

(2025) 11 GUJ CK 1874
In the Gujarat High Court
Case No : R/First Appeal No. 2506 Of 2015

Mansuri Mohsin Salimbhai

APPELLANT

Vs

Thakor Jasvantbhai Laxmabhai & Ors

RESPONDENT

Date of Decision : 17-11-2025

Acts Referred:

Citation : (2025) 11 GUJ CK 1874

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.95,650/- 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 on 17.06.2008, at about 5:00 file the present appeal is that 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 and 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 by driving the said jeep in the rash and negligent manner at excessive speed so as to endanger the human life and hit the motorcycle of the appellant. Resultantly, appellant sustained the serious injuries and fractures.

3. It is also the case of the appellant that in the said accident, the appellant sustained permanent disability of 13% body as a whole. It is also the case of the appellant that at the time of accident the appellant was aged about 17 years and he was studying in 11th standard. Therefore, he claimed the 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

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

42

2.

Copy of complaint

47

3.

Panchnama of place of accident

48

4.

Panchnama of motorcycle bearing registration No.GJ-9-AE-9903

49

5.

Injury Certificate

50

6.

Disability Certificate

51

7.

School Leaving Certificate

54

8.

Copy of Charge-sheet

72

9.

Paper of medical treatment and bills for medicine

73/84

10.

Educational document

75 to 85

11.

Certificate of Cast

81

7. Having considered the materials on record, the learned Tribunal has awarded a sum of Rs.95,650/- as a compensation along with the interest at the rate of 8% per annum from the date of filing of the claim petition till realization.

8. Heard learned advocates for the parties.

9. Learned advocate for the appellant submitted that he is challenging the award on the point of quantum and he is not challenging the award on the point of negligence. He further submitted that at the time of accident, the appellant/original claimant was aged about 17 years and he was studying in 11th class, however, the learned Tribunal has determined the income of the appellant at Rs.1250/- per month, which is much lesser than the minimum wages prevalent at the time of accident. He further submitted that in absence of proof of income, the learned Tribunal could have considered the income of the appellant as per minimum wages prevalent at the time of accident. He further submitted that it is not in dispute that at the time of accident, the original claimant/appellant herein was aged about 17 years, however, the learned Tribunal has applied the

multiplier of 16 in total disregard to the settled proposition of law. 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 a meager amount of Rs.10,000/- under the actual loss of income and a meager amount of Rs.10,000/- under the head of transportation, special diet and attendant charges. He further submitted that the amount of compensation awarded under these heads are required to be enhanced and accordingly, the appeal is deserved to be allowed partly.

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

11. On the other hand, Mr. Palak H. Thakkar, learned advocate appearing on behalf of the respondent No.6- Insurance Company, vehemently submitted that the rider of the motorcycle was not negligent, therefore, the findings recorded by the learned Tribunal on the issue No.1 is required to be set aside. No other submissions have been raised on behalf of the learned advocate for the respondent No.6- Insurance Company.

12. Having considered the submissions of the learned advocates for the parties and having gone through the record, it is to be noted that the appellant herein has not disputed the findings recorded on the point of negligence. The learned Tribunal had held the rider of the motorcycle contributorily negligent to the extent of 30%. Appellant has not challenged that finding. The Insurance Company of the motorcycle has not preferred any appeal or any counter objections in the appeal for challenging the findings returned by the learned Tribunal under issue No.1. Therefore, the submissions raised by the learned advocate Mr. Palak H. Thakkar is not sustainable. So far as the quantum is concerned, it is not in dispute that at the time of accident the appellant was the student of 11th Standard and he was aged about 17 years. The learned Tribunal has determined the income of the appellant at Rs.1,250/- which is lower than the income notified by the Government of Gujarat as minimum wages at the relevant time. Accordingly, considering the minimum wages prevalent at the relevant point of time, the income of the original claimant/appellant herein is determined at Rs.2,700/- per month. Therefore, the income for calculating the future loss of income is taken at Rs.2,700/-. It is not in dispute that the claimant/appellant sustained functional disability of 13%. Therefore, after applying the multiplier of 18 as per age of the claimant, the future loss of income would come to Rs.75,816/- (2700 x 13% x 12 x 18).

13. The learned Tribunal has awarded a sum of Rs.10,000/- under the head of loss of enjoyment of life. Considering the disability sustained by the appellant, the compensation awarded under this head is enhanced from Rs.10,000/- to Rs.15,000/-. Further, the learned Tribunal has awarded a sum of Rs.10,000/-

under the head of pain, shock and suffering which is also to be required to be enhanced. Considering the nature of injuries and considering the fact that, at the time of accident appellant/claimant was only aged about 17 years. The compensation awarded under this head to the tune of Rs.10,000/- is enhanced to Rs.30,000/-. The learned Tribunal has awarded actual sum spent by the appellant in his medical treatment, therefore, no interference is required. The learned Tribunal has awarded a sum of Rs.10,000/- under the head of actual loss of income, the same is enhanced to Rs.20,000/-. Similarly, the learned Tribunal has awarded a meager amount under the head of transportation, special diet and attendant charges, which is also required to be enhanced to Rs.15,000/-from Rs.10,000/-.

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

75,816/-

Loss of enjoyment of life

15,000/-

Pain, Shock and Suffering

30,000/-

Medical Expenses

34,450/-

Actual Loss of Income

20,000/-

Transportation, Special Diet and Attendant Charges

15,000/-

Total

1,90,266/-

Less: compensation already awarded

95,650/-

Enhancement

94,616/-

15. The learned Tribunal Rs.95,650/-. Therefore, the additional compensation of has already awarded a sum of appellant shall be entitled for the Rs.94,616/- i. e. (Rs.1,90,266/- - (less) Rs.95,650/-). Learned Tribunal has awarded the interest at the rate of 8% per annum, therefore, the appellant shall also be entitled for the interest at the rate of 8% on the additional amount of compensation.

16. The learned Tribunal has determined the inter se liability of both the Insurance Company in the ratio of 70:30. The liability of respondent No.3 was determined by the learned Tribunal to the extent of 70% and liability of the respondent No.6- Insurance Company was determined by the learned Tribunal to the extent of 30%. Therefore, both the Insurance Company are jointly and severally liable to deposit the additional amount of compensation along with the interest at the rate of 8% per annum within the period of 6 weeks from today.

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

18. Upon depositing of the said amount, claimant shall be at a liberty to withdraw the entire amount of compensation along with the interest.

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.