
(1978) 04 GUJ CK 0004
In the Gujarat High Court
Case No : First Appeal No. 560 of 1977

Nathalal Chhaganlal

APPELLANT

Vs

Koli Karsan Lavji and Others

RESPONDENT

Date of Decision : 27-04-1978

Acts Referred:

Citation : (1979) ACJ 212

Hon'ble Judges : P.D. Desai, J;M.K. Shah, J

Bench : Division Bench

Advocate : Suresh M. Shah, for the Appellant; B.R. Shah, for the Respondent

Final Decision : Allowed

Judgement

M K. Shah, J.—This appeal arose out of an award of the Motor Accidents Claims Tribunal at Rajkot, dated 19th February, 1977, in Claim Case No. 58 of 1975. The Appellant is the original claimant in Claim Case No. 58 of 1975. He was driving a motor-cycle with his father, Chhaganlal, on the pillion seat. Respondents Nos. 1 and 2 are the driver and the owner respectively, of the public carrier, bearing No. G.T.A. 5662, involved in the accident and Appellant No. 3 is the insurance company, with which the said carrier was insured at the relevant time.

2. The accident happened in the morning of 26th January, 1975 at 9-00 O" clock in the chowk of intersection of two roads, viz., Subhash or the Sardar Road, which runs from east to west, along which road, the carrier was proceeding and the Takhtsinghji road, also referred as the "Scientific" or "Watch" Gali, which runs from north to south and which road, the motor-cycle was proceeding It was the case of the injured-claimant, i.e. the Appellant, that, when he had already entered the intersection, the carrier came with high speed and dashed with his motor-cycle and the motor-cycle along with the Appellant, was dragged by the carrier for a distance of about 30 ft. before the carrier became stationary. He received injuries on both his legs. He was removed to a hospital. He was hospitalized for 2 1/2 months and he had also to remain in bed for 4 or 5 months

thereafter. He claimed a total amount of Rs. 20,000/-. His father, Chhaganlal, who owned the motor-cycle, claimed compensation for damage to the motor-cycle and preferred claim petition No. 57 of 1975. Both the petitions were tried together and disposed off by a common judgment. So far as the petition of the Appellant is concerned, the Claims Tribunal, though it gave a finding that the driver of the carrier was guilty of rash and negligent driving of the carrier, it also found that the Appellant was rash and negligent in driving the motor-cycle and was guilty of contributory negligence. The Tribunal apportioned the negligence in equal proportion between the motor-cycle driver, i.e. the Appellant and the driver of the carrier, i.e. Respondent No. 1, and, though it came to the conclusion that the Appellant was entitled to a compensation of Rs. 5,600/- in all, the award, taking into consideration the contributory negligence on the part of the driver of the motor-cycle (the Appellant), was made for half the amount, i.e. Rs. 2,800/-, and, aggrieved by the said order, the original claimant, Nathalal Chhaganlal, has preferred this appeal.

3. Mr. Shah, the learned advocate appearing for the Appellant, attacked the judgment of the Tribunal, firstly, with regard to its finding about the contributory negligence on the part of the Appellant. Mr. Shah has taken us through the evidence of Appellant Nathalal, exhibit 66, Nitubha Bhajubha Judeja, exhibit-83 and the medical evidence of Dr. Pravinchandra Harjivanbhai Hirani, Exh. 46 and Dr. Navinchandra K. Upadhyaya, exhibit-63, as also the carrier driver, Koli Karsan Lavji, exhibit-85-respon-dent No. 1. He has also drawn our attention to the Panchnama, exhibit-54.

4. The topography of the place, as it emerges from the panchnama, as also the oral evidence, may be noted first. The wider of the two roads, which are intersected by the chowk, is the Subhash road or the Sardar Road, which is a straight road running from east to west and the width of that road is 24 ft., with a foot-path on the either side of the width of 4 ft. This is a cement road. The other road, i.e. Takhatsinhji Road, which is also referred to as the Scientific or Watch Gali, runs from north to south and, though the width of that road is not recorded in the panchnama, the witnesses refer to the same as 12 ft. At this stage, the position of the vehicles may also be noted, as it was found at the time of the panchnama. The carrier was found lying in the south-west corner of the chowk, i.e. the intersection facing western direction. The distance between its front right wheel and the northern border of the road was 15 ft. While the same on the Southern side was 10 ft. The southern border of the road was at a distance of 4 ft. from the front left wheel. There were brake marks to the extent of 20 ft. towards the eastern side of the carrier.

5. The learned Judge, constituting the Tribunal, was carried away by the fact that, looking to the position in which the carrier was lying, it was found that it was on the left hand side of the road and it had covered a substantial part of the inter section. He, therefore, came to the conclusion that the driver of the motor cycle was also negligent in coming and dashing against the truck when it was in

this position ; and this would also show that the motor-cycle was being driven on the right hand side of the road, that means the road on which the motorcycle was proceeding, as covered by the inter section. In our opinion, the learned Judge has erred in coming to the conclusion that the Appellant was guilty of contributory negligence. As observed by the learned Judge himself there was dent on the front mudguard of the carrier and this leads to the conclusion that the impact was by the front portion of the mudguard and not by the wheel or the side portion of the mudguard of the carrier on the motor-cycle and that the carrier had come in contact with the motor-cycle only by the front portion and not by the side portion. This would also be the position, if we bear in mind the fact that the motor-cycle was actually found lying pressed under the front right wheel. This, therefore, appears to be a case in which the motor-cycle has already proceeded into the inter section and thereafter the carrier-driver has knocked it down by dashing against it from its front part. The carrier is a heavier vehicle and a duty is cast on the driver of such a vehicle to be careful and cautious before entering an intersection. It has to slow down its speed, look to the right and the left and then start negotiating the intersection. If these precautions, which a driver is obliged to take, were taken by the driver of the carrier, he would have seen that the motor-cycle had already entered the intersection and, if the speed was moderate and had been cut down, he would have immediately been able to control his vehicle and would have been able, first, to allow the motor-cycle, which had already entered the intersection, to pass before negotiating the intersection. The significant factor, in this connection, is the fact, as disclosed by the panchnama that there were brake-marks to the extent of about 20 ft. and though, this may not necessarily prove the Appellant's case that the motor-cycle and the Appellant were dragged along with the carrier from the right side of the road, which was being negotiated by the carrier to the left hand side of the road, this would lend considerable support to his version that the actual impact was not at the point, where the truck was lying at the time of the panchnama, but at a point 20 ft. away towards the eastern side of the carrier and, if this is so, then it cannot be said that the motor-cyclist was proceeding on the wrong side of the road, when he started negotiating the intersection and that he dashed against the carrier which had already negotiated a substantial part of the intersection. If that was so, the impact or the damage on the carrier would be on the right side body of the carrier and not on the front right side of the truck. The learned Judge, therefore, in our opinion, committed an error in arriving at the conclusion that the motor-cycle driver was guilty of contributory negligence and his finding in this regard is, therefore, set aside and we hold that there is no material on record to warrant a conclusion that the Appellant-driver of the motor-cycle, was guilty of contributory negligence. Again, if one keeps before one's mind's eye the respective directions in which the two vehicles were proceeding, it will become manifest that the motor-cycle was proceeding on a road which lay on the right side of the road on which the carrier was proceeding; and it had therefore a right of precedence over the carrier as per the rules of the road. The driver of the carrier has committed a breach of duty cast on him by the

rule in failing to give precedence to the other vehicle entering the intersection from his right side ; and he is therefore guilty of a negligent act. In the case of drivers entering an intersection from two different roads passing through an intersection, the relevant rule of the road enjoins on the driver entering from the left to give precedence to the driver entering from the right side of the first mentioned driver and to allow it to pass the intersection before entering the same. The learned Judge has failed to address himself on this important aspect which has led him to come to an erroneous decision about contributory negligence. The entire amount of award, therefore, awarded by the Tribunal and the additional amount which may be awarded by this Court in appeal will be fully payable to the Appellant.

6. That will take us to the question of quantum. The Tribunal has awarded a sum of Rs. 5,000/- in all, i.e., Rs. 3,000/- for pain and suffering and Rs. 2,000/- for loss of amenities and enjoyment of life. We have gone through the medical evidence, as also the evidence of the Appellant, and the evidence discloses that the Appellant had three injuries, two C.L. Ws., one on the right leg and the other on the left leg, with a crack fracture at the end of the femur of the left leg. Dr. Upadhyaya, exhibit-63, says that there was a tear on synobiat membrane of the left knee joint, which was repaired by him. Skin grafting was also done and he was discharged from the hospital on the 14th April, 1975. That means he remained in the hospital for 2 months and 16 days. In his opinion, the tear on synobial membrane may result into restriction of movements of the left knee joint; and, when he examined the patient last on the 3rd February, 1977, he found that there was Flexion ankylosis of about 10 degrees of the left knee joint. He also found that there was wasting of the muscles of the left thigh by about 7 inches at the level of 5 inches above the upper border of patella. There was also weakness of thigh muscle to some extent and the movement while running or weight lifting may be restricted. According to him, the disability would be 10 to 15 percent. In the cross-examination, he stated that ;is opinion was not based on any authority of medical jurisprudence or any provisions of law and that he is not an Orthopaedic surgeon, though he is an M.S. with general surgery. He also admitted that there are instruments to measure the degree of flexion, but he had not measured the flexion by such an instrument, and has estimated the same by examination ; and, therefore, there were chances of variations of 5 to 7 degrees.

7. In our opinion, looking to the nature of the injuries, pain and suffering which it caused and the slight permanent disability in the left leg, the amount of Rs. 5,000/- awarded for pain, suffering and loss of amenities and enjoyments of life, cannot be said to be lower or outside the brackets, but seems to be fair and reasonable and the question, therefore, so far as the award for pain, suffering and loss of amenities and enjoyments of life, for which Rs. 5,000/- are awarded, is concerned Mr. Shah does not challenge the award, as also the award for special damages with regard to the medical expenses, etc., for which Rs. 600/- are awarded and he restricts his challenge to the finding of the Tribunal with regard to that part of the award which refers to the question about pecuniary

loss of earnings in future to the Appellant, as also special damages upto the date of the trial in the form of the expenses incurred for engaging the services of an assistant at the tea-stall, run by the Appellant for the period the Appellant was not able to attend his business. Now, taking up the latter thing first, the Appellant's evidence shows that he was hospitalized for 2 1/2 months and, for a period of 4 to 5 months, thereafter, he was confined to bed and could not attend to his business. He runs a tea-stall where he and his brother were engaged in the work of preparing tea and serving the same to the customers. Because of his absence, an assistant had to be kept for this period and he was paid Rs. 7/- per day. Mr. Shah draws our attention to the statement of the Appellant in the cross-examination, that the person engaged, namely, Bachu Bhagwan, who was employed on the next day of the accident, was in service for a period ending with two months prior to the date, when the Appellant gave his evidence, which was on 5th February, 1977. In our opinion, these statements cannot help the Appellant in view of the categorical statement made by him in the examination-in-chief earlier in the following terms:

During my stay at home we had to engage one more man for preparing tea. His name is Bachu Bhagwan. He was paid Rs. 7/- per day for that.

8. He, therefore, would be entitled to the expenses incurred on this count from the date of the accident upto the time he started attending to his business, which was 4 to 5 months, after he was discharged from the hospital. He was in the hospital for 2 1/2 months and therefore the period should be taken as 7 months in all. Taking the wages paid to the employee at Rs. 200/- per month, the amount payable to the Appellant in this connection will come to Rs. 1,400/- and he would be entitled to the same.

9. So far as the pecuniary loss for future earnings is concerned, there is no material on record justifying any award on this count. The services of Bachu Bhagwan were discontinued when the Appellant started attending to his business. The disability of the Appellant is not such as would effectively hamper his attendance at the business and consequently the earnings therefrom. In any case, there is no evidence brought on record showing as to what were the earnings from this business and in what manner and to what extent the same are affected and would be affected in future by virtue of his disability. No award, therefore, will be made in this regard for loss of future earnings.

10. The additional amount, therefore, to which the Appellant would be entitled, would be the difference between the full amount awardable to the Appellant and the amount which has been actually awarded by the Tribunal, i.e. the difference between Rs. 5,600/- and Rs. 2,800/- which comes to Rs. 2,800/-. He will also be entitled to the additional amount of Rs. 1,400/- as the special damages for loss of earnings during the period he could not attend to his business and the total additional amount, therefore, awarded in this appeal will come to Rs. 4,200/-. The result will be the following order:

Appeal partly allowed. The Respondents to pay an additional amount of Rs. 4,200/- and interest thereon at the rate of 6 percent from the date of the claim petition till payment and costs on the said amount, throughout There will be no order as to costs for the claim disallowed in the facts and circumstances of the case.