

(1978) 04 GUJ CK 0009
In the Gujarat High Court
Case No : First Appeal No. 1030 of 1973

Babu Mansa

APPELLANT

Vs

The Ahmedabad Municipal Corporation and Others

RESPONDENT

Date of Decision : 05-04-1978

Acts Referred:

Bombay Motor Vehicles Taxation Rules, 1959 — Rule 291
Motor Vehicles Act, 1939 — Section 110

Citation : (1978) ACJ 485 : AIR 1978 Guj 134 : (1978) 19 GLR 492

Hon'ble Judges : P.D. Desai, J;M.K. Shah, J

Bench : Division Bench

Advocate : V.M. Choksi and H.D. Karnik, for the Appellant; G.N. Desai and D.K. Trivedi, for the Respondent

Judgement

P.D. Desai, J.—X X X

2. This is a case in which the claimant appellant is the injured person and the claim for compensation arose out of an accident which occurred on Dec. 6, 1971 at about 6-30 or 6-45 A. M. on the Naroda Road In Ahmedabad. The appellant, who was aged about 15 at the material time, was proceeding along the Naroda Road in the company of his sister Lila aged about 8 years with three donkeys to collect sand from the river-bed at Bhadreswar. At that time, A. M. T. S. Bus No. G. T. A. 8495 driven by the third respondent approached from the opposite direction, that is to say, from the Sardarnagar side. . The bus hit one of the donkeys which fell down and then it collided against the appellant who was thrown down on the road and received injuries. The donkey died on the spot, while the appellant was removed for treatment to the Civil - Hospital. The appellant was hospitalized for a -period of about four months and the medical evidence discloses that the accident has resulted in shortening of his right leg by half centimeter as also in a limp in the right leg. The permanent partial disability is assessed at 20 %.

3. The appellant thereupon instituted the claim application through his guardian

before the Tribunal in which he claimed total compensation in the sum of Rs. 36,400/- together with costs and interest, The claim was split up under various heads as follows:-

Rs. 1,000/- Expenses incurred during the period of treatment. Rs. 1,000/- Future expenses for diet, etc. Rs. 1,000/- Pecuniary loss from the date of the accident till the date of the claim application. Rs. 5,000/- Pain and suffering. Rs. 5,000/- Loss of amenities and enjoyment of life. Rs. 25,000/- Future pecuniary loss. Rs. 400/- Loss of the donkey. _____ Rs. 38,400/- _____

Though the amount claimed under various heads as aforesaid totalled up to its, 38,400/- the appellant restricted his claim to Rs. 36,400/-.

4. The Tribunal found that the appellant had sustained his injuries as a result. of rash and negligent driving of the A. M. T. S. bus in question by the third respondent, and that the first and second respondents were vicariously liable for the said act of the third respondent. As regards - compensation. the Tribunal awarded a total sum of Rs. 9,150/- under the following. Heads:

Rs. 750/- Expenses incurred during the period of treatment. Rs. 500/- Pecuniary loss from the date of the accident till the date of the Claim Petition. Rs. 3,000/- Pain and suffering. Rs. 4,500/- Future pecuniary loss. Rs. 400/- Loss of the donkey. _____ Rs. 9,150/- _____

It is this award which is under challenge at the instance of both the parties.

5 to 14. x x x x x x x x x 15. On an analysis of the aforesaid evidence it clearly emerges that the appellant received multiple injuries in the course of the accident. His right leg was fractured. A nail had to be inserted into the right leg. Even after a period of about one year and eight months from the date of the accident when Dr. Bhatt examined the appellant, the after-effects of the injury on the right leg were clearly discernible. The appellant was limping on account of the shortening of the leg by 1/2 c. m. There was wasting of the thigh and there was also fixed flexion deformity of hip. Even after such a long period, the appellant was able to walk only with the support of a stick. He was not in a position to sit cross-legged and could squat only with support. The appellant has deposed that he was unable to. walk with normal gait and could not bend his leg. There was fracture of the arm and it also left some defect. There was injury on the right eye-brow and consequential removal of a piece of bone from near the eye-brow. The appellant was unable to open his eye fully. It is true that with regard to the injuries on the arm and eye-brow there is no medical evidence. That is because the case Papers and certificates have not been admitted into evidence. Dr. Bhatt has deposed only about the injury on the right leg - presumably because being an Orthopaedic Surgeon, he was consulted long after the- accident only with regard to the said injury, the after-effect of which was of a more permanent and lasting nature. The fact, however, remains that the appellant has not been cross-examined with regard to those other injuries to which he has deposed.

16. The entire evidence discussed about makes it clear that the appellant's Injuries were of a serious nature and that particularly the injury on his right leg has left a permanent sear as a result of which he is severely handicapped in his day-to-day pursuit of life. A person in his position of life, who has to undertake manual work to earn livelihood, would suffer a severe handicap on account of such deformity. If he cannot walk with ease and without support, if he cannot sit cross-legged, if he can squat with support only and if he is unable to bend his leg, it is difficult to appreciate as to how he would be able to efficiently carry on his work of excavation of sand. It is true that in medical terms Dr. Bhatt has evaluated the injury as having left permanent partial disability of 20 per cent. However, in terms of actuality, it appears to us that the disability which the appellant would suffer right from his young age unto his last days would be of a fairly extensive nature. It would not only result in pecuniary loss but also in non-pecuniary loss such as loss of enjoyment and amenities of life, retardation of prospects in other walks of social life and such and similar other handicaps. The ultimate question of compensation will have to be resolved bearing in mind these factors.

17 to 21. x x x x * x x x 22. The next question which arises for consideration is as to the economic loss-past and future -sustained by the appellant as a result of the accident. The Tribunal came to the conclusion that the appellant's capacity to earn was reduced by about 25%. We do not propose to interfere with this finding of the Tribunal although it appears to us that the approach of the Tribunal on the question is not wholly correct. It is true that Dr. Bhatt has deposed that the permanent partial disability was to the extent of 20 per cent. However, as earlier stated, the evidence of Dr. Bhatt relates only to the injury sustained on the right leg. The appellant also sustained injuries on the arm and eye-brow and they too appear to have left their telling effect. Besides, it is not entirely right to always make the future loss of income co-extensive with the extent of permanent disability. This is not an algebraic problem which can be solved by any abstract formula. On the basis of the evidence as to permanent disability, whether complete or partial, an assessment must be made as to what effect such disability would have on the entire functioning of the body and how it would consequently affect the earning capacity. If all these factors are borne in mind and their inter-action is taken into consideration, it would appear even on a conservative estimate that the earning capacity of the appellant was affected to the extent of 25 per cent. Accordingly, the appellant would sustain a loss of Rs. 60/- per month, so far as his future earnings are concerned. The annual loss sustained on this account would be Rs. 720/-. The Tribunal has applied the multiplier of 15 in order to arrive at the just amount of compensation. We are of the view that the said multiplier has been properly applied on the facts and in the circumstances of the case. Accordingly, the loss of future income ought to be justly computed at Rupees 10,800/- and compensation in the like sum will have etc) be awarded to the appellant under the said head. The Tribunal's award in the sum of Rs. 4,500/- on the basis of the loss of income at the rate of Rs. 25/-

per month is totally inadequate and we are unable to uphold the same.

23. The Tribunal has awarded a sum of Rs. 500/- as and by way of loss of income from the date of the accident till the (late of the filing of the application which was a period covering roughly about five months. This amount was awarded on the footing that the net income of the appellant per month was Rs. 100/-. As we have found above, this estimate was grossly inadequate. We have held that the net earning of the appellant must have been Rs. 240/- per month. Accordingly, the award under this head should be in the sum of Rs. 1,200/-.

24. It is true that in the claim application the compensation claimed by the appellant "under this head was confined to Rs. 1,000/-/. However, so long as the total amount to be awarded does not exceed the total amount claimed, there should be no objection in awarding higher amount than that claimed- under one particular head, if on the true assessment of the evidence led at the trial, the claimant is found entitled to the same. In an application for compensation made under S. 110 (1) of the Motor Vehicles Act, 1939 read with R. 291 of the Bombay Motor Vehicles Rules, 1959 and the prescribed form Comp. A, the relevant particular which the claimant has to set out relates to the quantum of compensation and basis thereof. The basis has to be broadly indicated on estimates. "Besides, heads of compensation have to be regarded separately as aids to reaching a just amount. The tribunals power to award just and proper compensation is, therefore, not fettered by the specification of an amount in the claim application under any head. We are supported in the view which we are taking by the decision in Bai Nada and Others Vs. Patel Shivabhai Shankerbhai and Others, . It was there held at page 691" that once loss under both the heads comprised in Ss. 1-A and 2 of the Fatal Accidents Act, 1855 has been claimed and so long as the amount awarded does not exceed the amount claimed, the amount awarded can be suitably split up and awarded under the said two sections. The same principle will apply in cases of personal injury. So long as the award does not exceed the total amount claimed, there should be no objection in splitting, it up under different heads and even if a specific amount is claimed under a particular head, the Tribunal has the power to award an excess amount under that very head without amendment of the claim application provided the evidence justifies it.

25 to 26. x x x x x 27. We come now to the last head of claim, namely, the claim under the head of pain and suffering and loss of amenities and enjoyment of life. The appellant has claimed in all a sum of Rupees 10,000/- in the claim petition under this head. The Tribunal has, however, awarded a sum of Rs. 3,000/-. We are of the view that this award is grossly - inadequate.

28. It is well settled that a Person injured by another's wrong is entitled to general damages for non-pecuniary loss such as his pain and suffering, past and future, and his loss of amenity and enjoyment of life. Damages are also recoverable for loss of expectation of life. Damages awarded for pain and suffering and loss of amenity constitute a conventional sum which is taken to be

the sum which society deems fair, fairness being interpreted by the court In the light of previous decisions. Thus there has been evolved a set of conventional principles providing a provisional guide to the comparative severity of different injuries, and indicating a bracket of damages into which a particular injury will currently fall. The particular circumstances - of the plaintiff, including his age and any unusual deprivation he may suffer, is reflected in the actual amount of the award. The fall in the value of money leads to a continuing reassessment of these awards and to periodic reassessments of damages at certain key Points in the pattern where the disability is readily identifiable and not subject of large variations in individual cases (see Halsbury's Laws of England, Volume 12, Paragraphs 1146 and 1147 at pages 446 and 447). In the foot-note, the learned authors have pointed out that the age of the injured person may make a considerable difference because, for example, an old lady with a broken and deformed leg will have fewer years to suffer than a young woman with a similar injury. As regards continuing reassessment of awards for non-pecuniary loss, the learned authors have given in the foot-note a comparative assessment of various awards made by the Courts in England for the loss of sight in one eye as an illustration. The pattern according to the learned authors, has been

as follows:-

&1500 - 1960 &2000 - 1961 Between &2000 and &3000 - 1965 &3500 - 1971 &4000 to &4500 - 1974

This analysis shows that the Courts in England have raised the awards in such cases under the head of non-pecuniary loss almost three times within a period of 14 years. This consideration has to be borne in mind even by the Courts in our country while assessing damages, for, as observed by Lawton LJ in *Cunningham v. Harrison* (1973) 3 WLR 97 107, "conventions, however, change and if judges do not adjust their awards to changing conditions and rising standards of living their assessments of damages will have even less contact with reality than they have had in the recent past or at the present timely

29. The decision of this Court in *Ranjitsingh Gopalsingh v. Meenaxiben* (1972) 13 GLR 662 is the leading decision with regard to the award for- personal or non-pecuniary loss to an injured person. In that decision it has been pointed out that both in England and in this country the settled pattern of awards in personal injury cases is not to award merely token damages but to grant substantial amounts both under the head of personal loss as well as economic loss. The awards must be on a conventional figure derived from experience and from awards in similar other cases and there should be some measure of uniformity in awards. After reviewing certain decisions, it was found that the conventional amount on the basis of normally accepted standard in our country was to award Rs. 10,000/- for pain and suffering in case of loss of limb. The decisions which were relied upon in that case were reported in Law Journals published in 1914, 1959 and 1960 and the respective cases were decided in 1913, 1958 and 1960 by the concerned High Courts. However, in that case which was decided in 1971

it was observed at p. 671 that Rs. 10,000/- which was the normal amount awarded for pain and suffering could hardly compensate the personal loss in the case of a young girl aged 11 who had lost her right arm and, therefore, additional 75% amount was awarded and the total amount under the head of pain and suffering and personal loss was made in the sum of Rs. 17,500/-." Be it noted that as stated at page 671" in awarding this amount the Court had not taken into consideration personal inconvenience and discomfort or the social discomfiture or consciousness of loss which the girl was likely to suffer because it was felt that the global assessment would take care of all those factors. However, the special circumstance that in the case of a female such a loss of limb might considerably affect her chance of marriage was particularly taken into account. This decision, therefore, itself shows that the amount of Rs. 10,000/- awarded under this head is not necessarily a standard figure and that it has to vary according to circumstances of each case. It is true that the attention of this Court was there not focussed on the question whether there was need to continually reassess damages on account of the fall in the value of money and that it has, therefore, not referred to that aspect and the conventional amount of Rs. 10,000/- was accepted on the basis of old awards. Besides, as earlier stated, that decision itself has not stuck to the conventional figure and it should not therefore, be read as laying down the principle that conventional amount cannot be revised upwards or as fixing an invariable or immutable figure of compensation for pain and suffering and loss of amenities and enjoyment of life. The true guideline on that question is furnished by the statement of law contained in Halsbury which has been extracted above and those guidelines must always be borne in mind by the Tribunals.

30. We cannot conclude the discussion on this subject without referring to the data relating to the fall in the value of money in our country so that the need of periodical reassessment of damages at certain key points is highlighted and the requirement of adjusting awards to changing conditions is realised. The consumer price index numbers for industrial workers - all India general index - discloses the following state of affairs:

(Base: 1960 = 100) Month/Year (General Index Annual Average) 1961 104
1965 137 1970 184 1975 321 1976 296 1977 321 January 1978 325

This table illustrates the fall in purchasing power of rupee and, hopefully may be, rising standards of living. From 1961 to 1977 the annual average has almost tripled. Under these circumstances, if we still continue to be governed by the conventional figure adopted in pre-1960 awards, the current awards will have lost contact with reality. The conventional principle providing a broad guideline for the bracket of damages into which a particular injury having regard to its comparative severity will fall thus requires to be up-to-dated.

31. Once this position is appreciated, it would become difficult to sustain the total award in the sum of Rs. 3,000/- made in the present case for pain and suffering and loss of amenities and enjoyment of life. In the first place, as

pointed out in Meenaxiben's case, Rs. 10,000/- is the commonly accepted or conventional amount of compensation under the head of pain and suffering in case of loss of limb. Therefore, the Tribunal was entirely in error in awarding such a less amount as Rs. 3,000/- under the combined head of pain and suffering and loss of amenities and enjoyment of life in case of permanent disability in a vital limb. It ought not to have been overlooked that we are herein concerned with the case of a young boy aged 15 who has suffered severe physical handicap which would restrict his activities and lead to diminution in the enjoyment and amenities of life. Beside suffering acute physical discomfort and handicap having regard to the injury on the right leg, the appellant will also suffer social discomfiture and he would always be conscious of his physical defects. The fall in the value of money since the decision in Meenaxiben's case and the cases referred to therein must also be taken into account. If all these factors are borne in mind, then the appellant must be held to be entitled to a compensation in the sum of Rs. 15,000/- under the combined head of pain and suffering and" loss of amenities and enjoyment of life. In Meenaxiben's case ((1972) 13 GLR 662), in the case of young girl with all the peculiar circumstances attendant upon the case of a female, the total award under this head was made in the global sum of Rs. 17,500/- and that too, because the right arm was lost. Here, we are awarding Rs. 15,000/- as a conventional global amount under this head even in the absence of such special features and although this is not a " case of loss of a limb but merely the case of a permanent handicap in a vital limb in the case of a young boy of 15. This, in our opinion, is the bracket of damages into which this kind of injury will currently fall in similar cases.

32. As a result of the foregoing discussion, we hold that the appellant is entitled to the following award under different heads:-

Rs. 10,800/- Future economic loss. Rs. 1,200/- Economic loss sustained between the date of the accident and the date of the Claim Petition Rs. 15,000/- Pain and suffering and loss of amenities and enjoyment of life. Rs. 750/- expenses incurred during hospitalization. Rs. 400/- Compensation for loss of donkey.
_____ Rs. 28,150/- _____

The appellant will accordingly be entitled to total compensation in the sum of Rs. 28,150/- as against Rs. 9,150/- awarded by the Tribunal. The appellant will be entitled to recover the additional amount awarded to him with Interest at the rate of 6% per annum from the date of the Claim Application. The appellant will also be entitled to proportionate costs throughout. The additional amount which becomes payable by the order made herein will be deposited by the respondents in the Tribunal. Out of the said amount. the Tribunal will arrange to have an amount of Rs. 15,000/- deposited in fixed deposit with a nationalised bank in the name of the appellant, who has since attained majority, for a period of 61 months with the condition that the appellant will not be entitled to withdraw the amount before the due date nor will it be open to him to raise any loan against

the said fixed deposit without the prior permission of the Tribunal. Till the fixed deposit matures the appellant will be entitled to receive only interest accruing due from time to time if he so desires. The balance amount will be paid over to the appellant after due identification in person. This direction is given with the consent of the learned advocates appearing on behalf of the appellant to whom a suggestion in this behalf was made by the Court in the interest of the appellant himself. The cross-objections preferred by the respondents must obviously fail in view of our findings recorded above. The cross-objections are, therefore, dismissed. The appellant will be entitled to his costs on the cross-objections.

33. Order accordingly.