

(2014) 01 GUJ CK 0085
In the Gujarat High Court
Case No : First Appeal No. 3169 of 2009

Panchhiji Hiraji Vanzara

APPELLANT

Vs

Mahadevbhai Mansangbhai

RESPONDENT

Date of Decision : 30-01-2014

Acts Referred:

Citation : (2014) 3 ACC 779 : (2015) ACJ 1349 : (2015) 2 AnWR 671

Hon'ble Judges : Kaushal Jayendra Thaker, J

Bench : Single Bench

Advocate : Sureshm Shah and Mehul S. Shah, Advocate for the Appellant;
Sandip C. Shah, Advocate for the Respondent

Judgement

Kaushal Jayendra Thaker, J.—This is an appeal by the appellant original claimant, whereby he has challenged the judgment and award of the learned MACT (Auxi) Dhrangadhara, Dated 8.10.2008, passed in MACP No. 21 of 2005, awarding compensation to the tune of Rs. 2,10,000 with nine percent interest per annum from the date of filing of the claim petition till its realization together with proportionate costs from the original Respondent Nos. 1 to 3. The brief facts of the case are that on 28.1.2005, while the appellant was going home riding a motorcycle bearing No. GJ-13-D-2105 as a pillion rider, which was owned by Respondent No. 5 and was being driven, at the relevant point of time, by Respondent No. 4, herein, same met with an accident with a truck bearing No. GJ-13-U-8259, which was being driven in a rash and negligent manner by the present Respondent No. 1, owned by Respondent No. 2 and insured by Respondent No. 3. As a result thereof, the appellant sustained severe bodily injuries. Hence, he preferred the aforesaid claim petition, wherein, the Tribunal passed the impugned judgment and award. Hence, the present appeal.

2. Mr. Shah, learned Counsel for the appellant, submitted that the Tribunal failed to consider the material on record in its proper perspective and erred in not considering the prospective income of the appellant. Further, the multiplier applied by the Tribunal is on lower side, considering the fact that the appellant

was only 22 years of age, at the time of accident. It was also submitted that the amount awarded under the head of pain, shock and suffering is too meagre and that no amount is awarded under the head of loss of enjoyment of life. He, therefore, prayed that the appeal be allowed.

3. As against this, Mr. Sandip C. Shah, learned Counsel for Respondent No. 3, supported the judgment and award of the Tribunal and submitted that the same was passed after taking into consideration the material on record, and hence, no interference is called for at the hands of this Court.

4. The first aspect which comes up for the consideration of this Court is the involvement of the truck in the alleged accident. In order to prove his case, the appellant filed his affidavit and from his cross-examination, the respondents failed to bring out anything, which would help their case. The appellant also produced documentary evidence in the form of FIR, Panchnama of Place of offence, etc., to prove the aforesaid aspect. The averments made by the appellant in the claim petition, remains uncontroverted. Thus, the Tribunal did not commit any error in determining the aforesaid issue in favour of the appellant.

5. So far as the quantum of compensation is concerned, it was the say of the appellant before the Tribunal that he was aged about 22 years and was earning Rs. 2,000 per month at the time of accident. It was also the case of the appellant that on account of the alleged accident he had sustained 100 per cent disability and he also produced necessary medical certificate in support, thereof. However, in view of the fact that the medical certificate did not describe the disability sustained by the appellant as 100 percent of the body as a whole, the Tribunal took the disability sustained by the appellant as 50 per cent of the body as a whole and calculated the loss of income at Rs. 1,000 per month, after deducting 50 per cent amount towards disability sustained by him and after applying the multiplier of 15, awarded an amount of Rs. 1,80,000 under the head of loss of income. However, while doing so the Tribunal failed to take into account the prospective income of the appellant. Taking into consideration the fact that the accident is of the year 2005, if, the income of the appellant is taken at Rs. 3,000 per month and, considering the fact that there would have been at least rise of 50 per cent in his income, if his income is taken at Rs. 4500 per month, same would be just and proper. As stated above, the disability sustained by the appellant is 50 per cent of the body as a whole, and hence, his monthly loss of income would come to (Rs. 4,500 - 50% disability) = Rs. 2,250. In view of the fact that the appellant was aged about 22 years at the time of accident, the multiplier of 15 applied by the Tribunal appears to be a little on lower side, and hence, the application of the multiplier of 18 would be just and proper. Thus, the loss of prospective income of the appellant would come to Rs. $(2250 \times 12 \times 18)$ = Rs. 4,86,000. The Tribunal has already awarded Rs. 1,80,000 under the head of loss of income. Hence, the appellant shall be entitled to an additional amount of Rs. $(4,86,000 - 1,80,000)$ = Rs. 3,06,000 under this head.

6. The Tribunal has awarded Rs. 15,000 under the head of pain, shock and suffering and has awarded no amount under the head of loss of amenities of life. In view of the fact that the appellant sustained 50 per cent of the disability of the body as a whole due to the alleged accident, the amount awarded under the head of pain, shock and suffering requires to be enhanced, whereas, the Tribunal has committed apparent error by awarding no amount under the head of loss of amenities of life. Hence, the ends of justice would be met, if, Rs. 50,000 is awarded under the head of pain, shock and suffering and another Rs. 50,000 towards the loss of amenities of life.

7. On account of the alleged accident, the appellant could not attend to his work for about four months, and hence, his actual loss of income would come to Rs. $(3000 \times 4) = \text{Rs. } 12,000$. The Tribunal has already awarded Rs. 8,000, by taking monthly income of the appellant at Rs. 2000 per month, under the said head, and hence, the appellant shall be entitled to an additional amount of Rs. 4,000 under the said head.

8. The Tribunal has awarded Rs. 3,000 under the head of attendance charges, which appears to be on lower side, in view of the fact that the appellant could not attend the work for about four months. Hence, the appellant shall be entitled to an additional amount of Rs. 5,000 under this head.

9. So far as the aspect of interest is concerned, the Tribunal has awarded 9 per cent interest on the amount of compensation. However, taking into consideration the current rate of interest, if, the appellant is granted 7.5 per cent interest on the additional amount of compensation, as stated above, it would meet the ends of the justice. In the result, the appeal is Partly Allowed. The appellant will be entitled to an Additional amount of (1) Rs. 3,06,000 under the head of loss of income, (2) Rs. 50,000 under the head of pain, shock and suffering, (3) Rs. 50,000 towards the loss of amenities of life, (4) Rs. 4,000 under the head of actual loss of income, (5) Rs. 5,000 under the head of attendant charges, i.e. the appellant will be entitled to an additional amount totalling to Rs. 4,15,000 with 7.5 per cent interest per annum from the date of application, till its realization, over and above the amount of Rs. 2,10,000 awarded by the Tribunal with NINE per cent interest per annum from the date of application, till its realization. The judgment and award of the Tribunal, Dated 8.10.2008, Stands Modified, accordingly. Direct service is permitted.