(2022) 12 GUJ CK 0020

In the Gujarat High Court

Case No : R/First Appeal No. 1672 Of 2019

Nitaben Manishbhai Thakkar APPELLANT

Vs

Vishalbhai Rameshbhai Vaghani RESPONDENT

Date of Decision : 21-12-2022

Acts Referred:
Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2022) 12 GUJ CK 0020

Hon'ble Judges : Dr? Ashokkumar C. Joshi, J

Bench : Single Bench

Advocate : Yogen N Pandya, Tanmay B Karia, Bhavik P Shah

Final Decision : Allowed

Judgement

Dr. Ashokkumar C. Joshi, J

1. This is an appeal under Section 173 of the Motor Vehicles Act, 1988 (MV Act) filed at the instance of the appellant – original claimant against the judgment and award dated 05.05.2018 passed by the learned Motor Accident Claims Tribunal (Auxiliary), Bhavnagar (Tribunal) in Motor Accident Claim Petition No. 110 of 2015 (claim petition), which was preferred under Section 166 of the MV Act, whereby, against a claim valued at Rs.35 lakh for the injuries sustained in an accident that had occurred on 24.01.2014, the Tribunal has awarded a sum of Rs.5,81,400/- with interest at the rate of 9% per annum from the date of claim petition till realization, holding liable the opponents therein to pay the compensation to the appellant – original claimant. Hence, grieved claimant has filed this appeal on the point of quantum.

2. Since, the facts of the accidents are not in dispute, the same are not detailed here.

3. None, present for the respondent Nos. 1 and 2 when called out. The respondent No. 3 – the insurance company being the main contesting party, the Court proceeded to hear the matter finally. Accordingly, heard, learned advocate

Mr. Yogen Pandya for the appellant and learned advocate Mr. Tanmay B. Karia for the respondent No. 3 – insurance company.

3.1 The gist of the arguments of the learned advocate for the appellant is that the appellant – claimant was running a firm in the name and style of Om Marketing indulged in fitting and repairing work of Air Conditioner etc. and was thereby, earning Rs.50,000/- per month and to substantiate the said fact, though produced the ITR in support of her claim, the Tribunal did not take into consideration such amount towards income of the appellant while computing the compensation. Further, the Tribunal has erred in considering Rs.3,000/- per month as the income of the appellant – claimant. Moreover, it is submitted that the Tribunal has erred in awarding actual loss of income. Further, it is submitted that under the heads of Pain, Shock and Suffering, Special Diet, Attendant Charges and Transportation Charges also, the Tribunal has awarded meagre amounts. Accordingly, it is urged that this Court may allow this appeal considering the said aspects of the matter and thereby, enhance the award suitably.

4. Per contra, the learned advocate for the respondent No. 3 – insurance company, while heavily opposing this appeal and supporting the impugned judgment and award, submitted that the impugned judgment and award being just and proper, no interference is required at the hands of this Court. It is submitted that the Tribunal has rightly not believed the tax returns for want of proper seal and signature and copy of challan for tax deposit. Further, admittedly, the appellant – claimant has not taken any course with respect to air conditioner repairing work and has not studied about the same. Further, there was no documentary evidence to suggest that the appellant was taking contracts for AC repairing work. Accordingly, considering all such facts and circumstances of the case, the Tribunal has rightly considered the income of the claimant – appellant at Rs.3,000/- per month. Further, it is submitted that the amount awarded under different heads are also rightly awarded by the Tribunal and accordingly, he requested that this appeal being bereft of any merits, deserves to be dismissed.

5. Regard being had to the submissions made and considering the averments made in the appeal as well as a perusal of the record reveal that in an accident that had occurred on 24.01.2014, the appellant – claimant had sustained severe injuries and stated to have suffered great pain, shock and suffering besides the loss of income. The appellant – claimant has sustained 28% disability body as a whole. The appellant – claimant stated to have been indulged in a business of AC repairing work and was running a firm in the name of Om Marketing and thereby, was earning to the tune of Rs.50,000/- per month. A perusal of the record reveals that to substantiate the said fact, the appellant – claimant had produced ITR for the relevant assessment year before the Tribunal wherein, admittedly, her income is shown as Rs.5,22,895/-. Nonetheless, the Tribunal has not believed such an ITR on the count that the same does not bear the seal or signature of

the concerned authority. However, from a perusal of the record it transpires that the appellant – claimant had filed e-return, copies of which are produced at Exh. 42, which do not bear any seal or signature of the receiving authority. The gross income of the appellant – claimant for the Assessment Year (AY) 2012-2013 is Rs.4,10,897/-, having net income Rs.3,10,900/-, for AY 2013-2014 Rs.6,03,787/-, having net income Rs.5,03,183/- and for AY 2014-2015 Rs.6,23,455/-, having net income Rs.5,22,895/-. Further, the returns are filed in the name of the appellant – claimant only. Therefore, there was no reason for the Tribunal for not considering the said amount as income of the appellant – claimant. Accordingly, when the appellant – claimant was a running business as discussed herein above and was earning thereby, and in that regard ITRs are also filed and produced on record, in the considered opinion of the Court, the Tribunal has erred in considering the income of the petitioner – claimant. However, the appellant – claimant has admitted that her husband was doing the work of selling the Acs and the claimant was doing the AC repairing work by taking contracts. Further, her husband used to do the AC repairing and she only used to take contracts. Accordingly, the income of the appellant – claimant is justified, however, since the applicant – claimant was only indulged in taking contract work and her husband was doing the rest, it would be in the fitness of things if her income is taken at Rs.25,000/- per month. Further, the amounts awarded under different heads are also required to be enhanced suitably as being trivial sum. Therefore, this appeal, is required to be allowed to that extent and the impugned judgment and award is required to be modified accordingly.

6. In the aforesaid backdrop, this appeal succeeds and is allowed accordingly. The impugned judgment and award is modified to the aforesaid extent and it is held that the appellant – claimant shall be entitled for the following towards compensation:

Head

Award of Tribunal (Rs.)

Modified Amt. (Rs.)

Future loss of income

1,41,120/-

11,76,000/- (25,000x28%x12x14)

Pain, Shock & Suffering

20,000/-

35,000/-

Special Diet, Attendant, Transportation

20,000/-

50,000/-

Medical Expenses

3,91,184/-

3,91,184/-

Actual loss of income

9,000/-

50,000/-

Total

5,81,304/-

R/o. 5,81,400/-

17,02,184/-

R/o,17,02,400/-

Different Amt.

11,21,000/-

6.1 The difference amount shall be deposited within a period of 08 (eight) weeks.

6.2 The appellant – claimant shall be entitled to interest at the rate of 6% per annum on such enhanced amount of compensation, from the date of petition till realization.

6.3 The rest of the impugned judgment and award is not disturbed.

6.4 R&P, if received, be sent back forthwith.