

(2020) 02 GUJ CK 0007
In the Gujarat High Court
Case No : R/First Appeal No. 432 Of 2014

Pasabhai Dahyabhai Rathod		APPELLANT
	Vs	
Firozkhan Sharifkhan Pathan & 3 Other(s)		RESPONDENT

Date of Decision : 03-02-2020

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2020) 02 GUJ CK 0007

Hon'ble Judges : N.V.Anjaria, J

Bench : Single Bench

Advocate : Hiren M Modi, Ankit Shah, Vasavdatta Bhatt

Final Decision : Partly Allowed

Judgement

N.V.Anjaria, J

1. Heard learned advocate Mr.Hiren Modi for the appellant, learned advocate Mr.Ankit Shah for respondent No.2 and learned advocate Mrs.Vasavdatta Bhatt for respondent No.4. As far as respondent Nos.1 and 3 are concerned, they are served in the Appeal but they have chosen not to appear.

2. The present Appeal under Section 173 of the Motor Vehicles Act, 1988 preferred by the original claimant is addressed to judgment and award dated 22nd April, 2014 passed by Motor Accident Claims Tribunal (Aux.) & 6th Additional District Additional Judge, Nadiad in Motor Accident Claims Petition No.622 of 2007. The Tribunal awarded in favour of the appellant-claimant amount of Rs.27,475/- with interest at the rate of 7.5% from the date of application till realisation.

2.1 In the present Appeal, the appellant-claimant seeks enhancement in the compensation and has restricted his appeal value to the extent of Rs.75,000/-.

3. In the proceedings of accident claim petition arose from the vehicular accident took place on 27th March, 2007, when the appellant was going to village Kheda

for agricultural work, and for that purpose had started from Radhvanraj Cross Road in rickshaw bearing registration No.GJ-7-TT-3639. It was around 9.45 a.m. in the morning when S.T. Bus No.GJ-18-V-9881 came from behind to dash with the rickshaw at a place 100 meter away from Kathiyawadi Hotel. The Bus was stated to be driven rashly and negligently and wanted to speedily overtake the rickshaw and in the process, the bus hit the driver side, that is right side of the rickshaw. The claimant suffered injuries, was admitted to Government Hospital at Kheda and was treated as indoor patient. He filed claim petition seeking compensation to the tune of Rs.01.00 lakh.

3.1 The Tribunal proceeded to consider the claim petition. On the count of negligence, the bus driver was held to be 100% negligent. The Tribunal adverted to the quantum of compensation. In awarding total Rs.27,475/- with interest as above, the Tribunal held appreciating the claim put-forth and the evidence led, that the claimant was a government servant on the date of accident, had received in the month of February, 2007 salary of Rs.09,750/- which was together with dearness allowance. The income of the claimant was assessed at Rs.09,750/-.

3.2 The Tribunal however held that after accident neither the salary of the claimant was altered nor he was shown to have suffered any disability, therefore future loss of income was not awarded. Since the injured remained on leave for one month, the Tribunal awarded Rs.09,750/- towards loss of income for the said period.

3.3 Adding the amount of Rs.12,000/- towards pain, shock, suffering and further counting Rs.03,000/- towards medical treatment and also accepting the claim towards expenses of attendant charges etc. so as to award Rs.05,000/- under the said head, the total compensation of Rs.27,475/- was arrived at to result into the judgment and award.

4. What was contended primarily by learned advocate for the appellant was that the Tribunal ought to have considered the aspect of future loss of income and ought to have awarded amount on that score. It was submitted that it was an error committed by the Tribunal in not adverting to the calculation of compensation for future loss of income. It was submitted that since the age of the injured was 58 years, the standard multiplier may not be applied, still however multiplier of 5 ought to have been considered.

4.1 Learned advocate for the appellant pressed into service the decision of this Court in Gujarat State Road Transport Corporation v. Jagdishbhai Dharamdas being First Appeal No.2724 of 2008 decided on 12th September, 2013 to seek support for his contention about awarding future loss of income. On the other hand, learned advocate for respondent No.4 relied on to the decision of the Supreme Court in Raj Kumar v. Ajay Kumar [2011 ACJ 1] and by highlighting the principle mentioned in paragraph 14 thereof, submitted that all injuries would not result into loss of earning capacity.

5. Having considered the facts of the case, and the judgment and award of the Tribunal, further appreciating the same in the context of rival submissions, case was made out for enhancement in the compensation. It is to be noticed that on the basis of Exh.40, the Tribunal has accepted that due to injuries in the accident, the claimant suffered bodily disability to the extent of 15%.

5.1 Even as the salary of the injured was not reduced and functional debility was not accepted by the Tribunal, the fact remained that the injuries resulted into 15% disability. This disability was accepted by way of Purshis tendered at Exh.40 in the process. There would be not gainsaying that the disability and the injuries would mutilate the claimant in his post-retirement life. It would also be submitted that if he is to seek another earning avenue after retirement, the disability may come in his way to work and discharge duties with cent percent physical capacity. The injury and the disability resulted out of the accident would bound to have its own effect on the functional ability to the body of the claimant. Therefore, amount deserves to be awarded towards future loss of income. Though the regular multiplier may not be adopted looking to the age of the claimant, the multiplier of 5 has been adopted by the Courts in such fact situation.

5.2 In light of the above discussion, counting disability at the rate of 15% which is accepted disability as per Exh.40, the calculation for the additional compensation under the head of future loss of income would be 15% of monthly income of Rs.09,750/- would be Rs.01,462/- multiplied by 12 and further multiplied by the multiplier of 5, the total amount would come to Rs.87,720/-. This amount would become awardable under the head of future loss of income. The Tribunal has awarded Rs.27,475/- only. However, since the Appeal is restricted to Rs.75,000/-, total additional amount of Rs.75,000/-becomes awardable.

6. Accordingly, the appellant stands entitled to the additional award of Rs.75,000/- to the appellant-claimant over and above Rs.27,475/- awarded by the Tribunal. The appellant shall get the additional amount of Rs.75,000/- with interest at the rate of 7.5% from the date of application till realisation of the said amount.

7. The present Appeal stands partly allowed. The judgment and award of the Motor Accident Claims Tribunal (Aux.) & 6th Additional District Judge, Nadiad dated 22nd April, 2013 in Motor Accident Claims Petition No.622 of 2007 shall stand modified in terms above.

Record and Proceedings shall be sent back immediately.