

(2010) 03 GUJ CK 0027
In the Gujarat High Court
Case No : F.A. No. 146 of 2010

Kamlaben Lalaji Mungia

APPELLANT

Vs

Jilubhai Ramabhai Masani and Another

RESPONDENT

Date of Decision : 12-03-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 168

Citation : (2011) 1 TAC 276

Hon'ble Judges : K.M. Thaker, J

Bench : Single Bench

Advocate : J.V. Japee, for the Appellant; Hardik C. Rawal, for the Respondent

Judgement

K.M. Thaker, J.—Heard Mr. J.V. Japee, learned Advocate for the Appellant and Ms. Archana N. Patel, learned Advocate, on behalf of Mr. Hardik C. Rawal, learned Advocate for the Respondent No. 2. Having regard to the submissions and claim in Appeal, Admit.

2. Ms. Patel for Mr. Rawal waives service of notice of admission for the opponent No. 2-State Transport Corporation. The opponent No. 1 is the driver. With the consent of the learned Advocate of opponent No. 2, the Appeal is taken-up for hearing and decision today.

3. In this Appeal, the Appellant has brought under challenge the judgment and award dated 1st February, 2006 passed by the M.A.C. Tribunal (Auxi.), Banaskantha at Palanpur in M.A.C.P. No. 321 of 1990.

4. The facts, which emerge from the impugned award are to the effect that, on 7th February, 1990 at about 9.46 a.m. the Appellant had started from her house to join the procession of Lord Vishwakarma, which was passing-by outside her house. At that time, a State Transport bus, driven by the Respondent No. 1, came with excessive speed and knocked down the Appellant. Due to the accident, the girl, aged about 10 years, sustained serious injuries and her right leg was almost crushed and she had to be admitted as indoor patient at the

hospital in Ambaji. During the treatment, her right leg had to be amputated. The Appellant claimed that she lost her leg due to the accident which rendered her handicapped for rest of her life. On the premise of such facts, the Appellant preferred the claim petition before the learned Tribunal and claimed compensation to the tune of Rs. 1,50,000/- which was subsequently enhanced to Rs. 4,00,000/-. After the trial, the learned Tribunal passed award dated 1st February, 2006 and partly allowed the claim petition awarding compensation to the tune of Rs. 1,57,500/- with interest at the rate of 9% p.a. from the date of institution of the claim.

5. The Appellant, in present Appeal, has claimed that she had to undergo the agony and pain and she still passes through the trauma and difficulties in living her day-to-day life. Besides other grievances, the Appellant has essentially laid stress on her challenge so far as the award towards head of pain, shock and suffering is concerned.

6. Mr. Japee, learned advocate for the Appellant, has submitted that the learned Tribunal has committed serious error in awarding only Rs. 7,500/- towards pain, shock and suffering and the compensation amount towards the said head deserves to be enhanced. Mr. Japee has submitted that considering the disablement coupled with the difficulties in day-to-day life, atleast Rs. 50,000/- ought to have been awarded. The future expenses towards the hospitalization for operation, etc. should have been considered. He also submitted that there is no dispute about the fact that the Appellant is rendered handicapped for her entire life after amputation of her right leg. For all such reasons and grounds, learned Advocate Mr. Japee has submitted that even the amount awarded towards medical expenses (Rs. 7,500/-) is too less and the learned Tribunal has also erred in considering only Rs. 15,000/- per annum as Appellant's notional income.

7. Mr. Raval and Ms. Patel on behalf of the Respondent Corporation have defended the award by the learned Tribunal and submitted that it is just and proper. The learned Counsel submitted that in the facts of the case the learned Tribunal had to take only notional income into account and that therefore, the learned Tribunal has not committed any error in considering Rs. 15,000/- as the notional income. The learned Counsel also submitted that even with regard to medical expenses the learned Tribunal has not committed any error and the award does not warrant any interference.

8. There is no dispute about the factum of accident or about the fact that victim's leg was almost crushed under the State Transport bus bearing registration No. GRU-9934 and that during the treatment, her leg had to be amputated. Thus, the Appellant has, for the life time, suffered loss of her one limb. There is also no dispute about the fact that the Appellant was hospitalized for more than 4 months and at the time of accident, she was only 10 years old.

9. The learned Tribunal has determined the compensation amount towards the head of pain, shock and suffering to the extent of only Rs. 7,500/-. The

quantification has been done on the ground that the Appellant was hospitalized only once and that too for about 4 months and that she was only 10 years old at the time of accident.

10. It should be noted that a child, who suffered such serious accident and injuries at a tender age, even before she could be, mentally, psychologically and emotionally, strong enough to withstand the infirmity and above all the physical difference between her and her friends and other family members, has been put to undergo the trauma and she will have to pass through the learning process of coping with the physical disability, differences and discomfort. Merely because at the time of the accident, the girl was not an earning person, it does not, by any standard, reduce the extent of her trauma, pain and shock than that of an earning person. Actually, her path would be more tumultuous and her sufferings would be more painful. The victim will have difficulty in matrimonial prospects also which would add to her agony.

11. The learned Tribunal ought to have appreciated that actually her future prospects are also adversely hit and she will have to suffer the miseries throughout her life. The Tribunal has failed to appreciate the emotional, physical and psychological difficulties, which the Appellant will have to undergo and she will have to pass through the process of training herself to become mentally strong enough to accept her physical handicap and to digest it and take it in stride and to go on with her normal life. Such physical and emotional exercise cannot and should not be diluted or belittled or washed away on the premise that the victim was only 10 years old or that she was a non-earning individual or that she stayed in hospital only once. The suffering for any individual, be the person of tender age of 10, would not be, by any standard, less than that of elder persons. Actually, a child has to pass through emotional and mental pain and suffering much more than a grown-up person and for longer span and when a child has to grow with group of friends, who are not as physically disabled or as physically different as her, such pain and sufferings are all the more severe than what a grown-up individual would bear.

12. Besides this, the child may have to go through further treatment including the treatment for artificial limb.

13. All these features and such other factors ought to have been duly and sensitively considered by the learned Tribunal.

14. In this context, reference may be made to the judgment of the Hon''ble Apex Court in Sapna Vs. United India Insurance Co. Ltd. and Another, where in the Hon''ble Apex Court in Para 2, 8, 12 to 14 observed thus:

2. What should be the fair and adequate compensation for permanent disability suffered by a 12 years'' girl in an accident involving a motor vehicle is the question involved herein. On 3rd September, 1999, at about 10.00 a.m., Sapna, while going to a temple, was hit by a "jeep", used as a taxi. She was dragged alongwith the jeep to a distance of about 15-20 feet. She suffered compound

fracture of left knee and dislocation of Patellae/bone of left, knee and skin and muscles above and below came out and veins got cut and knee got completely damaged and bones of left leg became bare due to tearing of skin and flesh and left leg bent at 90 degree at knee as a result whereof she has become crippled and completely disabled to walk. The skin of right leg from thigh to ankle was also peeled off resulting in serious wounds.

8. The principles governing a claim petition for assessing the damages in case of bodily injury suffered is that while awarding the compensation, the Tribunal should consider all relevant factors so as to enable the insured to be put in the same position as if he had not sustained any injury. The principle of Restitutio-in-integrum may be applied in a case of nature. Pecuniary loss and non-pecuniary loss are required to be pressed under certain heads. So far as the pecuniary loss is concerned, the same can be ascertained. What is required to be done is a balancing act by awarding such sum which, on the one hand, shall take care of the loss suffered by the claimant for the present time and future pecuniary benefits and, on the other, pecuniary advantages which from whatever source comes to them by reason of such injuries. So far as non-pecuniary loss is concerned, the same has to be assessed broadly under certain heads, namely, damages for physical pain, mental suffering, etc. Besides the amount spent on medical treatment, if any.

12. In Abati Bezbaruah Vs. Dy. Director General Geological Survey of India and Another, it was held:

11. It is now a well-settled principle of law that the payment of compensation on the basis of structured formula as provided for under the Second Schedule should not ordinarily be deviated from. Section 168 of the Motor Vehicles Act lays down the guidelines for determination of the amount of compensation in terms of Section 166 thereof. Deviation from the structured formula, however, as has been held by this Court, may be resorted to in exceptional cases. Furthermore, the amount of compensation should be just and fair in the facts and circumstances of each case.

We may also notice a decision in Nagappa Vs. Gurudayal Singh and Others, wherein a Three Judge Bench of this Court opined that the law does not permit passing of any further award after the final award was passed, stating:

Therefore in a case where injury to a victim requires periodical medical expenses, fresh award cannot be passed or previous award cannot be reviewed when the medical expenses are incurred after finalization of the compensation proceedings. Hence, the only alternative is that at the time of passing of final award, the Tribunal/Court should consider such eventuality and fix compensation accordingly. No one can suggest that it is improper to take into account expenditure genuinely and reasonably required to be incurred for future medical expenses. Further medical expenses required to be incurred can be determined only on the basis of fair guesswork after taking into account increase in the cost

of medical treatment.

13. What would be the genuine and reasonable expenditure likely to be incurred by the Appellant towards her future treatment is not borne out from the records. It would require serious consideration for the purpose of award of damages. When a person becomes completely incapable to do any work and virtually has no enjoyment for life, the same form relevant factors and, thus, requires consideration for the purpose of determining a fair and reasonable amount of compensation.

14. It has not been disputed that future treatment for the Appellant would be necessary. If future treatment is necessary, some provision should be made therefor. In absence of any clear cut estimate, we are inclined to award a further some of Rs. 75,000/- under the said head. She may require another operation. She may require to be provided with an artificial limb. We direct accordingly.

15. Having regard to the facts and circumstances of the case as well as the discussion by the learned Tribunal in the impugned award and upon taking into consideration the submissions made by the learned Counsel and the forgoing discussion and the fact that the Appellant is rendered crippled-probably for life, it appears equitable and appropriate as well as in the interest of justice that an additional amount of Rs. 25,000/-towards pain, shock and suffering is awarded to meet with the ends of justice.

16. The assessment and determination of claim for medical expenses also deserves a re-look. The learned Tribunal has awarded Rs. 7,500/-, against the claim of Rs. 25,000/-, towards medical expenses. The learned Tribunal has merely considered the span of hospitalization for treatment. It is likely that the victim may need (may be prescribed) artificial limb. The conveyance-traveling expenses, particularly the past hospitalization expenses, also have not been taken into account. Assessing the requirements and the post-operation expenses, it appears that award of Rs. 12,500/- towards medical expenses would be just and proper.

17. In the result, an additional amount of Rs. 25,000/- is awarded towards pain, shock and suffering and additional amount of Rs. 5,000/-towards medical expenses in addition to the amount awarded towards the said heads by the learned Tribunal. The other claims are not found tenable, hence they are rejected.

18. The award of the learned Tribunal is modified to the aforesaid extent.

With the/aforesaid observation, the Appeal is partly allowed. No order as to costs.