

(1992) 11 BOM CK 0008
In the Bombay High Court
Case No : F.A. No. 935 of 1984

Chhaganlal Nathubhai Patel

APPELLANT

Vs

Bhagirath Kheraji and Others

RESPONDENT

Date of Decision : 15-11-1992

Acts Referred:

Citation : (1993) ACJ 1152

Hon'ble Judges : S.M. Daud, J;M.G. Chaudhari, J

Bench : Division Bench

Advocate : G.J. Desai, S.C. Dharmadhikari, Gordhandas and Fozdar, for the Appellant; A.R. Kudrolli, for the Respondent

Judgement

S.M. Daud, J.—This appeal takes exception to the quantum of compensation granted by the Motor Accidents Claims Tribunal at Thane.

2. The appellant, Chhaganlal Nathubhai Patel, is a person of Indian origin who has acquired British citizenship and who was working for his livelihood in the United States of America. In the States, Chhaganlal was running a hotel in Los Angeles which is in the State of California and also doing business as an insurance agent with the Metropolitan Insurance Company. Chhaganlal's wife and children were in India and from time to time he was coming to this country to see them. One such visit was made by him in July, 1978. Chhaganlal on 16.1.1979 stalled en route to Bombay with a friend Hasmukh Jariwala and two others in a car of Fiat make. Hasmukh was at the steering wheel and Chhaganlal was seated by his side. The rear side of the car was occupied by two others. The car left Surat at about 8.00 a.m. On the very day, i.e., 16.1.1979, opponent's witness Pakarsingh was at the steering wheel of a goods truck bearing registration No. GRS 5734. The said truck was headed for Ahmedabad and had started from Bombay at about 12.00 a.m. The consignment in the truck was soap boxes. At 2.00 p.m. when the truck and the car were some distance away from each other, the two vehicles headed in opposite directions. There had been the breakdown of another truck and this truck which had broken down was

parked almost in the centre of the road. Pakarsingh, with a view to negotiate the partially blocked road, took his truck to the road's right side. Seeing this, Hasmukh took the Fiat car to the left extreme, his correct side. The goods truck dashed against the Fiat car completely smashing its front side and also the door of the car on the left front side. Chhaganlal and Hasmukh were both injured, the person most seriously affected by the mishap being Chhaganlal. The injured were taken to the hospital at Vasai where they were given first aid. Later they were shifted to Harkissondas Hospital at Bombay. The truck being driven by Pakarsingh was owned by respondent No. 1. The purchase of the truck by respondent No. 1 had been financed by respondent No. 2. It was insured with respondent No. 3. Both the injured persons, viz., Chhaganlal and Hasmukh preferred separate applications claiming compensation. In relation to Hasmukh he has been content with whatever was awarded by the Tribunal and more need not be said in respect of his claim. Chhaganlal at the initial stage claimed about Rs. 1,00,000/- for medical expenses. It is relevant to quote the application:

The applicant could not leave India as scheduled on or about 19th January, 1979 and had to remain in India till 26.4.1979. He had to employ a Manager and manage his business of hotel and was required to incur heavy expenditure for medical and other incidental expenses to the tune of Rs. 80,000/- and also other medical expenses to the tune of Rs. 20,000/- till now.

General damages were estimated at Rs. 25,000/-. Thus the total sum claimed was Rs. 1,25,000/-. Later on, the application was amended and the compensation under all heads was placed at Rs. 3,25,000/-. It was Chhaganlal's contention that the mishap had occurred on account of the rash and negligent driving of Pakarsingh which rendered all the respondents liable. The respondents in their written statement denied that Pakarsingh was responsible for the mishap. According to them, the fault lay with Hasmukh, but for whose negligence in the driving of the Fiat car, the mishap could not have occurred. The claims on different counts were described as exaggerated and untenable in law. Chhaganlal, Dr. Vora and Hasmukh were the witnesses examined in support of the claim, whereas the only witness examined by the respondents was the truck driver Pakarsingh. The learned Member of the Claims Tribunal held that the mishap occurred as a result of contributory negligence on the part of Hasmukh as also Pakarsingh. The negligence was apportioned half and half between Chhaganlal and Pakarsingh. The only two heads under which compensation was granted to the applicant, Rs. 12,500/- towards general damages and Rs. 7,500/- towards special damages-the latter, only if Chhaganlal could satisfy the Tribunal by documentary evidence that his claim for reimbursement of medical expenses incurred in India had been rejected by his insurer in the States. The alleged error in the finding of contributory negligence as also in fixing quantum of compensation has brought Chhaganlal in appeal to this court.

3. Counsel representing Chhaganlal and respondent Nos. 2 and 3 have been heard. The first point for decision is whether the Tribunal was in error in holding

the mishap to be the result of contributory negligence. In coming to this conclusion, the Tribunal has overlooked the very obvious fact of Chhaganlal not being a contributor to the mishap. Chhaganlal was not at the steering wheel of the Fiat car. He was an innocent passenger in the said car and if there was any person guilty of contributory negligence from amongst the inmates of the car, it was Hasmukh. If that finding is correct, the mishap should have been described as the result of a composite negligence, the tort-favors being Hasmukh and Pakarsingh. Their liability would be joint and several. But there is an apparent error in equating the driver of the Fiat car with the driver of the goods truck. Pakarsingh was prosecuted for rash and negligent driving in the Court of Judicial Magistrate, First Class. He pleaded guilty to the charge, was convicted and sentenced. It may be that the plea of guilt by Pakarsingh was motivated by considerations other than the plea being a reflection of the true position. Pakarsingh who has been examined as a witness admits his conviction on the basis of an admission. He does not say that the admission was made to get a lenient sentence or to save time. Having regard to the admission it was for the respondents to establish that the guilt lay at the doors of the others or that it had to be shared between Pakarsingh and the driver of the Fiat car. No such evidence has been led and the absence of such evidence fortifies the inference arising out of the conviction recorded by the Magistrate against Pakarsingh. This apart, we have good evidence on record to show that the mishap occurred solely on account of the negligence of Pakarsingh. He himself testified that instead of stopping after sighting the broken down vehicle on the road, his truck was taken ahead though this required his going to the wrong side of the road and then bringing it to his correct side. The Fiat car, on the other hand, was on the correct side of the road and it was with a view to avert the collision that it went off the tarred portion of the road. Even so, this did not prevent the collision. The truck gave so severe a dash to the Fiat car that the front side of the car was badly smashed. The left side door of the Fiat car also smashed. Even the lay witnesses of the scene of offence, panchnama which is at Exh. 32, have assessed the damages at Rs. 30,000/-. As against the damage caused to the Fiat car, the goods truck being driven by Pakarsingh suffered nothing worse than a dent on the bumper and the breaking of the head lamp. Unless the truck was in a high speed the collision would not have been so serious. The scene of offence, panchnama, does not show that any attempt was made by Pakarsingh to arrest the speed of the vehicle. Hasmukh who was driving the Fiat car was on the correct side of the road and had even got out of the tanned portion of the road so as to avoid colliding with the truck. He could have done nothing more. The version given by Chhaganlal and Hasmukh is thus borne out by the impersonal circumstances as also the direct evidence. Mr. Desai appearing for the appellant has rightly criticised the approach of the Tribunal in stalling with a firm conviction about the incapacity of the actors involved in the event, to tell the truth. We do not see why this conviction should have been the stalling point for an appraisal of the evidence. After all, Chhaganlal is a foreigner who visits India occasionally and does not appeal" to have much time to waste over speculative litigation. The

version as given by Chhaganlal and Hasmukh did come from witnesses who had a stake in the success of their claims for compensation. But what they had to say was borne out by the scene of offence, panchnama, showing that it was the goods truck which had strayed from the correct side of the road. The explanation given by Pakarsingh was falsified by the scene of offence, panchnama. The damage caused to the Fiat car shows the larger vehicle being driven at uncontrollable speed and dashing much smaller vehicle with great force. Added to this was the fact of Pakarsingh's admission that on the preceding night he was at the steering wheel for quite some time and had slept very little before commencing the journey back from Bombay. Differing with the Tribunal, we hold that Pakarsingh's rash and negligent driving of the goods truck was the sole and exclusive cause of the mishap.

4. The second point for discussion is what compensation should be allowed to Chhaganlal, firstly, by way of special damages and next, by way of general damages. In so far as the special damages are concerned, the learned Member of the Tribunal has passed a conditional award in favour of Chhaganlal and that too for the meagre amount of Rs. 7,500/-. Chhaganlal has testified that hospitalisation at Harkissondas Hospital cost him Rs. 20,000/-. He had to undergo an operation. The attendant medication and other expenses must have been considerable. Judicial notice can be taken of the fact that orthopaedic treatment is a costly affair. Physicians have to be paid as also Surgeons. Money flows like water for undergoing preliminary tests. Even after the operation or operations are over, the patient has to visit the treating Physician or Surgeon for the post-operative examinations and counselling. We see nothing unreasonable in Chhaganlal's claim that the treatment in India itself cost him nearabout Rs. 20,000. Even the Tribunal has accepted that fact that there could not be receipts or accounts for every single penny spent on the treatment. Chhaganlal has also spoken of the treatment required to be taken by him in America and this costing him quite a considerable" sum. The Tribunal disallowed this part of the claim on the ground that Chhaganlal was compensated by the insurance company in America. But that compensation was the result of premiums paid by Chhaganlal and the risks undertaken by the American insurer. The medical expenses in America totalled 20,000 dollars. 18,000 dollars were borne by the American insurance company and Chhaganlal was required to pay 2,000 dollars from his own pocket. Judicial notice can again be taken of the fact that medical treatment in the States is very costly. There is no reason to disbelieve Chhaganlal and the equivalent of 2,000 dollars which he was required to bear, at the rate of exchange then prevailing would be in the neighbourhood of Rs. 20,000/-. We would, therefore, allow Chhaganlal Rs. 40,000/- towards special damages.

5. This brings us to the general damages. To start with, the claim for general damages was only Rs. 25,000/-. Later on, Chhaganlal enhanced the claim to Rs. 3,25,000/- describing this figure as damages on all counts. The evidence in relation to loss of income is not very satisfactory. Chhaganlal has spoken of the inconvenience to which he was put in running his occupations. His brother was

made to give up a job and start looking after the hotel that Chhaganlal was running. Chhaganlal speaks of loss of business as an insurance agent. True, as this may be, the difficulty lies in assessing the loss in terms of money. There is some reliable evidence wherefrom we can ascertain the loss in terms of money occasioned to Chhaganlal as the result of a mishap. His brother who was said to be assisting Chhaganlal in the conduct of the hotel business, was assessed by the American Internal Revenue, to an income of 5,000 dollars per annum. The evidence shows that Chhaganlal and the said brother are in fact running that hotel as members of a joint family. His brother's income being 5,000 dollars per annum, the same must also be the income of Chhaganlal himself. Chhaganlal's not being in a position to do proper business for at least 4/5 years cannot be doubted. Apart from his account of the difficulties, we have the testimony of Dr. Vora. The evidence shows that Dr. Vora last examined Chhaganlal some two weeks prior to 23.9.1983. Even at that time Chhaganlal was limping. In Dr. Vora's opinion, Chhaganlal was never going to be in a position to walk like a normal man. The disability was permanent and it was to the extent of 20 per cent. We see no reason to doubt this estimate of Dr. Vora. Taking the loss of income at 20 per cent for has to be compensated for the physical pain, agony, anguish and suffering imposed upon him. That he must have suffered immensely goes without saying. A person who suffers a bone injury is in the unfortunate position of being well, and yet, seriously incapacitated in his normal pursuits. For every step he requires the assistance of another. The treatment is endless and every visit to a consulting physician adds to his woes. Placing the damages payable under all these heads at Rs. 35,000/- will not be deemed unreasonable. Therefore, the damages payable to Chhaganlal come to:

- (i) Rs. 20,000/- for treatment in India;
- (ii) Rs. 20,000/- for treatment in the States;
- (iii) Rs. 50,000/- for loss of income for 3 years assessed at 20 per cent of the loss of income per annum;
- (iv) Rs. 35,000/- for physical pain and mental suffering, etc.

Total: Rs. 1,25,000/-.

6. The only item now remaining is in relation to interest. The Tribunal has allowed pendente lite and future interest at the rate of 6 per cent per annum. Mr. Desai contends that this is an error and the interest should be allowed at the rate of 12 per cent per annum. He relies for support upon Maharashtra State Road Trans. Corpn. Vs. Pushpaben Rajarambhai Patel and Others, . But that was a case of interest allowed on dependency compensation. In the instant case, the injured person has fortunately survived. Therefore, the Tribunal was right in awarding interest only at 6 per cent per annum. Hence, the order.

7. Appeal partly allowed. Respondents do severally and jointly pay to the appellant a sum of Rs. 1,25,000/- along with interest at the rate of 6 per cent

per annum from the date of application until realisation. Rest of the appellant's claim is dismissed. Parties do bear their own costs in both the courts.