

(2005) 10 GUJ CK 0013
In the Gujarat High Court

Case No : First Appeal No's. 647 and 648 of 1989

Manohar Madhukar Tambe

APPELLANT

Vs

Bhagubhai Liladhar and Others

RESPONDENT

Date of Decision : 20-10-2005

Acts Referred:

Citation : (2005) 10 GUJ CK 0013

Hon'ble Judges : Bhawani Singh, C.J.;H.K. Rathod, J

Bench : Division Bench

Advocate : Amrish Pandya and Bhatt, for the Appellant; Arun H. Mehta and N.S. Tahilramani, for the Respondent

Judgement

Bhawani Singh, C.J.—Both the appeals [First Appeal No. 647 of 1989-Manohar Madhukar Tambe v. Bhagubhai Liladhar and Ors. and First Appeal No. 648 of 1989-Gitaben Vasudev Chugla and Ors. v. Bhagubhai Liladhar and Ors.] are proposed to be decided by this judgment, since they arise out of the same accident and common award passed by the Motor Accident Claims Tribunal, Valsad at Navsari, in M.A.C.Petition No. 345 of 1985 and M.A.C.Petition No. 351 of 1985 dated 01.11.1988.

2. Shortly stated, accident took place on 05.02.1985 at about 12.30 p.m. near village Adada. Vasudev Chugla (deceased) and pillion rider Manohar Madhukar Tambe going on motor cycle No. GTN 8418 were hit by truck No. GTO 3098 coming from opposite side. As a result of the accident, Vasudev Chugla died and Manohar Madhukar Tambe suffered serious injuries. The truck was driven by Bhagubhai Liladhar (opponent-1) owned by Vinodkumar Durlabhbbhai Patel (opponent-2) and insured with The Oriental Insurance Company Limited (opponent-3). Consequently, minor Manohar Madhukar Tambe filed claim petition for Rs. 50,000/- and legal heirs of Vasudev Chugla claimed compensation of Rs. 4,00,000/-.

3. In M.A.C.Petition No. 345 of 1985, opponents-1&2 have not filed reply. Reply

(exh.19) was filed by opponent-3. It is stated that truck was insured with the opponent-3-Insurance Company for third party risk. Age and injuries of the applicant-Manohar Madhukar Tambe were denied. It is also denied that opponent-1 drove the truck on wrong side and dashed against the motor cycle. It is denied that applicant spent Rs. 10,000/- towards medical expenses and suffered loss of Rs. 5,000/- in education. Further, it is denied that his leg was shortened, he is not able to squat, run and walk properly. His permanent partial disability was also disputed. It was stated that the claim was highly exaggerated.

4. In M.A.C. Petition No. 351 of 1985, with regard to claim of heirs of deceased Vasudev Chugla, age and income of deceased was disputed. It was denied that deceased was holding valid driving license to drive the vehicle. Further, allegation of rash and negligent driving by driver was not admitted and stated that deceased was responsible for the accident and the claim was highly exaggerated.

5. Accordingly, in both the cases, evidence was sought and parties heard. The finding recorded is that accident took place, as alleged by the claimants, therefore, claimants were held entitled to compensation. Minor Manohar Madhukar Tambe was awarded compensation of Rs. 39,600/- and legal heirs of deceased Vasudev Chugla Rs. 1,35,000/-. In both cases, interest at 12% per annum from the date of application till realisation has been awarded.

6. These appeals arise at the instance of the claimants. They seek just compensation. Appellants heard and record perused.

7. Gitaben, wife of Vasudev Chugla has appeared as witness and states that accident took place in which her husband died. Minor Manohar Madhukar Tambe states that he was pillion rider at the time of accident and the motor cycle was being driven by the deceased. At about 12.30 p.m. near village Adada they were going on the left side of the road. The truck came from opposite direction in full speed and knocked down the scooter, colliding with it on the front side, and they were thrown off. Truck driver neither filed statement of defence nor appeared as witness to explain the accident. Copy of F.I.R. (exh.30) and copy of Panchanama (exh.31) were produced. Panchnama shows that scooter was lying on the western border of the pucca road, the left guard was broken, there was blood spot and at a distance of 2 feet there was blood pool. Though the motor cycle was being driven on the left side of the road, still it was hit by the truck. Case was made out against the truck driver by the police for negligent driving, though he was acquitted later. Claims Tribunal did not find it to be a case of contributing negligence on the part of the deceased. The finding as to rash and negligent driving by truck driver is held reasoned, based on evidence, therefore, confirmed.

8. Next question pertains to assessment of compensation. Minor Manohar Madhukar Tambe was 15 year old at the time of accident. He suffered fracture on right thigh and on the knee, apart from other parts of the body. He was admitted in Bilimora Mangusi Hospital, thereafter, removed to Panchal Orthopedic Hospital, where he stayed for 2? months. He was operated twice and remained in the

hospital for a long time and had plaster for six months. Because of injuries, he remained in bed from 22-03-1985 to 19.10.1985. He was examined by Dr.Panchal, who states that patient had compound fracture of femur on right side. He claims compensation for pain, shock and suffering, medical expenses, loss of education, transportation and other connected charges including attendance, etc. He has been awarded Rs. 15,000/- for pain, shock and suffering, Rs. 12,000/- for medical expenses attendance and transportation, Rs. 12,600/- for disability. Through this appeal, enhancement of Rs. 10,000/- is claimed. Shri Amrish Pandya learned counsel for the claimants submits that looking to the nature of injuries and other loss suffered by him, claimant is entitled to just compensation, i.e. more than what has been claimed,. He claimed Rs. 50,000/- before the Claims Tribunal and confined the appeal to Rs. 10,000/-, since due to poverty, he could not pay court fee. Learned counsel for the claimants submits that evidence for enhancement is available, therefore, without amendment and evidence, enhanced compensation can be awarded. Reliance is placed on Apex Court decision in Nagappa v. Gurdayal Singh and Ors. (AIR 2002 SCW 5348). There is substance in the contention advanced by the learned counsel. On perusal of injuries suffered by the claimant, it is crystal clear that they are of serious nature. Claimant remained in bed under plaster for 9 months and subjected to two operations. One of the injuries found by Dr.Panchal is compound fracture of femur on right side. Claimant must have undergone great pain, shock and suffering, therefore, award of Rs. 15,000/- seems to be unjust, consequently, it is enhanced to Rs. 50,000/-.

9. With regard to medicines, transportation, attendant charges, against the claim of Rs. 12,000/-, claimant is awarded Rs. 20,000/- because Rs. 12,000/- cannot meet the requirements for such long treatment, be it with regard to medicines, special diet or transportation. Persons suffering from serious injuries are not expected to maintain accounts of every amount spent during the treatment due to seriousness of illness, therefore, general assessment of such expenditure can be made.

10. Claims Tribunal did not award compensation for studies. The conclusion arrived at by the Tribunal that claimant has not failed but passed in 9th std. Examination, therefore, he cannot awarded special amount, is not reasonable. Loss in study for 9 months is obvious. Of course, claimant passed, but he could have passed with higher marks had he been in the school for these 9 months. Loss is obvious, therefore, an amount of Rs. 10,000/- is awarded.

11. Next comes the claim for permanent partial disability. Nature of injuries has been discussed in the preceding part of this judgment. Further, it is added that due to disability suffered by the claimant, his leg was shortened by 2" and he limps while walking. He cannot walk properly, he cannot run, he cannot sit cross-legged, nor squat or do cycling. There is, therefore, around difficulty suffered by the claimant due to this disability. Of course, looking to the factual, physical disability, permanent partial disability of right lower limb is fixed by doctor at

1/6th of 45%, i.e. 8% of the entire body. Division Bench of this Court said in *State of Gujarat Vs. Somabhai Dhurabhai Sindhava and Others*, that for computing the future economic loss of an injured person, the Court has to apply its mind not only to the abstract percentage of loss of earning capacity, but also to the actual economic loss sustained or likely to be sustained by the injured person. Merely computing the economic loss on the basis of the Medical Certificate regarding physical disability will amount to turning a blind eye to the reality of actual economic loss. The claimant is going to suffer with physical disability throughout his life, therefore, he will have the disadvantage in every sphere of activity, earning or non-earning. Accordingly, it is just and proper to fix the disability at 25%. The age of claimant at the time of accident was 17 and applying multiplier of 16 on the income of Rs. 15,000/- of a non-earning member, the compensation is worked out thus: annual income Rs. 15,000, monthly income Rs. 1,250 $\times$ 25% = Rs. 312.50 $\times$ 12 $\times$ 17 = Rs. 63,750/-. Therefore, the claimant is entitled to compensation of Rs. 50,000/- (pain, shock and suffering), Rs. 20,000/- (Medicines and other charges), Rs. 63,750/- (permanent partial disability), Rs. 10,000/- (loss of studies), which comes to a total compensation of Rs. 1,43,750/-, although the appellant claims Rs. 50,000/-.

Consequently, First Appeal No. 647 of 1989 is allowed. The award stands modified to the aforesaid extent. Claimant is held entitled to total compensation of Rs. 1,43,750/-, which will carry interest at the rate of 12% from the date of application till realisation. Costs of this appeal shall be borne by the parties.

12. Now, we turn to deal with First Appeal No. 648 of 1989 arising out of M.A.C.Petition No. 351 of 1985. Deceased was 35 years old at the time of accident, although postmortem notes show that he was 33 year old. He was running electrical store. Assessment orders issued by the Income Tax Department for 1981-82, 1982-83 and 1983-84 show his total income Rs. 13,867/-, Rs. 14,145/- and Rs. 17,619/- respectively, therefore, his average income was Rs. 1,400/- p.m. Making deduction of 1/3rd towards personal expenditure, dependency has been fixed at Rs. 900/- and applying multiplier of 12, compensation of Rs. 1,29,600/- was awarded. By adding Rs. 5,000/- towards loss of expectation of life, Rs. 1,000/- towards funeral expenses, total compensation of Rs. 1,35,600/ was awarded. In this case also, the Claims Tribunal has not assessed the compensation correctly. By taking the same income of Rs. 1,400/- and applying the principles laid down in *Smt. Sarla Dixit and another Vs. Balwant Yadav and others*, and *Ritaben @ Vanitaben and Anr. v. Ahmedabad Municipal Transport Service and Anr.* (2000 ACJ 153), compensation can be worked out thus: Rs. 1,400 $\times$ 3 = Rs. 4,200 $\times$? = 2,100 $\times$ 1/3rd = Rs. 1,400 $\times$ 12 = Rs. 16,800/- $\times$ 17 = Rs. 2,85,600 + Rs. 10,000 (loss of expectancy of life) + Rs. 3,000/- (funeral expenses) + Rs. 10,000/- (consortium) = Rs. 3,08,600/-.

Consequently, this appeal is also allowed. Award is modified to the aforesaid extent. Claimant is held entitled to total compensation of Rs. 3,08,600/- carrying

interest at the rate of 12% per annum from the date of application till payment.
Costs of this appeal shall be suffered by both the sides.

Opponents to pay compensation in two months to the claimants.