

(2017) 06 GUJ CK 0044
In the Gujarat High Court
Case No : 2251 of 2011

PARAGIBEN JASWANTLAL SONI

APPELLANT

Vs

SIRAJ ABDULLAH MAFFAT & ORS.

RESPONDENT

Date of Decision : 07-06-2017

Acts Referred:

Citation : (2017) 06 GUJ CK 0044

Hon'ble Judges : R.P.Dholaria

Bench : Single Bench

Advocate : PARESH M DARJI, UM SHASTRI, VC THOMAS

Judgement

1. This appeal has been preferred by the appellantclaimant against the judgment and award dated 03.08.2010, passed by the Motor Accident Claim Tribunal (Aux.), Panchmahals, at Godhra, in Motor Accident Claim Petition No.1272 of 1998.

2. The original claimant has preferred the present appeal interalia contending that the amount of compensation awarded by the learned Tribunal is on lower side. It is further contended that the judgment and award passed by the learned Tribunal is contrary to law and against the provisions of the statute and against the principles of natural justice. It is further contended that at the time of accident, age of the claimant was 21 years and she was pursuing her study. It is further contended that the claimant had to undergo indoor treatment for about 8 months and sustained disability to the extent of 62%, however, the learned Tribunal has awarded very meager amount towards future loss of income and assessed her disability as a body as whole to the extent of 24%. It is further contended that the Tribunal has awarded very meager amount on other nonpecuniary heads also and that the learned Tribunal has not taken into consideration various guidelines laid down by the High Courts as well as Supreme Court and ultimately, the appellant has urged to enhance the amount of compensation.

3. The brief facts of the case are that on 8.4.1989, when the claimant along with her friend was cycling her bicycle slowly on the left side of the road and as soon as she was crossing the railway overbridge, opponent No.1 driving truck bearing registration No.GRY4173 came from behind on full speed and negligently dashed with the bicycle of the claimant. The claimant sustained grievous injuries and was admitted in Civil Hospital Godhra and thereafter at S.S.G. Hospital, Vadodara.

4. Heard Mr.Paresh Darji, learned advocate for the appellantclaimant, and Mr.V.C. Thomas, learned advocate for respondent no.3Insurance Company.

5. Mr.Paresh Darji, learned advocate for the appellantclaimant has reiterated the grounds mentioned in the appeal and thus, contended that the learned Tribunal has not properly appreciated the evidence on record and has awarded compensation which is on lower side. He has further argued that the learned Tribunal has adopted a very conservative view while assessing the income of the claimant and awarding nonpecuniary benefits thereon. He has therefore, requested to enhance the amount of compensation.

6. On the other hand, Mr.V.C. Thomas, learned advocate for respondent no.3 has strongly opposed the appeal and submitted that the learned Tribunal has rightly awarded just and proper compensation in view of the evidence available on the record. Therefore, this Court should not interfere with the award passed by the learned Tribunal. He has further submitted that the learned Tribunal has passed the impugned judgment and award after taking into consideration the entire material on record and hence, no interference is called for at the hands of this Court and the present appeal be dismissed.

7. Considering the submissions made by the learned advocates for the respective parties, there appears no dispute regarding factum of accident, negligence attributed on the part of the driver and owner of the truck and regarding liability fastened upon the Insurance Company. In this view of the matter, the only dispute arises in the present appeal for determination of this Court is with regard to the question as to whether the prospective rise of income and other nonpecuniary heads awarded by the learned Tribunal is just and proper and whether the learned Tribunal awarded lesser compensation under the head of pain, shock and suffering.

8. On going through the records and proceedings of the case and impugned judgment and award, it is noticed that the learned Tribunal has awarded following amounts by way of compensation:

1 Future Loss of Income Rs.57,600/

2 Pain, Shock and Suffering Rs.12,000/

3 Medical Expenses Rs.20,000/

4 Attendance Charges Rs.10,000/

5 Special Diet Rs.7,400/

6 Transportation Charges Rs.5,000/

Total Rs.1,12,000/

9. Having heard the submissions made by the learned advocates for the respective parties and taking into consideration the fact that at the time of accident, the claimant was pursuing her study and she was also serving as a part time receptionist at Aasopalav Saree Center, Godhra and from her job, she was earning Rs.570/per month and due to accident, she sustained serious injuries on her abdominal area. She has also sustained pelvis compound fracture and her body below the waist was got paralyzed and she had to undergo prolonged indoor treatment for about 8 months at SSG Hospital at Vadodara where she was operated four times and she also underwent 4 to 5 times surgeries and she sustained disability to the extent of 62%. Consequently therefore, compensation of Rs.1,12,000/awarded by the learned Tribunal appears to be insufficient and the learned Tribunal has taken into consideration only 28% of disability on the body as a whole, while awarding compensation.

10. Taking into consideration the recent decision of the Hon"ble Supreme Court in the case of Mallikarjun Vs. Divisional Manager, National Insurance Company Ltd. and Another reported in 2014 (14) SCC 396, this Court deems it appropriate to enhance the amount of compensation taking into consideration peculiar circumstances of the case, from Rs.1,12,000/to Rs.2,00,000/inclusive of all heads.

11. For the reasons recorded above, the present appeal succeeds. The impugned judgment and award passed by the learned Tribunal is hereby modified. The compensation awarded by the learned Tribunal of Rs.1,12,000/is enhanced to Rs.2,00,000/with interest at the rate of 8% per annum from the date of application till realization. Rest of the impugned judgment and award remains intact. The deficit amount to be deposited by the respondentInsurance Company with the learned Tribunal within a period of two months from the date of receipt of this order and on such deposit, the same shall be paid to the original claimant in terms of the award. Present appeal is allowed to the aforesaid extent. The Registry is directed to return the R & P, if any, forthwith to the learned Tribunal. No order as to costs.