstances in which the appellant and his aged and widowed mother were placed due to the accident.

25. In this case, we are concerned with a claimant who was employed as a chef at the Taj Fort Aguada Beach Resort in Goa. At the young age of 25, he met with an accident that rendered him completely disabled. Though the medically certified disability was about 95%, the functional disability was 100%. He had mainly his widowed mother to look after him at an age when he had just begun to provide for her. There is evidence of prolonged treatment before the appellant could barely stabilise and survive as a person with disabilities. Mr Ramaiya rightly contended that the mother's first priority was her son's survival.

26. The disability certificate produced on record reads thus:

ANNEXURE-B
STANDARD FORMAT OF THE CERTIFICATE

*NAME AND ADDRESS OF THE
INSTITUTION/HOSPITAL ISSUING THE
CERTIFICATE
DEPARTMENT OF NEUROLOGY, GOA MEDICAL
COLLEGE, BAMBOLIM GOA*

Certificate No.Neurology/GMC/2012-13/023

dated: 10th March 2013

CERTIFICATE FOR THE PERSONS WITH DISABILITIES

This is to certify that Shri Oswald Francisca Caldeira, aged 35 years, male, Son of Franscico Caldeira, resident of Jaycee nagar, Ponda - Goa, Registration no. 11/11307 is a case of "Sequelae of head injury" (Dysarthria (moderate) 50%, controlled epilepsy 50%, Spastic hemiparesis 25%, I. Q. 65 (certified by Psychologist of I.P.H.B.) 75% Total disability as per combining formula 95.3% (Ninety five. three percent) permanent (Physical impairment/~~visual impairment/speech and hearing impairment~~) in relation to his above sickness.

Note:

- 1. The condition is progressive/non progressive/likely to improve/not likely to improve.*
- 2. Re-assessment is not recommended/is recommended after a period of months/year.*
- Strike out which is not applicable.*

*Sd/- sd/- Sd/-
(DOCTOR) (DOCTOR) Dr. Aaron De Souza
Assistant Professor
Department of Neurology
Goa Medical College*

Signature/Thumb impression of the patient

*Medical Superintendent/Chief Medical Officer
Of the Hospital (with seal)*

27. The appellant's mother, Clara (AW1), has deposed that the appellant was in the ICU battling to survive for almost 15 days. The appellant was in the GMC for about two months. The discharge summary recorded by Dr. Dubhashi (AW9), for the Department of Neurosurgery, at GMC shows, that the Appellant was initially taken to the ICU for ventilatory support, and had to undergo a Tracheostomy, [a surgical procedure where a hole(stoma) is created in the windpipe/trachea, so that air/oxygen may be mechanically/manually ventilated through the lungs through the created opening, via an inserted tube]. At discharge from Goa Medical College, the Appellant still had the Ryle's tube (Nasogastric tube to provide nutrition etc.) in situ. The Appellant was treated at GMC, with Antibiotics, Analgesics, Mannitol given intravenously, Dilantin as well as other medication that was required. Subsequently, the Appellant was taken for treatment at different hospitals, such as Apple Hospital and Research Centre in Kolhapur and Apollo Victor Hospital Margao as and when required, the bills and receipts of which have also been produced in evidence. The treatment with local doctors at Ponda continued for a considerable period. The Appellant had to be admitted to the GMC on no less than three occasions.

28. AW1 deposed that the Appellant's skull had received a crush injury, and he suffered multiple head injuries due to the accident.

The Appellant gets fits and convulsions and is incapable of balancing himself. He cannot even walk for short distances. There is evidence about the Appellant's body being paralysed, and his mother has described him as deranged and completely 'at the mercy' of the other family members. There is ample evidence about the fracture of the skull and the jaws. There is evidence of serious dental issues and memory loss. All this evidence has not been denied in the least and is backed by doctors and medical records.

29. There is ample evidence to establish how the claimant could not handle his day-to-day activities. There is evidence that the claimant was entirely reliant on his aged and widowed mother. There is evidence about how the mother was focussing on her son's medical needs and had no time or resources to seek compensation. The mother was about 60 years old when the claimant suffered the accident. No less than three doctors deposed in this case, i.e. Dr Anuja Ganoo (AW3), Dr Sanjay Sukthankar (AW7), and Dr Sarvesh Dubhashi (AW9). The attendant who attended to the Appellant was also examined as AW5.

30. Even after the petition was sworn before the notary, it could not be immediately filed before the Tribunal. All these factors cannot be ignored to deny compensation to the claimant and some relief to his 80-year-old mother, who cares for him. The delay is adequately explained. If the delay is considered in the context of all

these unfortunate circumstances, then it must be held that the petition was instituted within a reasonable period.

31. Besides, in this case, except for the Insurance Company raising the delay issue, nothing is pleaded or proved about the prejudice, if any, caused due to such delay. There was no suggestion of any records being destroyed or witnesses not being available. If the compensation is found to be payable, the interest would commence from the petition date and not earlier.

32. Even the Tribunal, except for saying at one place that the petition was initiated with delay, has not dismissed the petition on the grounds of delay. The petition was dismissed because the Tribunal felt that the helpless claimant and his widowed and aged mother could not establish rashness and negligence issues.

33. The judgment of this court in *Jaganath Hiroji Rawool and Another v. C.J. Jogy (First Appeal No. 94 of 2015 decided 20.05.2022)* turned on its own facts, namely that the claimant had restarted operating his business and had only explained two years' delay due to his incapacity and lack of mobility but had been errant thereafter in instituting his claim, whereas here the factual matrix is significantly different and as such the above judgment will be of no assistance to the Respondent, in any case the matter therein was

only remanded to the Tribunal to consider if the delay was reasonable.

34. Therefore, point (A) shall have to be answered in favour of the Appellant.

RASHNESS AND NEGLIGENCE

35. The Tribunal's approach for determining rashness and negligence in accident cases is contrary to the law laid down by the Hon'ble Supreme Court in the cases of *Sunita & Ors. V/s. Rajasthan State Road Transport Corporation & Ors.*⁶, *Anita Sharma & Ors. V/s. New India Assurance Company Limited & Anr.*⁷, *Parmeshwari V/s. Amir Chand & Ors.*⁸, *Mangla Ram V/s. Oriental Insurance Company Ltd. & Ors.*⁹ and *Dulcina Fernandes & Ors. V/s. Joaquim Xavier Cruz & Anr.*¹⁰.

36. In all the aforesaid cases, the Hon'ble Supreme Court has held that the approach of the Courts/Tribunals when dealing with such matters has to be sensitive enough to appreciate the turn of events on the spot or the hardship that the claimants usually face in tracing witnesses and collecting information for an accident

⁶ (2020) 13 SCC 486

⁷ (2021) 1 SCC 171

⁸ (2011) 11 SCC 635

⁹ (2018) 5 SCC 656

¹⁰ (2013) 10 SCC 646

when they were themselves not present at the accident spot. Further, the Courts/Tribunals must be cognizant of the fact that strict principles of evidence and standard of proof, like in a criminal trial, are inapplicable in MACT claim cases. The standard of proof in such matters is one of the preponderance of probabilities rather than proof beyond a reasonable doubt.

37. In *Sunita & Ors. (supra)*, the Hon'ble Supreme Court has held that it is well settled that in motor accident claims cases, once the foundational fact, namely, the actual occurrence of the accident, has been established, then the Tribunal's role would be to calculate the quantum of just compensation if the accident had taken place because of the negligence of the driver of a motor vehicle and, while doing so, the Tribunal would not be strictly bound by the pleadings of the parties. Notably, while deciding cases arising out of motor vehicle accidents, the standard of proof to be borne in mind must be of a preponderance of probability and not the strict standard of proof beyond all reasonable doubt, which is followed in criminal cases.

38. The observations of the Hon'ble Supreme Court in *Anita (supra)* are also apposite and pertinent to this case, the Court observed that, it is commonplace for most people to be hesitant about being involved in legal proceedings and they therefore do not volunteer to become witnesses. Hence, it was highly likely that

the name of Ritesh Pandey or other persons who accompanied the injured to the hospital did not find mention in the medical record. There was nothing on record to suggest that the police reached the site of the accident or carried the injured to the hospital. *The statement of AW3, therefore, acquires significance as, according to him, he brought the injured in his car to the hospital. Ritesh Pandey (AW3) acted as a good Samaritan and a responsible citizen, and the High Court ought not to have disbelieved his testimony based merely on a conjecture. It is necessary to reiterate the independence and benevolence of AW3. Without any personal interest or motive, he assisted both the deceased by taking him to the hospital and later his family by expending time and effort to depose before the Tribunal.*

39. Further, the Court noted that it is quite natural that such a person who had accompanied the injured to the hospital for immediate medical aid, could not have simultaneously gone to the police station to lodge the FIR. *The High Court ought not to have drawn any adverse inference against the witness for his failure to report the matter to the police.* Further, as the police had themselves reached the hospital upon having received information about the accident, there was perhaps no occasion for AW 3 to lodge a report once again to the police at a later stage either.

40. The observations of the Hon'ble Supreme Court in *Parmeshwari* (supra) are also required to be referred to, the Court observed that the other ground on which the High Court dismissed the case was by way of disbelieving the testimony of Umed Singh, PW 1. That, *such disbelief of the High Court is totally conjectural. Umed Singh is not related to the appellant but as a good citizen, Umed Singh extended his help to the appellant by helping her to reach the doctor's chamber in order to ensure that an injured woman gets medical treatment. The evidence of Umed Singh cannot be disbelieved just because he did not file a complaint himself. We are constrained to repeat our observation that the total approach of the High Court, unfortunately, was not sensitised enough to appreciate the plight of the victim.*

41. The evidence on record in this matter will have to be evaluated by considering the aforementioned perspectives and principles. Since the Tribunal failed to notice these decisions or apply them to the facts emerging from the record, the evidence must be reassessed.

42. That there was a collision between the scooter and the pick-up is an admitted fact. Therefore, the accident itself has been proven. It is the Appellant's case that the pick-up bearing No.GA-01-T-4181 was being driven rashly and negligently, and because the pick-up was overtaking a bus, it hit the scooter bearing No.GA-

01-K-5585 being ridden by the Appellant on the correct side of the road. Further, due to the impact, the scooter was dragged by the pick-up, causing it to fall on the left side of the pick-up, the wrong side of the road apropos the scooter.

43. The Respondent's case is that the pick-up was being driven with due care and that the Appellant was riding in a rash and negligent manner and, while trying to overtake a bus, got confused, lost control and banged the left front side of the pick-up truck being driven by Respondent No. 1 and fell onto the water pipe kept at the side of the road, causing his injuries.

44. Admittedly, the claimant examined two eyewitnesses. The Respondents examined no eye-witnesses. Still, the evidence of AW2 and AW4 was sought to be discredited because they did not form part of the 'list of witnesses' submitted by the appellant and that, therefore, they were merely got-up witnesses.

45. The above reasoning, however, is misconceived because the claimant is not required to name every witness in the list; he is required only to name every witness he requires the assistance of the court to produce. If a claimant believes he can secure the presence of a witness he wishes to examine, he need not include such name/s in the list of witnesses. In any case, only on this ground, the eyewitness testimony could not have been rejected.

46. In *Mange Ram v. Brij Mohan*¹¹, the Hon'ble Supreme Court was seized of an appeal in an election petition, where the High Court had disallowed the examination of 54 witnesses on the ground that their names had not been part of the list of witnesses. The procedure in an election petition is also governed by the Code of Civil Procedure, 1908, subject to the provisions of the Representation of People Act, 1951, the Apex Court held that where the party wants the assistance of the court to procure the presence of a witness on being summoned through the court, it is obligatory on the party to file the list with the gist of evidence of witness in the court as directed by sub-rule (1) of Rule 1 and make an application as provided by sub-rule (2) of Rule 1. But where the party would be in a position to produce its witnesses without the court's assistance, it can do so under Rule 1-A of Order 16, irrespective of whether the name of such witness is mentioned in the list.

47. Therefore, the evidence of AW2 (Babyn Rodrigues) and AW4 cannot be discredited or discounted because their names were not on the list of witnesses. AW2 has given evidence that he knew the Appellant since the accident occurred on 23.04.2003 at about 3:00 PM at Nagzar Bhoma. On the day of the accident, while

¹¹ (1983) 4 SCC 36

proceeding from Usgao to Panaji by car to his sister's place, being driven by Eusebio Fernandes, he saw that the claimant was riding the scooter bearing No. GA-01-K-5585 ahead of his vehicle, and at that time, the driver of the pick-up, whilst overtaking another vehicle, dashed against the Appellant's scooter on his left side and dragged him towards his side. This corroborates the Appellant's version of events.

48. In cross-examination, AW2 stated that he did not know the Appellant before the accident. That the Appellant was riding towards Panjim about one metre from the left edge of the tarred road, and that after the dash, the pick-up was on its correct side of the road, i.e. on the left-hand side of the road as one proceeds from Panaji towards Ponda. He also stated that the scooter was about three metres from the pick-up after the impact. He has also denied the suggestion that the Appellant dashed the pick-up and fell on the pick-up's left side. AW2 also states that he, along with others, helped the Appellant and placed him in the car so as to take him for medical treatment. He has also denied the suggestion that the driver of the pick-up took the Appellant for medical treatment. He has also denied the suggestion that he is depositing in the Appellant's favour as he is his friend. AW2's evidence has not been dented in cross-examination.

49. AW4 (Sanjay Naik) has deposed that on the day of the accident, he was waiting for a bus to return to Ponda, his place of residence, after leaving the house of his relations, which is about a hundred metres away from the place of the accident. He deposed that the Appellant was riding a scooter proceeding towards Banastarim. He has also deposed that the Appellant was almost two metres inside the road if one proceeded from Ponda to Banastarim. At that time, a tempo came driving from the Banastarim side towards Ponda, and after overtaking a bus, hit the Appellant on his left-hand side and dragged him towards his left-hand side.

50. In AW4's cross-examination, he stated that he did not remember the day of the week but that he remembered that it was 23.04.2003 and that he had taken leave to go to his friend, Suman Gaude's house, which was around 100 metres from the spot of the accident. He stated that he did not have any relations at Bhoma but that his friend Suman Gaude lived there and that he had come up to the road to drop him. He stated that after he crossed the road, he was waiting for a bus, and if one proceeds from Banastarim towards Ponda, he was standing on the left-hand side of the road, about 5 metres from the accident spot.

51. He stated that the accident occurred immediately after the bus stop and that when he first saw the Appellant, he was maybe two to three metres away from where he was standing. He has

stated that the Appellant was wearing a helmet; he has denied the suggestion that the Appellant was overtaking a bus and, in the process, went onto the other side of the road and dashed the pick-up following which the appellant went and hit the pipes which were kept on the left side of the road as one proceeds towards Ponda, he has also denied the suggestion that after the scooter dashed the pick-up, the pick-up stopped then and there. He has also denied the suggestion that he was falsely deposing to help the Appellant get compensation. Again, AW4's evidence has also not been significantly dented in cross-examination.

52. Mr Netravalkar may be correct that the Panchanama secured under the RTI Act should not be brushed aside; however, the question of any contradiction in the Panchanamas and sketches produced by the Appellant and the Respondent No. 3 was required to be answered by RW2 (Yeshwant Gawas), who was best suited to answer such a question given he was the ASI who conducted the Panchanama at the spot of the accident. In his cross-examination, however, on being shown the Panchanama and sketch at Exht.29 Colly (produced by the Appellant) identified his signatures thereon and stated that he prepared the Panchanama and sketch; he also denied the immediately following suggestion that he had been deposed falsely; the Tribunal has ignored this aspect.

53. It is also relevant that the Panchanama and sketch produced by the Appellant was admitted with consent and that Respondents had not objected to the Panchanama and sketch produced into evidence by the Appellant at the first instance, and that this plea of manipulation was only raised subsequently. In *Oriental Insurance Co. Ltd. v. Premlata Shukla*¹², the Hon'ble Supreme Court has held that if the objection is not raised and the document is allowed to be exhibited/marked, then one cannot be permitted to turn around and raise a contention that the contents of the documents have not been proved and should not be relied upon. *Premlata Shukla (supra)* was also a matter concerning a claim petition under the M.V. Act.

54. As such, the panchanama produced by the Appellant should have been considered; however, the tribunal has erroneously disbelieved the Panchanama and sketch at Exh. 29 Colly in favour of Exh. 144/Colly. Further, the endorsement of the PI stating that a 'pure accident summary' was recommended was given undue weightage by the tribunal given that the PI was never examined; therefore, such endorsement could not have been relied upon by the Tribunal to conclude that the Panchanama at Exh. 29 Colly had to be disbelieved, or that there was no negligence on the part

¹² (2007) 13 SCC 476

of Respondent No. 1. Be that as it may, the case of the Appellant does not rest on the Panchanama and sketch which is not substantive evidence by itself.

55. In RW1's cross-examination, he stated that though there is no bus stop on the left-hand side of the road if proceeding towards Ponda, people wait to board a bus there and that buses stop there for the same. This lends credence to AW4 evidence that he was standing near the accident spot awaiting a bus. He stated that the width of the road at the time of the accident was four and a half metres and that two vehicles could cross each other at the same time. However, the Panchanamas and sketches show the road was 6.80 metres wide. He has also admitted that there is an upward slope if one proceeds from Ponda towards Banastarim, that there is a certain height. He also admitted that if a person overtakes any vehicle while coming from Banastarim to Ponda, one cannot see what is coming from the front, i.e. from Ponda towards Banastarim.

56. One has to be more careful than usual driving a pick-up, a large vehicle plying downhill. Indeed, there is a greater degree of care and caution that one needs to exercise so as not to cause a mishap, especially when, admittedly, one cannot see oncoming traffic properly. Both AW2 and AW4, who are independent witnesses, have cogently and coherently deposed as to how the

driver of the pick-up, Respondent No. 1, caused the accident by trying to overtake a bus, thereby striking the Appellant's scooter in his lane and dragging him into the Respondent No. 1's lane.

57. Therefore, based on the standard of preponderance of probabilities, which is the standard that is to be applied in a matter of this nature, on a holistic consideration of the evidence, it stands proved that it was Respondent No. 1's negligence that caused the accident, which severely and irreversibly injured the Appellant. As noted earlier, the evidence in such cases must be evaluated by applying the principles the Hon'ble Supreme Court explained in the abovementioned cases. The approach of the tribunals must not be to unnecessarily pick holes in the claimant's evidence. The tribunals must be conscious of the fact that witnesses are usually reluctant to get involved in police cases.

58. Therefore, even point (B) must be answered in the Appellant's favour.

Issue of Just Compensation

59. In *Sidram v. United India Insurance Co. Ltd.*¹³, the Hon'ble Supreme Court observed that determining the court's compensation is essentially a very difficult task and can never be an exact science. Perfect compensation is hardly possible, especially in

¹³ (2023) 3 SCC 439

claims of injury and disability. The court referred with approval to the observations in *H. West & Son Ltd. v. Shephard*¹⁴:

“... money cannot renew a physical frame that has been battered.”

60. The court noted that the principle consistently followed by the Hon'ble Supreme Court in assessing motor vehicle compensation claims is to place the victim in as near a position as she or he was before the accident, with other compensatory directions for loss of amenities and other payments. Several decisions have stated and reiterated these general principles (See *Govind Yadav v. New India Insurance Co. Ltd.*¹⁵).

61. Further, it is now a well-settled position of law that even in cases of permanent disablement incurred due to a motor accident, the claimant can seek, apart from compensation for future loss of income, amounts for future prospects as well.

62. The Appellant has produced on record a salary certificate from Taj Fort Aguada Beach Resort as proof of income, showing that he was paid Rs.4,000/- per month as remuneration for his services as an assistant cook. The same shall have to be taken as the

¹⁴ (1964) AC 326

¹⁵ (2011) 10 SCC 683

Appellant's income in computing the compensation quantum. There was no challenge to this position.

63. Besides, there is evidence of the Appellant's qualifications, experience and future prospects, such as a Diploma in Hotel Management from Curtorim Educational and Welfare Foundation School of Hotel Management, certification in elementary First Aid by MMTI, Mumbai, certification in personal survival technique, by Sea Scan Marine Services etc. There is ample evidence about the medical expenses already incurred and that are likely to be incurred in the future. In the first round, the Tribunal had allowed the claim petition by its award dated 17.12.2015. The compensation amount was determined to be Rs.25,96,420.81/- . But this award was set aside, and the matter was remanded to the Tribunal to reconsider mainly the issue of rashness and negligence.

64. The loss of income/earnings must be calculated per the multiplier method, as *Sidram* (supra) notes.

Sr. No.	Head of Compensation	Amount
1.	Income	Rs.4,000/- per month
2.	Future Prospects	50%
3.	Adjusted income	Rs.6,000/- per month
4.	Total Annual Income	Rs.72,000 (i.e. Rs.6,000x12)
5.	Multiplier	18 (Age 25)

6.	Loss of Income	Rs.12,96,000 (i.e Rs.72,000x18)
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65. Therefore, the loss of income as a part of pecuniary loss must be taken as Rs. 12,96,000/-

Medical Expenses and Past Attendant charges

66. The Appellant has produced medical bills on record. AW12 Shri Ratnadeep Kurtarkar, a pharmacist, had identified the bills. The total value of the cost of the medicine mentioned in the said bills at Exh. 31 colly works out to Rs.11,320.88. Medical bills at Exh. 32 Colly are worth Rs.6,579.93. The claimant had to pay Doctors towards their fees. At Exh.86 colly are two receipts issued by AW7, Dr. Sanjay Sukhthankar, stating that he had received Rs.12,000/- and Rs.2,600/- from the Appellant. The Appellant had spent a total amount of Rs.32,500.81 towards past medical expenses, which must be accepted.

67. AW5 has given evidence that he attended to the appellant for about four months and that he was paid Rs.24,600/-. His testimony was not shaken in cross-examination. Similarly, AW6, AW8 and AW11 have given evidence that they had attended to the Appellant for a period of about a month, five months, and eight months, respectively, and that they were paid Rs.4,800/-, Rs. 29,070/-, Rs. 36,450/- respectively. Their evidence has not been

dented; the Appellant has also produced receipts for the above. As such, this expenditure must be accepted, and the total past attendant charges come to Rs.94,920/- The sub-total under this head would therefore be Rs.1,27,420/-.

Future Medical and attendant expenses

68. This is a total disability case, wherein AW10 (Neurologist-Dr Aaron De Souza) has assessed the disability of the Appellant as 95.3% and that his condition is non-progressive and not likely to improve. In fact, AW10, in his cross-examination, has deposed that the Appellant's condition actually worsened in 2012 when he began getting fits on account of his head injuries. Though he has been assessed at 95.3% permanent disability, this really is a case where, effectively, the functional disability is 100%. The Appellant was an assistant cook at a five-star hotel; such a field requires dexterity, long hours on one's feet, constant movement and the use of fine motor skills, all of which the appellant has lost the capacity for. Therefore, it would be correct to hold the functional disability is 100%. [See para 34, 42 of *Sidram (supra)*]

69. The Appellant has required the assistance of assistants for some time now; going forward, this requirement will likely not change. The Hon'ble Supreme Court in *Sidram (supra)* while considering the future medical expenses in the context of disability

due to paraplegia and 45% total disability of a person requiring similar care, i.e physiotherapy, nursing, considered that at a bare minimum, such expenses would amount to Rs. 1000 per month, as such the court saw it fit determine future medical expenses thusly, $1000 \times 12 \times 18 = \text{Rs.} 2,16,000$, as the claimant was aged 19 years at the time of the accident, and around 29 at the time when the matter was decided.

70. In *Sanjay Verma v. Haryana Roadways*¹⁶, the Hon'ble Supreme Court, while seized of a case wherein the claimant was paralysed due to a spinal fracture, observed that insofar as "future treatment" is concerned there was no doubt that the claimant will be required to take treatment from time to time even to maintain the present condition of his health further, though it is not beyond the powers of the court to award compensation beyond what has been claimed (See *Nagappa v. Gurudayal Singh*¹⁷, in the facts of that case that the grant of full compensation, as claimed in the claim petition i.e. Rs.3,00,000 under the head "future treatment", would meet the ends of justice.

71. Here, however, no claim has been sought under this head; as such, in the interest of determining just compensation, it would be appropriate to hold the same to be Rs.3,00,000/- to enable the

¹⁶ (2014) 3 SCC 210

¹⁷ (2003) 2 SCC 274

Appellant to get the medical attention he requires in light of the nature of his injuries, fits etc. The medical costs are on the rise. There is no improvement in the Appellant's condition. Some reasonable provisions are a must towards future medical expenses. As the Appellant has required medical treatment in the past including, MRI, and CT Scan imaging, medication for his epilepsy, seizures, medication to maintain his quality of life such has analgesics for pain etc., as well regular medical check-ups to determine the care required to treat his chronic conditions, so shall they be required in the future, so as to at least maintain the quality of life the Appellant currently experiences. The Appellant has required physiotherapy in the past. The same shall be necessary going forward to maintain adequate mobility and strength given that his condition involves instability while walking or standing. Furthermore, due to the fact that he is supine for a significant period of time on account of his injuries and ailments, it is natural that his muscle mass will atrophy; here again, physiotherapy shall be crucial¹⁸. The cost of all of this is not stagnant and grows with time; as such, the amount of Rs. 3,00,000/- is proper in the facts and circumstances of this case.

¹⁸ Marusic U, Narici M, Simunic B, Pisot R, Ritzmann R. Nonuniform loss of muscle strength and atrophy during bed rest: a systematic review. J Appl Physiol (1985). 2021 Jul 1;131(1):194-206. doi: 10.1152/japplphysiol.00363.2020. Epub 2021 Mar 11. PMID: 33703945; PMCID: PMC8325614.

72. In *Sidram (supra)*, the Court observed that in so far as this head was concerned, neither the Tribunal nor the High Court thought it fit to award anything. Further, the evidence on record indicated that the appellant could not stand, walk, sit or bend his body or lift anything heavy. It was not in dispute that the appellant would not be able to work in the same manner as he used to before the accident. That, indisputably, the appellant had suffered from paraplegia on account of the accident and required an attendant throughout the day. According to the claimant, the cost of keeping the attendant would be Rs.4500/- per month. However, the court fixed it at Rs.2000/- per month. As a result, attendant charges were awarded thusly $\text{Rs.}2000/- \times 12 \times 18 = \text{Rs.}4,32,000/-$, which may be adopted here. Therefore, the total under this head would be Rs.4,32,000/-.

Litigation charges

73. The accident occurred in 2003, the claim petition was instituted in 2012, and as of 2024, twelve years have been spent litigating this claim, the Hon'ble Supreme Court in *Sidram (supra)* after considering that ten years had been spent litigating the case therein including an SLP, saw it fit to award Rs.50,000/- after considering the case law on the subject. Here, though the time spent litigating the claim has been greater, only the first forum of

appeal has been moved. Therefore, fixing the litigation expenses as Rs. 30,000 would be appropriate.

Loss of conveyance

74. In *Ayush v. Reliance General Insurance Co. Ltd.*¹⁹, the Hon'ble Supreme Court observed that the learned Tribunal had rejected the claim of taxi expenses for the reason that the taxi driver had not been produced. The Court noted that it is impossible to produce numerous taxi drivers. Still further, the Tribunal should have realised the condition of the child, who had complete sensory loss in the legs. Therefore, if the child's parents had taken him in a taxi, that was probably their only option. Accordingly, a sum of Rs. 2,00,000/- was awarded as conveyance charges.

75. Here, the Appellant has produced taxi receipts to the tune of Rs. 7,800/- the same must be accepted. However, the appellant was also taken to Apple Hospital and Research Centre in Kolhapur; as such, it would be proper to affix the total amount under this head as Rs.50,000/-, considering the various times the Appellant has required transport to and from hospitals, imaging centres, and Doctors' offices.

¹⁹ (2022) 7 SCC 738

Non-pecuniary expenses

76. The Appellant has sought Rs.2,00,000/- in the form of compensation under the head of pain and suffering. In *Divisional Controller, KSRTC v. Mahadeva Shetty*²⁰, the Hon'ble Supreme Court held that a person not only suffers injuries on account of an accident but also suffers in mind and body on account of the accident throughout his life and a feeling is developed that he is no more a normal man and cannot enjoy the amenities of life as another normal person can. While fixing compensation for pain and suffering as also for loss of amenities of life, features like his age, marital status and unusual deprivation he has undertaken in his life have to be reckoned.

77. In *Sidram (Supra)* the Hon'ble Apex Court held that pain and suffering would be categorised as a non-pecuniary loss as it is incapable of being arithmetically calculated. Therefore, when compensation is to be awarded for pain and suffering, special circumstances of the claimant have to be taken into account including the victim's age, the unusual deprivation the victim has suffered, the effect thereof on his or her future life.

²⁰ (2003) 7 SCC 197

78. In *R.D. Hattangadi v. Pest Control (India) (P) Ltd.*²¹, while discussing this aspect held that it is really difficult to assess the exact amount of compensation for the pain and agony suffered by the appellant and for having become a lifelong handicapped. No amount of compensation can restore the physical frame of the appellant. That is why it has been said by courts that whenever any amount is determined as the compensation payable for any injury suffered during an accident, the object is to compensate such injury "so far as money can compensate" because it is impossible to equate the money with the human sufferings or personal deprivations. Money cannot renew a broken and shattered physical frame. Further, when compensation is to be awarded for pain and suffering and loss of amenity of life, the special circumstances of the claimant have to be taken into account including his age, the unusual deprivation he has suffered, the effect thereof on his future life. The amount of compensation for non-pecuniary loss is not easy to determine but the award must reflect that different circumstances have been taken into consideration.

79. The Appellant was a young man in the prime of his youth, the unfortunate accident has irrevocably changed his life for the worse, he now requires the aid of attendants to conduct ordinary

²¹ (1995) 1 SCC 551

bodily imperatives, he also suffers from fits. The initial injuries recorded in the 'Hurt Certificate' issued by Goa Medical College, which has been produced in evidence by the Appellant include a head injury, laceration, ecchymosis of the left eye, cerebral oedema, multiple contusions in bilateral parietal region, a depressed fracture on left frontal bone and subdural haemorrhage, as well as another laceration on his left thigh. AW3 has given evidence regarding the same and also stated in cross-examination that the appellant was unable to speak at that point in time. He also suffers from epilepsy as a result of the accident, evidence regarding this was given by AW7, and that he was under medication for the same (Dilantin) and that he was operated upon, undergoing an extraction procedure. AW9 has deposed that after the accident the Appellant was admitted for a total of 49 days at the hospital, that the CT Scan revealed multiple injuries to the brain and skull. Even when the patient was discharged eventually, he was not fully conscious, he could not stand or sit properly, nor could he speak. In cross-examination, AW9 stated that in order to medically classify a person as fully conscious his Glasgow Coma Score should be 15, and that the time of admission the Appellant's GCS was 4 and that it was 9 at the time of the discharge. His disability now stands at 95.3%; there is evidence on record showing that the appellant does

not have control over his bowel movements and that he requires aid in bathing, eating, etc.

80. The Appellant had previously lost his father; he is cared for by his aged mother; his future as to who shall care for him is also uncertain. Considering the totality of circumstances, it is appropriate to grant the compensation sought under this head, which is determined at Rs.3,00,000/-.

Loss of Marriage prospects-

81. *Sidram* (supra), after considering case law on the subject deemed it appropriate to determine the compensation under this head, at Rs.3,00,000/-. Similarly, in this case, the Appellant also a young man of 25 at the time of the accident has lost, in all likelihood the opportunity to get married. As such Rs.3,00,000/- would be required to be determined under this head.

Loss of Amenities

82. In *Raj Kumar v. Ajay Kumar*²², the Hon'ble Supreme Court held that a person is not only to be compensated for the physical injury but also for the loss he suffered due to such injury. This means that he is to be compensated for his inability to lead a full life, to enjoy those normal amenities which he would have enjoyed

²² (2011) 1 SCC 343

but for the injuries, and to earn as much as he used to earn or could have earned.

83. Under this head, it would be appropriate to determine the compensation as Rs.1,00,000/- given that the Appellant was 25 years old at the time of the accident and also considering the nature of injuries suffered by him and the extent of his disability.

84. Just compensation, considering the totality of the circumstances holistically will need to be calculated as under:

<i>Sl. No.</i>	<i>Compensation</i>	<i>Amount (in Rupees)</i>
1.	Loss of earning due to disability	Rs. 12,96,000
2.	Medical expenses and attendant charges	Rs. 1,27,420
3.	Future medical expenses	Rs. 3,00,000
4.	Attendant charges	Rs. 4,32,000
5.	Litigation charges	Rs. 30,000
6.	Reimbursement for conveyance	Rs. 50,000
7.	Pain and suffering	Rs. 3,00,000
8.	Marriage prospects	Rs. 3,00,000
9.	Loss of amenities	Rs. 1,00,000
	<i>Total</i>	Rs. 29,35,420/-

85. Therefore, issue (C) shall have to be answered in favour of the Appellant by determining the compensation payable at Rs

29,35,420/- . This amount will carry interest @ 6% per annum from the claim petition date till effective payment.

86. For the above reasons, this appeal is therefore partly allowed. Accordingly, the impugned judgment is set aside, and the Respondents are held jointly and severally liable to pay the Appellant the compensation amount of Rs.29,35,420/- together with an interest rate of 6% per annum from the date of institution of the claim petition till the date of actual payment.

87. This appeal is disposed of by making the following order:

- (a) First Appeal No.46 of 2023, in Claim Petition No.49/2012, is partly allowed. The Respondents are directed to jointly and severally pay to the Appellant a sum of Rs.29,35,420/- together with interest at the rate of 6% from the date of institution of the claim petition till the actual payment;
- (b) The Respondents, including in particular the Respondent No.3 - Insurance Company, must deposit this amount in this court within two months from today after giving due intimation to the learned counsel for the Appellant;
- (c) Upon deposit, the Appellant would be entitled to withdraw the said amount after furnishing identity and bank

details. Registry to ensure that the amount is directly transferred to the Appellant.

88. The Appeal is allowed in the aforesaid terms. There shall be no order for costs.

M. S. SONAK, J.

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