

(2025) 11 GUJ CK 1875
In the Gujarat High Court
Case No : R/First Appeal No. 2507 Of 2015

Mansuri Akrambhai Kalubhai

APPELLANT

Vs

Thakor Jasvantbhai Laxmabhai & Ors

RESPONDENT

Date of Decision : 17-11-2025

Acts Referred:

Citation : (2025) 11 GUJ CK 1875

Hon'ble Judges : Mool Chand Tyagi, J

Bench : Single Bench

Advocate : R.K.Mansuri, Palak H Thakkar, Vibhuti Nanavati

Final Decision : Partly Allowed

Judgement

Mool Chand Tyagi, J

1. The captioned appeal is filed against the impugned judgment and award dated 19.06.2015, whereby the learned Tribunal has awarded a sum of Rs.1,02,480/- along with the interest at the rate of 8% per from the date of filing of the claim petition till its realization.

2. The succinct facts leading to file the present appeal is that on 17.06.2008, at about 5:00 p.m. in the evening, the claimant/appellant was riding his motorcycle bearing registration No.GJ-09-AE-9903 and going towards Meghraj from Malpur. When he reached near Shajaad Lining Works, in the meantime, respondent No.1- herein-driver of the jeep bearing registration No.GJ-17-Y-1248 came thereby driving the jeep in rash and negligent manner at an excessive speed so as to endanger the human life and hit the motorcycle of the appellant. Resultantly, appellant sustained serious injuries including fractures.

3. It is also the case of the applicant that in the said accident, the appellant sustained permanent disability of 19% of the body as a whole. It is also the case of the appellant that at the time of accident the appellant was aged about 19 years and he was the student of Second Year B.Com. Therefore, the appellant

claimed compensation of Rs.7,00,000/-.

4. Upon being served, respondent No.3- Insurance Company filed written statement at Exh-21 thereby denying the averments made in the claim petition and further submitted that the accident had occurred owing to the sole negligence of the appellant herein, and thereby, the respondent No.3- Insurance Company prayed for dismissal of the claim petition.

5. Having considered the pleadings of the parties, the learned Tribunal framed the following issues at Exh-21:-

"1. Whether it is proved that the claimant sustained injuries on account of rashness of negligence of negligent in driving on the part of the driver of the vehicle/vehicles involved in the accident?

2. What amount, if any claimant is entitled by way of compensation and from which of the opponents?

3. What order?"

6. In order to prove his claim, appellant herein had led the following oral as well as the documentary evidences.

Sr No.

Particulars

Exhibit

1.

Affidavit in examination-in-chief and cross-examination of appellant

43

2.

Injury Certificate

52

3.

Disability Certificate

53

4.

Paper of medical treatment and bills for medicine

55

5.

School Leaving Certificate

56

6.

Educational document

57 to 70

7.

Copy of Driving License of the applicant

71

7. Having considered the materials on record, the learned Tribunal has awarded a sum of Rs.1,02,480/- as a compensation along with the interest at the rate of 8% per annum from the date of filing of the claim petition till its realization.

8. Heard learned advocates for the parties.

9. Learned advocate for the appellant submitted that the learned Tribunal has ascertained the income of the appellant at Rs.2,500/- at the time of accident which is much lesser than the minimum wages as prevalent at the time of accident. He further submitted that appellant herein was aged about 19 years at the time of accident, therefore, the multiplier of 18 is required to be applied. However, the learned Tribunal has applied the multiplier of 16 instead of 18. He further submitted that the learned Tribunal has awarded a meager amount of Rs.10,000/- under the head of loss of enjoyment of life, a meager amount of Rs.10,000/- under the head of pain, shock and suffering and also a meager amount of Rs.10,000/- under the head of loss of actual income and a meager amount of Rs.10,000/- under the head of transportation, special diet and attendant charges. He further submitted that the said award is required to be modified.

10. On the other hand, learned advocate, Mr. Vibhuti Nanavati learned advocate appearing on behalf of the respondent No.3-Insurance Company, vehemently submitted that there is no infirmity in the impugned judgment and award, therefore, the appeal is liable to be dismissed.

11. Mr. Palak H. Thakkar, learned advocate appearing on behalf of the respondent No.6- Insurance Company, submitted that the learned Tribunal has not considered the issue of negligence in right earnest and ignored the material available on record.

12. Having considered the submissions of the learned advocates for the parties and having regard to the facts and circumstances of the case, it is to be noted that it is not in dispute that at the time of accident the claimant was the student of Second Year B.Com and he was aged about 19 years. However, the learned Tribunal has considered the income of the student of Second year B.Com as Rs.2,500/- per month and the learned Tribunal could have considered the minimum wages to determine the income of Appellant prevalent at the time of

accident. As the relevant point of time the minimum wages as notified by the State Government for Semi Skilled worker was Rs.2,900/- per month. Therefore, the income of the appellant/original claimant is determined at Rs.2,900/- per month. It is not in dispute that the claimant/appellant herein sustained the functional disability of 19% body as a whole, therefore, the learned Tribunal has rightly considered the future loss of income at the rate of 19%. However, the learned Tribunal has committed the serious and material illegality in considering the multiplier of 16 in place of 18. Considering the income at Rs.2,900/- per month, the future loss of income would come to Rs.1,19,016/- (2900 x 19% x 12 x 18).

13. Further, the learned Tribunal has awarded a meager amount of Rs.10,000/- under the head of loss of enjoyment of life. Considering the age of the original claimant/appellant a sum of Rs.15,000/- is awarded under this head. The learned Tribunal has failed to appreciate that at the time of accident appellant was aged about only 19 years and he sustained functional disability to the extent of 19%, therefore, the learned Tribunal could have awarded the reasonable amount under the head of pain, shock and sufferings. The learned Tribunal has awarded a sum of Rs.10,000/- under the head of pain, shock and suffering which is required to be enhanced to Rs.30,000/-.

The learned Tribunal has awarded the medical expenses incurred by the appellant, therefore, the same is not required to be interfered. However, the learned Tribunal has awarded only a sum of Rs.10,000/- under the head of actual loss of income, which is required to be enhanced to Rs.20,000/-. Similarly, the learned Tribunal has awarded a meager amount of Rs.10,000/- under the head of transportation, special diet and attendant charges which is required to be enhanced to Rs.15,000/-.

14. In view of the above discussions, the appellant shall be entitled for the following amount of compensation under the following heads.

Particulars

Amount (Rs.)

Future Loss of Income

1,19,016/-

Loss of enjoyment of life

15,000/-

Pain, Shock and Suffering

30,000/-

Medical Expenses

34,800/-

Actual Loss of Income

20,000/-

Transportation, Special Diet and Attendant Charges

15,000/-

Total

2,33,816/-

Less: 30% negligence

70,145/-

Total

1,63,671/-

Less: compensation already awarded

1,02,480/-

Enhancement

61,191/-

15. Further, the appellant was the rider of the motorcycle and he was held negligent to the extent of 30%. Therefore, 30% of the awarded amount is required to be deducted on account of the self negligence of the appellant. After, deducting the 30% amount of the award and compensation already awarded, the appellant shall be entitled for additional compensation to the tune of Rs.61,191/-.

16. The learned Tribunal has awarded the interest at the rate of 8% per annum. The same is not required to be interfered. Therefore, the appellant shall be entitled for the interest on the additional amount of compensation at the rate of 8% from the date of filing of the claim petition till its realization.

17. In view of the above discussions, the appeal stands allowed partly to the above extent.

18. The respondent No.3- Insurance Company shall deposit the entire additional amount of compensation within a period of 6 weeks from today.

19. Amount, if any, lying deposited with the Registry of this Court, the same be transmitted to the concerned learned Tribunal forthwith.

20. R & P, if any, be sent back to the concerned learned Tribunal forthwith. No order as to costs.