
(2014) 12 GUJ CK 0006
In the Gujarat High Court
Case No : First Appeal No. 3353 of 2012

Jagdishbhai Amratlal Shah

APPELLANT

Vs

Jigneshkumar Dineshbhai Bhoi and Others

RESPONDENT

Date of Decision : 03-12-2014

Acts Referred:

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 2(i)

Citation : (2015) 2 GLH 679

Hon'ble Judges : Akil Abdul Hamid Kureshi, J;V.M. Pancholi, J

Bench : Division Bench

Advocate : K.H. Dhomse and Hiren M. Modi, Advocate for the Appellant;

Final Decision : Partly Allowed

Judgement

V.M. Pancholi, J.

1. The appellant-original claimant has preferred this appeal for enhancement of amount of compensation awarded by the learned Motor Accident Claims Tribunal, Nadiad. The original claimant - appellant herein filed the Motor Accident Claim Petition No. 2108 of 2010 before the Motor Accident Claims Tribunal, Nadiad, in which, he has prayed to grant compensation of Rs. 36 lacs. By judgment and award dated 14th May 2012, the Motor Accident Claims Tribunal, Nadiad, partly allowed the said claim petition, by which, total amount of compensation of Rs. 12,55,275/- is awarded to the claimant. Hence, as stated hereinabove, this appeal is filed for the purpose of enhancement of the amount of compensation awarded by the Claims Tribunal. The brief facts leading to the filing of this appeal are as under:-

1.1 It is the case of the claimant in Motor Accident Claims Petition No. 2108 of 2010 that on 18th May 2010, the appellant with his wife and daughter had gone from Idar to Nadiad for attending a puja ceremony at a Jain temple. When the appellant and his family members were returning in a Maruti van, while crossing

Kamla Chowk, one truck bearing registration No. GJ-1-AU-4938 came from the opposite direction in full speed. The original opponent No. 4-driver was driving the truck carelessly and negligently, and as a result of which, the said truck dashed Maruti van bearing registration No. GJ-7-AR-810 driven by the claimant. In the said accident, the claimant received injuries on his head and other parts of the body.

1.2 For the said incident, First Information Report was lodged by one Jigneshkumar Dineshbhai Bhoi with the Nadiad Rural Police Station bearing C.R. No. I-93 of 2010. Original opponent No. 6-Insurance Company filed its written statement (Exh.28), whereas opponent No. 3-Insurance Company filed written statement at Exh.40, in pursuance to the notice issued by Claims Tribunal.

1.3 The claimant gave his deposition (Exh.43) before the Claims Tribunal, and produced the documentary evidence to prove the negligence on the part of the driver of the truck. With a view to prove his income, the claimant produced income tax returns for the year 2008-09 to 2010-2011. The claimant also examined the doctor, who issued the certificate of disability. The deposition of the said doctor, Dr. Vijay Ratilal Sheth, is recorded at Exh.47, and the certificate is produced at Exh. 48.

1.4 The Claims Tribunal, relying upon the aforesaid documentary as well as oral evidence on record, held that the driver of the truck was negligent in driving the said vehicle, as a result of which, the accident took place. Thereafter, the Claims Tribunal awarded Rs. 3,56,400/- under the head of loss of future income, and Rs. 1,36,875/- under the head of actual loss of income, further sums were added by way of compensation for pain, shock and suffering and loss of enjoyment of life, etc., and thereby total amount of Rs. 12,55,275/- was awarded by way of compensation to the claimant.

2. Being aggrieved and dissatisfied with the said order passed by the Claims Tribunal, as stated hereinabove, the original claimant has preferred this appeal for enhancement of the amount of compensation.

3. Heard learned Advocate Mr. K.H. Dhomse for learned Advocate Mr. Hiren M. Modi for the appellant, and learned Advocate Mr. G.C. Majmudar for respondent No. 6-Insurance Company.

4. Learned Advocate appearing on behalf of the appellant mainly submitted that the Insurance Company has accepted the finding of the Claims Tribunal with regard to the negligence on the part of the driver of the truck, and therefore, they have not challenged the said finding by filing an appeal. He has submitted that the claimant has filed this appeal against the findings given by the Claims Tribunal with regard to the income of the claimant and for enhancement of amount of compensation. Learned Advocate has relied upon the deposition of the claimant, which is recorded at Exh.43. In the said deposition, the claimant has specifically stated that in the accident, he had received serious injuries on his head and other parts of the body, and therefore, he was immediately shifted to

Mahagujarat Hospital, and thereafter, he was taken to Sterling Hospital, Ahmedabad, and from Sterling Hospital, he was taken to Medilink Hospital, where he was kept in ICU for 22 days. Thereafter, he was shifted to Indore at Joitaram Hospital. Thereafter also, he was shifted to Bombay Hospital, Indore. There also, he had taken treatment for 30 days. It is specifically stated by the claimant that because of the injuries received by him in the accident, he is not in a position to work, as a result of which, he has suffered loss of income. The claimant had produced documentary evidence, namely, the medical papers with regard to treatment taken by him in various hospitals, bills of medicines, etc. In the cross-examination, he has denied the fact that his son was doing business with him before the date of the accident. The learned Advocate of the appellant further referred to the deposition given by Dr. Vijay Sheth (Exh.47). The said witness has stated in his deposition that he had examined the claimant Jagdishbhai Amratlal Shah on 18th December 2010, and thereafter, he issued the certificate at Exh.48. As per the certificate issued by him, the claimant is having 63% permanent disability of the body as a whole, whereas he has further stated that there is 100% functional disability. However, in the cross-examination, he has stated that he has not mentioned this aspect in the certificate or has recorded therein as to 100% disability of the patient. Learned Advocate for the appellant further referred to the income-tax returns submitted by the claimant for the assessment year 2008-09 (Exh.94) and income-tax return for the assessment year 2009-10 (Exh.95). Learned Advocate further submitted that the Claims Tribunal has relied upon the aforesaid income-tax returns produced by the claimant, and considered the average annual income of the claimant at Rs. 1,92,700/-. However, the Claims Tribunal has committed an error by relying upon the income-tax return for the assessment years 2010-11, which is produced at Mark 46/1. Relying upon the said return, the Claims Tribunal has observed that during the assessment year 2011-12, the annual income of the claimant was Rs. 1,53,101/-, and therefore, the said income is deducted from the annual income of the claimant for the years 2008-09 and 2010-11, i.e. from the average annual income of Rs.. 1,92,635/-, and thereby, the Claims Tribunal wrongly considered the annual loss of income of the claimant at Rs. 39,534/-. Relying upon the said figure, the Claims Tribunal has calculated the loss of future income by applying multiplier of 9. Learned Advocate further submitted that the Claims Tribunal has also committed an error by awarding only Rs. 50,000/- under the head of loss of amenities.

5. Learned Advocate Mr. G.C. Majmudar on behalf of respondent No. 6-Insurance Company has mainly submitted that the Claims Tribunal has not committed any error while calculating the annual loss of income of the claimant. Learned Advocate further submitted that the son of the claimant is doing the same business as a commission agent of food grains, and the income of the claimant is not stopped from the said business. He, therefore, submitted that the Claims Tribunal has rightly considered the loss of future income of the claimant at Rs. 39,534/- per year, looking to the income-tax returns produced by the claimant

himself. The learned Advocate further submitted that looking to the disability certificate issued by the doctor, it cannot be said that the claimant is having 100% functional disability, and the claimant can participate in the business as a commission agent, and he can also guide his son in the said business, and therefore, no error is committed by the Claims Tribunal in awarding the compensation.

6. We have heard the submissions made by the learned Advocates and considered the documentary as well as oral evidence produced on record. The claimant - Jagdishbhai Amratlal Shah has given his deposition at Exh.43, in which, he has specifically stated that in the accident, which has occurred on 18th May 2010 between his Maruti van and the truck driven by the opponent No. 4, he received serious injuries. Therefore, he was admitted in the hospital and had taken treatment in different hospitals at Ahmedabad and Indore. He has further deposed that because of the injuries received by him in the said accident, left portion of his body as well as right hand and leg were paralysed. It is further deposed by him that his face was twisted, as a result of which, he is facing difficulty and is not in a position to work. His son is carrying on the business of commission agent on the licence obtained by the claimant. The claimant is not in a position to work, therefore, his income is stopped.

The Claims Tribunal has observed in its judgment and award that when the claimant went to the Claims Tribunal to give his deposition, at that time, he was required to be lifted along with the chair and he could give his deposition with the assistance of two other persons. At this stage, we are referring to the decisions of the Honourable Supreme Court relied upon by the learned Advocate for the appellant. The said decisions are in the case of Neerupam Mohan Mathur Vs. New India Assurance Co., and Mohan Soni Vs. Ram Avtar Tomar and Others, . In both the aforesaid decisions, the Honourable Supreme Court has relied upon its earlier decision in the case of Raj Kumar Vs. Ajay Kumar and Another, . Thus, we will follow the decision rendered by the Honourable Supreme Court in the case of Raj Kumar (supra). The Honourable Supreme Court in the case of Raj Kumar (supra) held as follows:--

"8. Disability refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human being. Permanent disability refers to the residuary incapacity or loss of use of some part of the body, found existing at the end of the period of treatment and recuperation, after achieving the maximum bodily improvement or recovery which is likely to remain for the remainder life of the injured. Temporary disability refers to the incapacity or loss of use of some part of the body on account of the injury, which will cease to exist at the end of the period of treatment and recuperation. Permanent disability can be either partial or total. Partial permanent disability refers to a person's inability to perform all the duties and bodily functions that he could perform before the accident, though he is able to perform some of them and is still able to engage in some gainful activity. Total permanent disability refers to a person's inability to

perform any avocation or employment related activities as a result of the accident. The permanent disabilities that may arise from motor accident injuries, are of a much wider range when compared to the physical disabilities which are enumerated in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ("the Disabilities Act", for short). But if any of the disabilities enumerated in Section 2(i) of the Disabilities Act are the result of injuries sustained in a motor accident, they can be permanent disabilities for the purpose of claiming compensation.

9. The percentage of permanent disability is expressed by the doctors with reference to the whole body, or more often than not, with reference to a particular limb. When a disability certificate states that the injured has suffered permanent disability to an extent of 45% of the left lower limb, it is not the same as 45% permanent disability with reference to the whole body. The extent of disability of a limb (or part of the body) expressed in terms of a percentage of the total functions of that limb, obviously cannot be assumed to be the extent of disability of the whole body. If there is 60% permanent disability of the right hand and 80% permanent disability of left leg, it does not mean that the extent of permanent disability with reference to the whole body is 140% (that is 80% plus 60%). If different parts of the body have suffered different percentages of disabilities, the sum total thereof expressed in terms of the permanent disability with reference to the whole body cannot obviously exceed 100%.

10. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, the percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation.

11. What requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that the percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of

permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation. (See for example, the decisions of this Court in *Arvind Kumar Mishra v. New India Assurance Co. Ltd.* and *Yadava Kumar v. National Insurance Co. Ltd.*)

12. xxx xxx xxx

13. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood."

Thus, from the observations made by the Honourable Supreme Court in the aforesaid decisions, it is clear that though in the present case the concerned doctor has issued the certificate with regard to disability of the claimant, i.e. 60% of the body as a whole, looking to the nature of work carried out by the claimant, it can safely be said that the Claims Tribunal has rightly considered 100% functional disability of the claimant. We may record, the claimant was engaged in the business of trading of grains for which he had requisite licence. He had, due to the accident received serious bodily injuries resulting into paralysis. The doctor had assessed permanent disability of 60% as body as a whole. The Claims Tribunal recorded that long time after the accident when the claimant came for recording his deposition, he had to be carried in a chair and throughout his deposition had to be supported by two people. It would not be difficult to imagine, any person who is unable to sit up in a chair without support would not be in a position to do any normal business. Even if the business of trading in grains may not require arduous physical work, it would require minimum mobility which the claimant had lost. Thus, we are not entertaining the submission made by learned Advocate Mr. Majmudar appearing on behalf of the respondent No. 6-Insurance Company that only 60% disability of the claimant should be considered for awarding compensation.

7. The computation of loss of income carried out by the Claims Tribunal requires a close scrutiny. The claimant had produced income tax returns for the assessment years 2008-2009 and 2009-2010. Both these returns were filed before the date of accident. In the return for the assessment year 2008-2009, the claimant had shown the income from business of trading in grains at Rs. 1,53,994/-. For the assessment year 2009-2010, such income was shown at Rs.

2,31,276/-. The Tribunal took average of these two last years of income and held that the assessee was earning Rs. 1,92,700/- from his business income at the time of the accident. The Tribunal thereafter, took into account the income from grain trading for the future years and considered that there was a drop of Rs. 39,534/- per annum in such income compared to the average income of Rs. 1,92,700/- computed as shown above. The Tribunal thus adopted this figure of Rs. 39,534/- as loss of income per year for awarding compensation of Rs. 3,56,400/- under this head by adopting multiplier of 9.

In our opinion, the Tribunal committed a serious error. Having held that the injuries suffered by the claimant during the accident resulted into 100% functional disability, the Tribunal ought to have computed the claimant's total income at the time of accident for computing the loss of future income. On one hand to assess the functional disability at 100% and thereafter to award a small portion of the current income of the claimant by way of loss of future income was self contradictory. We have already confirmed the Tribunal's opinion that the injuries were such that would render the claimant completely disabled to pursue his business and had thus resulted into 100% functional disability. This entire amount of Rs. 1,92,700/- therefore, had to be considered towards the loss of future income to be multiplied by a multiplier of 9. This would be in substitution of the compensation of loss of future income of Rs. 3,56,400/- and since we are awarding 100% loss of income, the compensation of Rs. 1,36,875/- towards loss of income would merge in this computation. Learned Counsel for the insurance Company however, strenuously contended that even if the claimant was incapacitated from pursuing the business, the business actually continued. The claimant could therefore, receive only compensation for loss of supervision. He pointed out that the son of the claimant had carried on the business. Such a contention cannot be accepted. When the claimant was in active business, it was a proprietary concern. He had obtained a license for trading in food grains. With his effort, he was earning sizeable income of commission. In his deposition, he denied the suggestion that his son was helping him in the business even prior to the accident. If after the claimant was unable to pursue the business, the son started doing the same business, any income generated from such business cannot be considered to be that of the claimant. It would be the income solely of that of the son. At best the son utilised the license for doing his business which license in any case he could have independently obtained. The son could have if the claimant had not met with the accident, engaged himself independently in some other business. Merely because the son engaged himself in the business which the father was previously doing would not mean that the income generated from such business was that of the father. Adopting such a logic would be erroneous for multiple reasons. Firstly, the claimant had suffered 100% functional disability. He was rendered totally incapable of continuing the business. Secondly, as noted, it would be the efforts of son which would generate the income. The income was therefore of the son.

Thirdly, son could have engaged himself in any other gainful employment and

earned independent and additional income. Fourthly, by this formula, entire income of the son is calculated in the hands of the father, thus having the son with no income of his own though he is the real earner of the income. Lastly, if the income was earned by son, there was no guarantee that he would have shared with his father. To adjust such income against that of the father was simply not permissible.

8. We are also of the opinion that the Claims Tribunal has committed an error by awarding Rs. 50,000/- under the head of loss of amenities. Because of the accident, the claimant had received serious injuries, as a result of which, left portion of his body is paralysed, and his right hand and right leg is also paralysed. His face was twisted, and therefore, he is not in a position to enjoy his married and social life. The claimant is also not in a position to perform his day-to-day activities without the help of others, hence, he is deprived of the amenities of life which he could have enjoyed. Thus, we are of the opinion that the Claims Tribunal has awarded lesser amount under the said head. Hence, it is enhanced from Rs. 50,000/- to Rs. 1,00,000/- under the head of loss of amenities. From the aforesaid discussion, it is clear that the functional disability of the claimant is 100%. The claimant was carrying on his business as a commission agent of food grains, and because of the injuries received by him, he is not in a position to carry on the said business, hence, considering the income-tax returns produced at Exhs.94 and 95, it can be said that he has suffered loss of future income of Rs. 1,92,700/- per year. Thus, we hold that the claimant has suffered loss of future income of Rs. 1,92,700/- per year. The Claims Tribunal has rightly applied the multiplier of 9 looking to the age of the claimant, i.e. 57 years. Thus, the claimant is entitled to receive Rs. $1,92,700 \times 9 =$ Rs. 17,34,300/-. We are further of the opinion that the claimant is also entitled to get Rs. 1,00,000/- under the head of loss of amenities, which is wrongly awarded by the Claims Tribunal as Rs. 50,000/-. Thus, as stated above, the claimant is entitled to get Rs. 17,34,300/- under the head of loss of future income. The Claims Tribunal has not committed any error in awarding compensation under any other heads, and therefore, the aforesaid amount is required to be calculated as under:-

The total compensation, therefore, comes to Rs. 25,46,300/-. Thus, the claimant-appellant is entitled to get the aforesaid amount from the respondent No. 6-Insurance Company with interest at the rate of 8% from the date of filing of the claim petition till the date of realization. Hence, the aforesaid judgment and award is modified accordingly. The appellant is directed to pay deficit Court fees on the additional amount of compensation awarded in this order. Respondent No. 6 is directed to deposit the additional amount of compensation with proportionate costs and interest before the Claims Tribunal within a period of eight weeks.

Out of the additional amount awarded under this order, the Claims Tribunal shall disburse 30% of the same in favour of the claimant, whereas the remaining 70%

of the additional amount of compensation calculated hereinabove shall be deposited in a nationalized Bank in a cumulative fixed deposit for a period of five years, to be released after a period of five years. The Fixed Deposit Receipt be kept in the custody of the Nazir of the Tribunal. The judgment and award of the Claims Tribunal is modified to the above extent. The appeal is partly allowed.

The record and proceedings be transmitted to the Claims Tribunal forthwith.