
(2013) 05 GUJ CK 0066
In the Gujarat High Court
Case No : F.A. No. 4250 of 1998

Hiralal Mulchand Kiri

APPELLANT

Vs

Brahmani Transport Co. and Others

RESPONDENT

Date of Decision : 01-05-2013

Acts Referred:

Citation : (2013) 4 ACC 284

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

Bench : Single Bench

Final Decision : Partly Allowed

Judgement

M.D. Shah, J.—By these appeals, the appellants have challenged the judgment and award dated 16th April, 1988 passed by the Motor Accident Claims Tribunal (Main), Banaskantha in M.A.C.P. Nos. 414/1988, 249/1988 and 157/1988 respectively. Brief facts of present appeals are that the vehicular accident occurred on 14th February, 1988 at about 4.30 p.m. in town limits of Deesa near T-junction on Deesa-Palanpur Road. When the scooter was being driven by one Hiralal with Pravinbhai and Rameshbhai as pillion riders, one truck came from the opposite side in rash and negligent manner and the truck ran over them. As a result thereof, Mr. Rameshbhai - second pillion rider received grievous injuries and died on the spot, and Mr. Hiralal and Mr. Pravinbhai received injuries.

1.1 As regards the facts of M.A.C.F. No. 414/1988, at the time of accident, the claimant Hiralal Mulchand was 19 years old. He was doing business and earning Rs. 1,000 per month. There were fracture injuries on the right thigh, left leg, both eyes and on head resulting into mental imbalance. Initially, he took treatment at Deesa Hospital and thereafter he was shifted to Civil Hospital, Ahmedabad where he remained as an indoor patient for 2 to 2 1/2 months.

1.2 As regards the facts of M.A.C.P. No. 249/1988, at the time of accident, he was 2nd Class Wireman at Deesa and earning Rs. 1,000 to Rs. 1,200 per month. In the said accident he received grievous injuries on head, leg and chest.

Initially, he was treated at Deesa and thereafter he was shifted to Civil Hospital, Ahmedabad. He was hospitalized for a month as indoor patient.

1.3 As regards the case of M.A.C.P. No. 157/1988 the claimant has received grievous injuries and died on the spot. At the time of death, he was aged 25 years, unmarried and had a tailoring shop. He was S.S.C. and had also obtained a Diploma in Tailoring. Prior to opening the business the deceased used to work with one Navalbhai who used to pay him salary of Rs. 1,500 to Rs. 1,800.

2. Learned Advocate Ms. A.R. Acharya appearing for the appellants, states that learned Claims Tribunal has committed error in awarding the compensation on lower side. She states that learned Claims Tribunal has not considered Panchanama of the truck involved in the accident, which shows that the scooter struck with the truck on the front left side due to sudden turn taken by the truck. She states that the scooter having pillion rider sitting behind could never have taken speed of 60 k.m. per hour. In such condition, there is no question of contributory negligence. She states that learned Claims Tribunal ought to have considered that truck is a heavy vehicle and while negotiating curve on "T" Junction, no signals were given, therefore, the negligence was totally of the truck driver. She states that in the said accident one person has died and others have received grievous injuries, therefore, learned Claims Tribunal ought to have granted just and adequate amount under the head of medical expenses as well as pain, shock and suffering. She states that learned Claims Tribunal has not assessed permanent disability in proper way. She states that learned Claims Tribunal has committed error in appreciating the evidence.

3. As against that learned Advocate Ms. Heena Desai appearing for the United India Insurance Co. states that learned Claims Tribunal has awarded just and adequate compensation, for that, learned Claims Tribunal has not committed any error which would require interference by this Court.

4. I have heard learned Advocate appearing for the parties at length and in great detail. I have also perused the common judgment and award passed by the Claims Tribunal as well as oral and documentary evidence, which are on record. Considering the facts of the present appeals, I am of the view that the appellants original claimants are entitled to get some reasonable amount under different heads.

5. In First Appeal No. 4250/1998 arising from M.A.C.P. No. 414/1988, the Tribunal has granted Rs. 20,000 under different heads in favour of the claimant. Considering the facts of this case, if Rs. 10,000 is granted as an additional amount of compensation, then it will meet ends of justice between the parties. Therefore, now the claimant Hiralal Mulchand Kiri is entitled to get Rs. 30,000 (20,000 + 10,000) with 7.5% interest p.a. on the additional amount.

6. In First Appeal No. 4251/1998, arising from M.A.C.P. No. 157/1988, the Tribunal has granted Rs. 77,000 under the different heads in favour of the claimants. Considering the facts of this case, if Rs. 15,000 is granted as an

additional amount of compensation then it will meet ends of justice between the parties. Therefore, now the claimants Hastuben Trishul and others are entitled to get Rs. 92,000 (77,000+15,000) with 7.5% interest p.a. on the additional amount.

7. In First Appeal No. 4234/1998, arising from M.A.C.P. No. 249/1988, the Tribunal has granted Rs. 21,500 under the different heads in favour of the claimant. Considering the facts of this case, if Rs. 15,000 is granted as an additional amount of compensation then it will meet ends of justice between the parties. Therefore, now the claimant Pravinbhai Jayrambhai Galsare is entitled to get Rs. 36,500 (21,500 + 15,000) with 7.5% interest p.a. on the additional amount. Accordingly the appeals are partly allowed. The judgment and award passed by Claims Tribunal is hereby modified to the effect that now the claimants are entitled to get additional amount of compensation as stated above with 7.5% interest p.a. Rest of the award remains unaltered. The Insurance Company is directed to deposit aforesaid amount with the Claims Tribunal within a period of six weeks from the date of receipt of this order. R & P, if any, is to be sent back immediately.