
(1984) 12 GUJ CK 0002
In the Gujarat High Court
Case No : First Appeal No. 167 of 1978

Natubhai Anopsing Jadeja	Vs	APPELLANT
State of Gujarat		RESPONDENT

Date of Decision : 28-12-1984

Acts Referred:

Citation : (1984) 12 GUJ CK 0002

Hon'ble Judges : D.C. Gheewala, J;B.S. Kapadia, J

Bench : Division Bench

Advocate : V.M. Solanki, for the Appellant; D.K. Trivedi, for G.N. Desai, for the Respondent

Judgement

D.C. Gheewala, J.—The Appellant-claimant who was serving at the relevant time, that is, on 27.9.1974 as a Sub-Inspector of Police while he was on his duty had the misfortune of meeting with the automobile accident. He was travelling in a jeep between Unjha and Mehsana at about 5.30 in the evening and a S.T. bus belonging to the Respondent-Corporation and driven by its employee in the course of its employment, was proceeding in the same direction. On account of negligence of Respondent's driver, there was a collision between the two vehicles whereby the jeep took about two to three somersaults, landed in a ditch on the side of the road and the Appellant-claimant sustained serious injuries along with some others. The claimant preferred claim petition. The Appellant-claimant claimed Rs. 75,000/- by way of compensation and the learned Tribunal on assessment of evidence came to the conclusion that Rs. 31,304/- would be awardable to the Appellant.

2. The claimant, being aggrieved by the said order, has approached this Court by way of this First Appeal, and has asked for enhanced amount of compensation. In the appeal, the claim is for Rs. 43,696/-, that is the balance of amount claimed by him before the Tribunal.

3. Mr. Solanki. the learned advocate appearing for the Appellant-claimant took us

through the evidence of the material witnesses as well as relevant portions of the judgment of the learned Tribunal. Mr. Solanki assailed the judgment on numerous grounds and main thrust of Mr. Solanki's argument was that on account of the Appellant having sustained permanent partial disability to the extent of 50% the Appellant has been condemned to a useless life and his future prospects for promotion have been totally obliterated. This, according to Mr. Solanki, will have an adverse effect on the future income of the Appellant inasmuch as after retirement, he will be totally useless for any further employment and he will receive a lesser amount by way of pension than what he would have, had his promising career been not cut off by negligence of the Respondent's driver. But as the question regarding negligence of the Respondent's driver has been finally closed by the Tribunal's judgment it is binding on both the parties and it is no longer res Integra. We have, therefore, only to determine as to whether the Tribunal was justified in awarding the amount that it did or as to whether on proper appreciation of evidence, the amount awarded to the Appellant requires to be suitably enhanced.

4. For the reasons to be now recorded, we feel that the Tribunal's award errs on the side of being conservative which in taking into consideration the injuries sustained by the Appellant, appears to be grossly niggardly. The Appellant at the relevant time was serving as Police Sub-Inspector. The Tribunal has calculated the salary of the Appellant at Rs. 608/-, whereas in fact it was Rs. 643/- as per salary certificate. The Tribunal considered that the Petitioner was constrained to avail of leave for a period of 13 months, whereas in fact it is evident from the evidence that the claimant was not allowed to resume by the medical expert before December 1975. Taking the salary of the claimant at a round figure of Rs. 640/-, the leave that the Appellant-claimant had to avail of on account of wrongful act of the Respondent's driver, would be 14 months, and on that score alone the Appellant requires to be awarded Rs. 8,960.

5. The Tribunal next awarded an amount of Rs. 3,400/- for expenses. The Petitioner had produced bills of Rs. 700/-. The Tribunal considered that Rs. 1,200/- for sundry expenses and Rs. 1,500/- for transport would be adequate, only Rs. 3,400/- were awarded on that score. The Tribunal's calculation on this score hardly requires to be disturbed but on account of the Petitioner's disability in boarding a public utility vehicle, he will be required to hire a private vehicle at a greater cost at times even for attending to his duties as well as for attending to his social and personal calls. On this score, the Appellant would be entitled to claim an amount of Rs. 3,000/- more.

6. The Tribunal next awarded a global amount of Rs. 20,000/- for pain, shock and suffering. We find that the Tribunal's award is suffering from a very conservative calculation as the claimant was constrained to remain in a plaster cast for a very long time and as he had to undergo numerous surgical intervention, we feel that only on the score of pain, shock and suffering, the claimant would be entitled to claim Rs. 15,000/- more.

7. Next comes the question of economic loss on account of the substantial reduction in the earning capacity of the Appellant. The Appellant at the relevant time was serving as Police Sub-Inspector. His chance for promotion as Inspector of Police and even still to higher echelons were permanently barred as he was advised by the doctors to undertake only light duties. As the Appellant had met with an accident during the course of his duties the Government very pragmatically continued the Appellant in service but he was relegated to table work. While the doctors have assessed the percentage of the Appellant's disability at 50% we feel that over all disability which the Appellant might have sustained on account of shortening of the limb, would not tantamount to such high percentage but on an average the Appellant can very definitely be said to have sustained atleast a loss of Rs. 200/- per month, if we take into consideration the reduction of pension which the Appellant will be drawing after his superannuation. This would come to Rs. 2,400/- per annum. As the Appellant at the relevant time was of 44, we feel that 12 years multiplier would take care of the Appellant on the score of economic loss. This amount would come to Rs. 28,800/-. The total amount, therefore, claimable by the Appellant-claimant would come to Rs. 79,160/-. This amount, the Appellant shall be entitled to claim with running interest at 6% per annum from the Respondent from the date of the application till the date of realisation. As the Respondents have already deposited Rs. 30,000/- as per order of the Tribunal, the Appellant will be entitled to draw interest only on the additional amount of claim allowed in this appeal. The Appellant shall also be entitled to claim costs on the above amount from the Respondent.

8. As the Appellant is still continuing in his job and is likely to continue for a period of three years more and as he has already withdrawn an amount of Rs. 30,000/- which was deposited by the Respondent before the Tribunal, it would be in the best interest of the Appellant himself, if Rs. 30,000/- is ordered to be deposited in a fixed deposit initially for a period of 37 months, so that the Appellant can periodically draw the interest thereon to supplement his income. Whatever be the amount in excess of this Rs. 30,000/- the Appellant shall be paid that amount in cash. The Tribunal is further directed to instruct the bank concerned that no loan shall be raised on the above amount of Rs. 30,000/- which shall be invested in a fixed deposit without written permission of the Tribunal. It is hoped that the Respondent-Corporation will not needlessly procrastinate depositing the additional amount and shall expeditiously do the same in the best interest of justice and fair play. 12 weeks time granted to the Respondent to deposit the additional amount.