(2026) 01 GUJ CK 1445

In the Gujarat High Court

Case No : R/First Appeal No. 1332 Of 2022

National Insurance Company Ltd APPELLANT

Vs

Shatishbhai Jayantibhai Chhag & Anr RESPONDENT

Date of Decision : 21-01-2026

Acts Referred:
Motor Vehicles Act, 1988 — Section 173

Citation : (2026) 01 GUJ CK 1445

Hon'ble Judges : Hasmukh D. Suthar, J

Bench : Single Bench

Advocate : Yogi K Gadhia, A R Dwivedi

Final Decision : Dismissed

Judgement

Hasmukh D. Suthar, J

1. Feeling aggrieved and dissatisfied with the judgment and award dated 04.12.2021 passed by learned Motor Accident Claims Tribunal Kheda at Nadiad, (hereinafter referred to as "the Tribunal" for short), in Motor Accident Claim Petition No.875/2017, the appellant – Insurance Company has preferred present appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act" for short).

2. Heard Mr. Yogi K. Gadhia, learned counsel for the appellant – Insurance Company and Mr. A.R. Dwivedi, learned counsel for respondent No.1. Though served, none appears for respondent No.2.

3. It is the case of the appellant that on 23.07.2017, the claimant was going on the motorcycle bearing No.GJ-11-BG-3875 on correct side of the road and when he reached at the place of accident at about 06:30 a.m, one car bearing No.GJ-23-AN-9339 came in full speed and in rash and negligent manner, dashed with the motorcycle of the claimant. In the said incident, the claimant got injuries. Therefore, the claimant filed claim petition seeking compensation. After appreciating the evidence produced on record, the Tribunal was pleased to partly

allow the claim petition and awarded compensation of Rs.7,86,788/- along with interest at the rate of 9% p.a.

4. Learned counsel for the appellant has submitted that the Tribunal has committed error in awarding exorbitant compensation. Though the driver of offending car filed a written statement, wherein he has denied the factum of accident, his negligence and even tendered the evidence before the Tribunal, the Tribunal overlooked the said vital aspects and held driver of the car sole negligent in causing the accident. Further, the Tribunal has committed error in not considering the contributory negligence on the part of the claimant. It is submitted that the FIR is filed by the third party, who was not eyewitness. Merely FIR is filed and chargesheet is filed against the driver of car, would not in any manner enough to hold car of the driver sole negligent. He has further submitted that, to prove the income, income tax returns for previous three years were produced before the Tribunal, however, only ITR for the year 2015-17 came to be considered. In absence of latest ITR, the Tribunal ought to have considered average income of the claimant rather to consider last three years income. The claimant was having newspaper agency, but he already surrendered the same as he was not able to do the same. Therefore, in such background of the facts, the compensation awarded by the Tribunal is very exorbitant and wrongly held driver of the car sole negligent.

5. Learned counsel for the original claimant has opposed the present appeal and submitted that the Tribunal has properly appreciated the evidence on record and that no error has been committed by the Tribunal. A charge-sheet has been filed against the driver of the car, and merely because he was acquitted, it cannot be presumed that he was not negligent in causing the accident. He further submitted that the alleged accident occurred due to the sole negligence of the car driver, who was driving the vehicle at high speed in a rash and negligent manner and dashed into the motorcycle without giving any signal or having any reflector. He has also argued that a new case has been developed in the written statement as well as in the evidence tendered before the Tribunal. However, considering the panchnama and the facts emerging from the evidence on record, the Tribunal has correctly appreciated the evidence and arrived at the conclusion that the driver of the car was solely negligent. Therefore, the Tribunal has not committed any error. So far as the aspect of income is concerned, the accident took place in the year 2017, and this is not a case where exorbitant income has been shown after the accident or where fabricated income-tax returns have been filed. Hence, as per the settled position of law, the Tribunal has properly appreciated the documents tendered by the claimant and awarded just compensation. He has, therefore, prayed for dismissal of the present appeal.

6. Having heard the learned counsel for the respective parties and upon perusal of the record, it appears that the Tribunal has properly considered the evidence produced on record at Exh.34. The said evidence, qua the allegations made against respondent No.2, remained unchallenged, as the claimant was not cross-

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examined by the driver of the car. Respondent No.2 filed his written statement and tendered his evidence at Exh.64. In the cross-examination of respondent No.2, the claimant has categorically denied any negligence on his part. Not only that, he has stated that he tried to avoid the accident, but could not apply the brakes as the accident occurred in a spur of the moment. He has further stated that respondent No.2 was driving the car at full speed in a rash and negligent manner without showing any indicator or signal.

7. It is well settled that while taking a turn on a main road or approach road, it is the duty of the driver of the vehicle to exercise due care, maintain proper control, and drive at a reasonable and controllable speed. On perusal of the evidence produced at Exh.64 and the cross-examination of the said witness, it transpires that respondent No.2 admitted that whatever he had stated in the written statement and deposition was disclosed for the first time before the Tribunal.

8. The Tribunal has also taken into consideration that a charge-sheet was filed against respondent No.2, the panchnama of the scene of accident, and the fact that the motorcycle was damaged from the front side and front tyre was found broken and the iron rod of the jumper also band. It has further been noted that the driver of the car fled from the spot after the accident and, therefore, the vehicle – car was not found at the time of drawing the panchnama.

9. Considering the size of the car, which is comparatively larger, and the manner in which the accident occurred, this Court is of the considered view that the Tribunal has committed no error while appreciating the evidence and in holding respondent No.2 solely negligent in causing the accident. Hence, the contention taken by the Insurance Company qua contributory negligence on the part of the claimant is not sustainable. Further, in light of the decision of the Hon'ble Supreme Court in Shrikrishna Kanta Singh v. The Oriental Insurance Company Ltd. and Others, reported in 2025 INSC 394 , in absence of any cogent evidence, contributory negligence cannot be inferred, as no sufficient material is available on record to establish contributory negligence on the part of the motorcyclist.

10. So far as quantum is concerned, the Tribunal has considered fact that the claimant was having newspaper agency and earning Rs.15,000/- and ITRs for the year 2011-12, 2012-13 and 2016-17 are produced at Exhs:56 and 59, which are prior in point of time of the accident. Considering the aforesaid fact, there is no chance of manipulation. It is needless to say that once income tax returns are filed, they include all sources of income and constitute statutory documents. In this regard, reference may be made to the decision of the Hon'ble Supreme Court in Malarvizhi & Ors. v. United India Insurance Company Limited & Anr., reported in 2020 ACJ 526 (SC), wherein it has been held that income-tax returns are statutory documents and the income of the claimant - deceased ought to be considered as per the ITRs. Therefore, in the case on hand, the income of the claimant as assessed by the Tribunal based on income tax returns for the A.Y 2016-17 as Rs.2,15,400/- p. a. is just and proper.

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11. So far as body disablement aspect is concerned, the Tribunal has assessed 60 % disablement of the body as a whole and as both the parties were agreed and no objection is taken by the other side, this Court deems fit not to disturb the said aspect. Further, the claimant was 26 years, 10 months and 21 days old, multiplier of 17 is rightly applied as per decision in case of Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr., reported in (2009) 6 SCC 121.

12. It is needless to say that the Motor Vehicles Act is a benevolent legislation which has been framed with the object of providing relief to the victims, or their families and there is no bar that compensation is restricted up to the claim by the claimant and the High Court and Tribunal have to award the compensation up to that extent. In this regard reference is required to be made to the judgment passed by the Hon'ble Supreme Court in case of Nagappa Vs Gurudayal Singh and others, reported in (2003) 2 Supreme Court Cases 274, wherein, it has been observed that there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In an appropriate case, where from the evidence brought on record if the Tribunal / Court considers that the claimant is entitled to get more compensation than claimed. Therefore, upon appreciating the evidence and in view of the settled position of law as cited above, the Tribunal has rightly awarded compensation of Rs.7,86,788/-though lesser amount is claimed by the claimant. Hence, no any inference is called for in the impugned judgment and award passed by the Tribunal.

13. For the foregoing reasons and observations, present appeal fails and is hereby dismissed. Record and proceedings be remitted back to the concerned Tribunal forthwith.

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