

(2019) 06 GUJ CK 0043
In the Gujarat High Court
Case No : R/First Appeal No. 2435 Of 2007

New India Asssurance Co Ltd.

APPELLANT

Vs

Bharatsinh Chandubha Rathod & 4 Other(s)

RESPONDENT

Date of Decision : 17-06-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2019) 06 GUJ CK 0043

Hon'ble Judges : R.M.Chhaya, J;B.N. Karia, J

Bench : Division Bench

Advocate : Ajay R Mehta, HA Sejpal, NM Kapadia, D. P. Kinariwala

Final Decision : Partly Allowed

Judgement

,

R.M.Chhaya, J",

1. Feeling aggrieved and dissatisfied by the judgment and award dated 29.11.2003 passed by the Motor Accident Claims Tribunal (Aux), Ahmedabad",

(Rural) in Motor Accident Claim Petition No.184 of 1994, the appellant's insurance Company has preferred this appeal under section 173 of the Motor",

Vehicles Act, 1988 (hereinafter referred to as the "Act").",

2. Following facts emerge from the record of the appeal:—

2.1 That, the accident took place on 4.9.1993 between 12:00 p.m. to 12:30 p.m. near Doordarshan T.V. Kendra, Thaltej, Ahmedabad. It was the case",

of the original claimant that he was travelling in a tanker bearing registration no. GTA " 3495, which was driven by the respondent no.5. When the",

tanker reached Thaltej Cross Roads, the tanker dashed with the truck bearing registration no. GJ1 U4419 which was lying on middle of the road",

without rear light or reflector. As can be seen from the record of the appeal, no person was also standing near the said truck and the tanker dashed",

with the truck from the back side because of which the original claimant sustained serious injuries and was admitted to the hospital and had to undergo,

surgery and ultimately left leg was completely amputated from below tibial tuberosity and even the muscles were cut. A First Information Report was,

lodged with Satellite Police Station bearing CR no. IÂ365/1993 at Exh.67. Panchnama of the scene of the accident was prepared which is at Exh.68.,

The original claimant preferred the claim petition under Section 166 of the Act and claimed compensation of Rs.12,00,000/Â with interest and costs.",

2.2 It was the case of the original claimant that that he was studying in 2nd LLB and was working as a Clerk with Senior Advocate of the,

Ahmedabad District Court one Shri C.M. Vyas and was earning Rs.2,000/Â per month. It was further the case of the original claimant that over and",

above the work of Mr. Vyas, he was also doing other advocates' work and was earning Rs.5,000/Â per month. It was further the case of the original",

claimant that because of the accident, he has sustained serious injuries in left leg and left hand was affected and in fact, the left leg was required to be",

amputated above the knee and even left hand is also cut of below Â½ inch on the forearm. It was also the case of the original claimant that because,

of the accident, he had urinal problems and had to undergo urological treatment at V.S. Hospital and was operated to introduce pipe and had to remain",

as an indoor patient for 5 days in the hospital. The original claimant has also relied upon the injury certificate at Exh.114 and the Tribunal considered,

90% permanent disability of the body as a whole. The Tribunal determined the income of the original claimant at Rs.5,000/Â per month and",

considering 90% disability, awarded Rs.8,64,000/Â by applying 16 multiplier as compensation under the head of prospective future economic loss.",

Over and above the same, the Tribunal also granted Rs.60,000/Â as compensation as actual loss of income for 12 months and also granted a sum of",

Rs.1,00,000/Â as compensation under the head of pain, shock and suffering. Considering the evidence on record and the bills of treatment at Exh.37,",

the Tribunal awarded Rs.40,000/Â lumpsum as medical reimbursement and Rs.50,000/Â under the head of future medical expenses and thus, while",

partly allowing the claim petition, awarded Rs.9,23,200/Â as total compensation. The Tribunal, after appreciating the evidence on record, came to the",

conclusion that the owner and driver and insurer of the truck involved in the accident i.e. one of the present appellant was liable to pay 80% of the, amount awarded to the original claimant jointly and severally and being aggrieved by the said order, the present appeal is filed. It is further noteworthy", that as per the order dated 28.12.2007 passed in Civil Application no.6709 of 2007 in the present appeal, the present appeal is restricted only to", Rs.5,00,000/Â?."

3. Heard Mr. Ajay R. Mehta, learned advocate for the appellant â?" insurance Company and Mr. N.M. Kapadia, learned advocate for the original", claimant. Though served, no one appears for the other respondents."

4. Mr. Ajay R. Mehta, learned advocate for the appellant â?" insurance Company has contended as under:Â?%",

4.1 That, the Tribunal has wrongly come to the conclusion that the driver of the truck was negligent to the extent of 80% without appreciating the", evidence on record which, according to Mr. Mehta driver of both the vehicles involved in the accident were contributory negligent in the accident and", therefore, the driver of the truck should be held to be negligent only to the extent of 50%."

4.2 It was further contended that the Tribunal has erred in assessing the income of the original claimant at Rs.5,000/Â per month even though there is",

no evidence on record. It was contended that the Tribunal has relied upon the oral deposition of the advocate Mr. Vyas who has also not stated in his,

deposition that the income of the original claimant was Rs.5,000/Â per month. According to Mr. Mehta, even if the deposition of the original claimant",

is taken into consideration, the Tribunal has committed an obvious error in assessing the income of the original claimant at Rs.5,000/Â per month. It",

was further contended that on the date of the accident, the original claimant was not a practicing advocate, but was a student of 2nd LLB and",

therefore, the Tribunal has wrongly assumed that the income of the original claimant was Rs.5,000/Â per month. It was therefore contended that the",

impugned judgment and award is erroneous on both counts and the same deserves to be modified accordingly by allowing the appeal.,

5. Per contra, Mr. N.M. Kapadia, learned advocate for the original claimant has supported the impugned judgment and award. It was contended that",

Panchnama at Exh.68 and FIR at Exh.67 clearly indicate that the truck was found

on the middle of the road without any reflector or rear lights and, therefore, it was contended that the Tribunal has rightly come to the conclusion that the driver of the truck was negligent to the extent of 80% and the", same does not require any modification.,

5.1 It was further contended that the Tribunal has committed no error in assessing the income of the original claimant at Rs.5,000/Â per month. It was", further contended that because of the accident, the original claimant has received serious injuries and even after completion of LLB course and as a", practicing advocate, the claimant has lost his left leg and even the left arm is also amputated. It was further contended that there is evidence on record", by way of oral deposition of the advocates with whom the original claimant used to work as a Clerk and earn Rs.5,000/Â per month. It was submitted", that only because no documentary evidence could be produced, it cannot be said that the income as held by the Tribunal is excessive or unrealistic.", Mr. Kapadia further candidly submitted that upon reÂAppreciation of the evidence on record, this Court may fix the income of the original claimant", independently and the same would be acceptable to the original claimant and the original claimant does not invite any reasons for the same and this, Court may quantify the award which should be just compensation. It is therefore submitted that the appeal, being meritÂless, deserves to be", dismissed.,

6. No other or further contentions and/or submissions are made by the learned advocates appearing for the respective parties.,

7. We have considered the submissions made and have also perused the original record and proceedings. A bare perusal of the Panchnama Exh.68,

read with FIR Ehx.67 clearly establish the fact that the truck was almost on the middle of the road that too, without any reflector and the accident has",

taken place at midnight and the impact was so strong that the original claimant sustained serious injuries. Even the police statement which is on record,

of the appeal clearly shows that there was no rear light or reflector in the truck. Upon reÂ appreciation of the evidence on record, we find that the",

Tribunal has rightly assessed the negligence of the driver of the truck at 80%, which does not require any modification. Considering the ratio laid down",

by the Hon'ble Apex Court in the case of Archit Saini & Anr. Vs. Oriental Insurance Company Limited & Ors, (2018) 3 SCC 36,5 in facts of this",

Rs.7,34,400/-",Prospective future economic loss
Rs.48,000/-", "Actual loss of income (Rs.4,000/- x 12)
Rs.1,00,000/-", "Pain, shock and suffering
Rs.40,000/-",Medical reimbursement
Rs.50,000/-",Future medical expenses
Rs.20,000/-",Conveyance charges
Rs.15,000/-",Attendant charges
Rs.5,000/-",Special diet
Rs.10,12,400/-",Total compensation