

(2025) 09 GUJ CK 1068
In the Gujarat High Court
Case No : R/First Appeal No. 2690 Of 2020

Jagdishbhai Khimabhai Jambucha

APPELLANT

Vs

Panchabhai Ghughabhai Bhil & Ors

RESPONDENT

Date of Decision : 16-09-2025

Acts Referred:

Citation : (2025) 09 GUJ CK 1068

Hon'ble Judges : J. L. Odedra, J

Bench : Single Bench

Advocate : Nishit A Bhalodi, Rathin P Raval

Final Decision : Disposed Of

Judgement

J. L. Odedra, J

1. The present Appeal arises against the judgment and award dated 30.09.2019 passed in MACP No. 104 of 2017, by the Learned Motor Accident Claim Tribunal (Main), Bhavnagar.

2. By way of the impugned judgment and award, the Tribunal was pleased to partly allow the claim petition against the opponent nos. 1, 2 and 3. The opponent no.4 was exonerated. The total compensation as awarded by the Tribunal was Rs. 3,81,610/- from the opponent nos. 1, 2 and 3 with simple interest at the rate of 9% from the date of filing of the claim petition till its actual realization.

3. The accident in question had occurred on 10.09.2016. It appears that the appellant was traveling on its motorcycle bearing registration no. GJ-4-AR-4452 as a pillion rider and the said motorcycle was being driven by the opponent no.4. It appears that when were on Kantala-Mandava Road, the driver of the Truck bearing registration no. GJ-15-V-7783, driving his vehicle in rash and negligent manner, collided his vehicle with the motorcycle. Hence, the appellant suffered grievous injuries, and therefore, he preferred the concerned claim petition before

the Tribunal.

4. The present Appeal has been preferred for the purpose of enhancement of compensation as ordered by the Tribunal.

5. Heard learned advocates for the respective parties.

6. Learned advocate Mr. Nishit Bhalodi, appearing for the appellant, has submitted that the Tribunal, has assessed the income of the mason at a lower amount i.e. only at the rate of Rs.4,000/- per month. It was submitted that nobody has doubted that the said appellant was not engaged in masonry work, and therefore, even if this Court were to take the minimum wages applicable, then too, for a semi-skilled individual, the minimum wages have been prescribed at Rs.7,800/- at the relevant point in time. It was thus submitted that the said amount may kindly be considered. It was next submitted that the Tribunal, after elaborate discussion on disability at paragraph-12, running into a total of four pages i.e. from page nos.8 to 11, has finally come to a conclusion that though the disability for the lower limbs were adjudged at 62% by the Doctor, the said disability for the purpose of a body as a whole would be to the tune of 32%. It was submitted that the said evidence indicates that the Doctor had categorically stated that the injured cannot walk without the help of another person and cannot do working with either of his leg. It was, thus, submitted that resultantly, not just 62%, but the functional disability of the injured would be to the tune of 100% in as much as the person who had 62% disability in his leg, and cannot stand on his own, cannot do mason work and, therefore, functional disability would be to the tune of 100%. He, therefore, submitted that view of the Tribunal that the disability would be 32% is only based on the arithmetical calculation whereby, whilst calculating the disability for the body as a whole, the disability for the lower limb is divided by two. It was next submitted that the Tribunal has not discussed the aspect of functional disability. Thus, it was urged that the functional disability in the present matter may be adjudged to 100%.

7. It was next submitted that the pain, shock and suffering suffered by the appellant were enormous. For the said purpose, the deposition of the appellant at Exhibit-34 was relied on. It was specifically argued before this Court that as stated in the internal page nos. 3 to 6 of the said document at Exhibit-34, the appellant has suffered numerous operations and that, constantly, he has complaints pertaining to his leg. It was thus submitted that the pain, shock and suffering may be revised from Rs.20,000/- to Rs.1,00,000/-. It was next submitted that under the head of special diet, attendant charges and transportation cost, the Tribunal has awarded a sum of Rs.15,000/-. It was thus submitted that in view of the prolonged treatment, the same may kindly be enhanced. It was submitted that the actual loss of income has been assessed by the Tribunal at 12,000/-. It was submitted that the appellant has been continuously suffered and undergone operations till 17.10.2018. It was submitted that irrespective of the treatment as aforesaid, the claimant would be satisfied if the actual loss of income for a period of 9 months and accordingly

Rs.70,200/- may kindly be awarded towards the actual loss of income. It was submitted that the Tribunal has otherwise considered the amount of Rs.88,850/- towards the medical expenses, for which, the appellant does not have any grievances. Lastly, it was submitted that for the loss of amenities and enjoyment of life that the appellant would suffer, he may be compensated with a sum of Rs.50,000/-. Thus, it was submitted that suitable enhancement may be allowed as prayed.

8. Mr. Rathin Raval, learned advocate appearing for the Insurance Company has vehemently objected to the said petition. He has, indeed, fairly stated that there is no cross-examination on the categorical assertion of the said deponent - Dr. Pinakin Indulal Vora at Exhibit-50 to the effect that the injured will not be able to walk for the whole of his life and that none of his legs work. Thus, the learned advocate has not been able to satisfactorily explain as to how a person having such injury would be able to do Mason work. He has, therefore, urged this Court to take appropriate view in the matter. He has also submitted that a mason would be a semi-skilled individual and that as per the prevalent notification, the minimum wages of the mason would be to the tune of Rs.7,800/-. He also fairly conceded that the prospective income, in the facts of the present case, more so, when the appellant- injured is self-employed, would be to the tune of 40%, he being the age of 33 years. He has further submitted that however on the other heads, the view taken by the Tribunal is just and proper, and therefore, no further interference is warranted in the impugned judgment and award.

9. Having heard the learned advocates for the respective parties, this Court proceeds to decide the present Appeal in terms appearing hereinafter.

10. The point of determination that arises for consideration before this Court in the present matter is as follows:

"Whether the disability and the consequent compensation as awarded by the Tribunal are just and proper? If not, what would be the just and proper compensation in the facts of the present case?"

11. At the outset, the deposition of the deponent at Exhibit-34, when examined, it appears that immediately after the accident, which happened on 10.09.2016, the appellant had taken treatment from 12.09.2016 till 05.11.2016, at Civil Hospital, Ahmedabad as an in-door patient. During that time, he had suffered three operations and a surgical affixation of plate, to the left leg of the deponent, had been done. Thereafter, it appears that the pus had developed in his left leg, and therefore, after the discharge from the Civil Hospital, he visited Dr. Pinakin Vora, Orthopedic Surgeon at Bhavnagar. There, he was admitted as in-door patient on 25.09.2017 and through an operation, an Ilizarov Ring (meant for stabilizing bones/allowing weight bearing etc.) was affixed to his left leg and he was on bed rest. From 14.06.2018, he was again admitted as in-door patient in Bhavnagar at Sir T. Hospital and had to be operated in left leg and was kept as indoor patient from 14.06.2018 till 24.06.2018. Thereafter again he developed

complications in his left leg and had to be admitted as in-door patient from 19.07.2018 till 26.07.2018. After such discharge, he suffered pain in his legs, and therefore, from 09.08.2018, he was again admitted in Sir T. Hospital and the received treatment till 29.08.2018. Unfortunately, he developed further complications, and therefore, from 03.10.2018 till 17.10.2018, he received treatment as an in-door patient. The last visit to Dr. Pinakin Vora on 27.06.2019, it appears that the said Dr. Pinakin Vora had advised him that he would still have to undergo operations in the knee of left leg and on the hip in the right leg and that he will have to get hip replacement for which he would have to bear costs to the tune of Rs.2,00,000/-. In the cross-examination, the learned advocate for the original opponent no. 3, i.e., the Reliance General Insurance Company Limited, there are suggestions that from 2017 to 2018 he had been admitted for some other injury and not connected to the injury in the accident. However, no further cross-examination appears to have been made by the learned advocate for the Insurance Company in that respect. Thus, the physical disability of 62% is palatable.

12. It may be seen that the appellant was admittedly doing a work of mason. Furthermore, a Dr. Pinakin Indulal Vora has categorically deposed in his deposition, that the appellant will not be able to move on his own for the rest of his life and both of his legs cannot work. That being the case, this Court is inclined to hold that the assessment qua disability, made by the Tribunal was mechanical. It is clear that merely because disability of lower limb of the injured is 62%, it does not automatically translate that the disability for the purpose of a claim petition would be half for the body as a whole. Indeed, the general principle is that the disability of the limbs, when translated to the disability of the body as a whole, would be half of the disability of limbs. However, what the Tribunal ought to do is to assess the functional disability i.e., the effect of the disability on the vocation or earning capacity of the injured. In the present case, the appellant was a mason. Naturally, if a Mason has not been able to work or walk on his own without assistance of a 3rd person, he cannot, by any stretch of imagination, possibly continue to work as a mason. Thus, for the purpose of the present case, the disability would be the functional disability which would be to the tune of 100% and not 32%, as assessed by the Tribunal.

13. Secondly, insofar as the monthly income of the injured is concerned, there is no dispute on record that the concerned person was not a mason. That the minimum wages prevalent as on the date of the accident i.e. on 10.09.2016, the minimum wages would clearly be to the tune of Rs.7,800/- qua this amount, there was no dispute between the learned advocates before this Court. Thus, this Court takes the minimum wages to the tune of Rs. 7,800/-. The future prospects will have to be added thereto in terms of paragraph-59.4 of the judgment in the case of National Insurance Co. Ltd vs Pranay Sethi reported at 2017 (16) SCC 680 which reads as follows:

"59.4. In case the deceased was self-employed or on a fixed salary, an addition

of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component."

14. Thus, the total monthly salary would be to the tune of Rs.10,920/- (Rs.7,800/- plus an addition to the extent of 40%). Thus, in the present case, the annual salary would be to the tune of Rs.1,31,040/- (Rs.10,920 X 12). This multiplicand will have to be multiplied by the multiplier as provided in the case of *Sarla Verma & Ors vs Delhi Transport Corp. & Anr* reported at 2009 (2) SCC (CRI) 1002, as the age of the appellant was of 33 years at the time of the accident, therefore, the appropriate multiplier in terms of the *Sarla Verma* (supra) would be 16. At this juncture, the said paragraph of *Sarla Verma* (supra) is quoted herein below for the ease of reference:

"15. We therefore hold that the multiplier to be used should be as mentioned in column (4) of the Table above (prepared by applying *Susamma Thomas, Trilok Chandra and Charlie*), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years."

15. Thus, the multiplier applicable having been concluded at 16. Resultantly, the future loss would be Rs. 20,96,640/- (Rs.10,920 X 12 X 16).

16. The appellant has a long history of medical interventions in as much as he has undergone multiple operations and the span of such treatment has continued for about 3 to 4 years. In such circumstances, this Court is inclined to award a compensation under the heading of pain, shock and suffering to the tune of Rs.1,00,000/-.

17. Insofar as the special diet, attendant charges and transportation cost is concerned, again looking to the treatment endured by the claimant and the fact that he will not be able to walk by himself, an attendant will have to continuously attend to him. Ordinarily, attendant cannot function 24 hours a day, and therefore, for each 24 hours a day, at least 3 attendants working in 3 shifts of 8 hours a day would be needed by the injured. Furthermore, keeping the attendant wages, for the Year-2016, and onwards as the attendant will have to be retained throughout the life of the victim, therefore, this Court is inclined to award a sum of Rs.3,50,000/- towards attendant charges. Further, an amount under special diet and transportation charges to the tune of Rs.25,000/- are being awarded.

18. The actual loss suffered by the claimant has been limited for a period of six months by the learned advocate for the claimant. Therefore, for the period of six months, the actual loss is awarded which comes to Rs.65,520/- (Rs.10,920 X 6).

The medical expenses, as awarded by the Tribunal, are not disputed before this Court, and hence they are retained.

19. Lastly, for the loss of amenities of life, this Court is aware that in view of the judgment in the case of Raj Kumar Vs. Ajay Kumar reported at AIR ONLINE 2010 SC 144, it was observed that where the disability is 100% or anything above 50%, the corresponding loss of amenities may not be awarded or it may be awarded at a token amount. Therefore, under the head of loss of amenities, no further amount need to be awarded.

20. Therefore, the total compensation would be as follows:

Sr.

No.

Particulars

Amount (in Rs.)

1

Loss of Future Income

20,96,640/-

2

Pain, Shock and Suffering

1,00,000/-

3

Actual Loss of Income

65,520/-

4

Medical Expenses

88,850/-

5

Attendant Charges

3,50,000/-

6

Special Diet and Transportation Charges

25,000/-

Grand Total

27,26,010/-

Less:

Compensation already awarded by the Tribunal

3,81,610/-

Enhanced amount awarded by this Court

23,44,400/-

21. Accordingly, the amount comes to Rs.27,26,010/- less Rs. 3,81,610/- which would come to Rs. 23,44,400/-. The said enhanced amount would incur interest at the rate of 9% per annum from the date of filing of the claim petition and till its actual realization.

22. The aforesaid compensation, shall be deposited by the Insurance Company within a period of eight weeks from the date of availability of the signed copy of this Judgment.

23. On deposit of the said amount, the Tribunal shall forthwith disburse the said amount to the appellant without any need of further creation of FDRs in view of the fact that the accident is of the Year-2016. Applicable court fees shall be paid by the appellant to the extent that it has not been paid so far.

24. The present appeal stands disposed of as allowed to the aforesaid extent.

25. R&P, if any, be remitted back to the concerned Tribunal.

26. Consequently, civil application, if any, preferred in the Appeal shall be disposed of in view of the aforesaid orders.