

(2016) 01 GUJ CK 0003
In the Gujarat High Court
Case No : First Appeal No. 5610 of 2008

Bhalaji @ Khodaji Gabhji Thakor

APPELLANT

Vs

Ahmedkhan Imamkhan Pathan & 1

RESPONDENT

Date of Decision : 04-01-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2016) AAC 709

Hon'ble Judges : M.R. Shah, J.

Bench : Single Bench

Advocate : Khushbu Danecha For Mrs. Vasavdatta Bhatt, Advocates, for the Respondent

Final Decision : Partly Allowed

Judgement

M.R. Shah, J. (Oral)- Feeling aggrieved and dissatisfied with the impugned judgment and award passed by the learned Motor Accident Claims Tribunal (Main) Gandhinagar (hereinafter referred to as "the tribunal") dated 24/09/2007 in MACP No.203/2001 by which the learned tribunal has awarded a total sum of RS. 2,50,000/- towards compensation to the original claimant for the injuries/permanent partial disability sustained by him, the appellant herein-original claimant has preferred the present Appeal to enhance the amount of compensation.

2. It is not in dispute that in a vehicular accident the appellant herein-original claimant lost his one hand and his right hand from the shoulder was required to be amputated and, therefore, in the present Appeal the only question, which is required to be considered by this Court is the just amount of compensation to be awarded to the original injured claimant for the injuries/permanent partial disability sustained by him. On appreciation of evidence and considering the fact that the original claimant at the time of the accident was a minor aged 17 years the learned tribunal has considered/assessed the income notionally at RS. 1250/- per month and thereafter after deducting 85% permanent partial disability to the

body as a whole the learned tribunal has assessed the future loss of income at RS. 1063/- per month and after applying the multiplier of 16 the learned tribunal has awarded RS. 2,04,000/- towards future loss of income. The learned tribunal has further awarded RS. 30,000/- towards pain, shock and suffering, RS. 10,000/- towards medical expenses and RS. 6,000/- towards transportation, nutritious food, attendance etc.. Thus, by the impugned judgment and award the learned tribunal has awarded a total sum of RS. 2,50,000/- with 9% interest thereon from the date of application till realisation. Hence, feeling aggrieved and dissatisfied with the impugned judgment and award passed by the learned tribunal, the original claimant has preferred the present Appeal to enhance the amount of compensation.

3. Shri Modi, learned advocate appearing on behalf of the appellant-original claimant has vehemently submitted that the learned tribunal has materially erred in assessing the income of the appellant-original claimant notionally at RS. 1250/- per month. It is submitted that as the accident occurred in the year 2000 and the original claimant was studying in Standard IX and was having bright career the learned tribunal ought to have notionally assessed the income at least at RS. 1500/- per month. It is submitted that adding 50% towards future rise in income as per the decision of the Hon'ble Supreme Court in the case of Sarla Verma (Smt) and Ors. v. Delhi Transport Corporation and Anr reported in 2009 (6) SCC 621, the learned tribunal ought to have awarded future loss of income and should have applied the multiplier of 18. It is further submitted that the learned tribunal has even erred in awarding RS. 30,000/- only towards pain, shock and suffering. It is submitted that considering the prolonged hospitalization and operation for amputation of the right hand from the shoulder and plastic surgery was also required to be done, the learned tribunal ought to have awarded at least RS. 50,000/- towards pain, shock and suffering.

3.1 It is further submitted by Shri Modi, learned advocate appearing on behalf of the appellant-original claimant that the learned tribunal has erred in not awarding any amount towards loss of amenities in life as the original claimant at the age of 17 years lost his one hand i.e. his right hand was required to be amputated from the shoulder. It is submitted that therefore the learned tribunal ought to have awarded at least RS. 70,000/- to RS. 75,000/- towards loss of amenities of life etc. and, therefore, it is requested to allow the present Appeal to the aforesaid extent and modify the impugned judgment and award passed by the learned tribunal.

4. Ms. Khushbhu Danecha, learned advocate has appeared for Ms. Vasavdutta Bhatt, learned advocate appearing on behalf of respondent no.2 herein-GSRTC. It is not in dispute that while awarding future loss of income the learned tribunal has as such not considered the future rise income. She is also not disputing that at the time of the accident the original claimant was aged 17 years of age. However, it is submitted that in the facts and circumstances of the case the learned tribunal has not committed any error in awarding RS. 30,000/- towards

pain, shock and suffering. It is submitted that as the accident occurred in the year 2000 and the amount awarded by the learned tribunal under pain, shock and suffering is RS. 30,000/- it can be said to be just compensation.

Making the above submission, it is requested to pass appropriate order considering the facts and circumstances of the case.

5. Heard the learned advocates appearing on behalf of the respective parties at length. At the outset, it is required to be noted that the appellant herein-original claimant at the time of the accident was aged 17 years and was studying in standard IX and unfortunately his right hand from the shoulder was required to be amputated and even some plastic surgery was required to be done/performed. As per the medical certificate the original claimant sustained 85% permanent partial disability of the body as a whole and, therefore, while awarding future loss of income the learned tribunal has assessed the income of the original claimant notionally at RS. 1250/- per month, which can be said to be on lower side. In the facts and circumstances of the case and considering the fact that the accident occurred in the year 2000 and the appellant herein-original claimant was studying in Standard IX, the learned tribunal ought to have assessed the income of the original claimant notionally at least at RS. 1500/- per month. As the original claimant was aged 17 years 50% of RS. 1500/- was required to be added towards future rise in income. The prospective income would therefore come to RS. 2250/- per month and 85% of the permanent partial disability of the body as a whole is considered, in that case, loss of income would come to RS. 1875/- per month and applying the multiplier of 18 as per the decision of the Hon'ble Supreme Court in the case of Sarla Verma (Smt) and Ors. (Supra) the original claimant shall be entitled to RS. 4,05,000/- towards future loss of income (instead of RS. 2,04,000/- awarded by the learned tribunal). Looking to the prolonged hospitalization and the medical treatment and the operation for the amputation on the hand from the shoulder and even the plastic surgery, which was required to be done, the amount of RS. 30,000/- awarded by the learned tribunal towards pain, shock and suffering can be said to be on lower side. Considering the prolonged hospitalization, medical treatment, operation etc. the original claimant shall be entitled to at least RS. 50,000/- towards pain, shock and suffering.

5.1 The learned tribunal has not awarded any amount towards loss of amenities in life. At the age of 17, the original claimant had lost his right hand and his right hand was required to be amputated from shoulder. Under the circumstances, the original claimant is also entitled to RS. 50,000/- towards loss of amenities in life etc. Thus, to the aforesaid extent, the impugned judgment and award passed by the learned tribunal is required to be modified and the present Appeal is partly required to be allowed to the aforesaid extent.

6. In view of the above and for the reasons stated herein above, the present Appeal succeeds in part and accordingly is partly allowed. The impugned judgment and award dated 24/09/2007 in MACP No.203/2001 is modified to the

extent and it is held that the original claimant shall be entitled to a total sum of RS. 5,21,000/- with 9% interest thereon from the date of application till realisation from both the respondents, including respondent no.2-GSRTC. The balance enhanced amount of compensation as per the present judgment and order to be deposited by the respondents, more particularly, respondent no.2 with the learned tribunal within a period of eight weeks from today and on such deposit the same be paid to the original claimant by an account payee cheque on proper identification and verification by the learned tribunal itself. The present Appeal is partly allowed to the aforesaid extent. In the facts and circumstances of the case, there shall be no order as to costs.