
(2011) 09 GUJ CK 0041
In the Gujarat High Court
Case No : First Appeal No. 1724 of 1997

Ramchandra Sindji Chauhan and Others	APPELLANT
Vs	
Haribhai Khimjibhai Kothari and Others	RESPONDENT

Date of Decision : 30-09-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2011) 09 GUJ CK 0041

Hon'ble Judges : R.M. Chhaya, J; Jayant Patel, J

Bench : Division Bench

Advocate : Sunil Parikh and Rajni H. Mehta, for the Appellant; Vibhuti Nanavati, for Respondent 1, Y.N. Ravani, for Respondent 2 and None for Defendant 3, for the Respondent

Final Decision : Allowed

Judgement

R.M. Chhaya, J.—The present appeal arises out of the common judgment and award dated 22.01.1997 passed by the Motor Accident Claims Tribunal (Main), Surendra nagar (the Tribunal) in M.A.C.P. Nos. 340/93, 380/93 and allied matters. The present appeal relates to claimant of M.A.C.P. No. 380/93, wherein the Tribunal has awarded Rs. 2,61,300/- holding the present Appellants and Respondent No. 3, the insurance company, jointly and severally liable, along with interest @ 12% from the date of the application till realization.

2. The facts arising out of the present appeal are that the claimant was occupying the front seat of the car of his friend-Dr. Arvind kumar S. Mehta, bearing Registration No. GAY-9044. The claimant had gone for pilgrimage to Shree Nathdwara and was returning back at about 1.00 a.m. on 06.12.1992. The car was being driven by the owner of the car, Respondent No. 2 herein, on Ahmedabad-Rajkot Highway and was proceeding towards Rajkot. It is the case of the claimant that the truck owned by the present Appellants bearing Registration No. GJ-15-T-1081 was coming towards Ahmedabad from Rajkot. It is particularly the case of the claimant that the driver of the truck, Appellant No. 1 herein, was

driving the truck on the wrong side of the road in rash and negligent manner, with excessive speed and with full light. It is the case of the claimant that as soon as the driver of the car saw the truck coming on the wrong side, he slowed down the speed of his vehicle and took it further extreme on the left of the road. It is the case of the claimant that because of the excessive speed and careless and negligent driving of the truck, Appellant No. 1 had lost control over the truck and dashed it with the motorcar resulting into accident. It is the case of the claimant that all passengers travelling in the car received serious injuries and the car was heavily damaged due to the said accident. It is also the case of the claimant that front portion of the car smashed in such a manner that the radiator, battery, right head light, including A/c. machine of the car, etc., were completely damaged.

1. It is also the case of the claimant that because of the serious injuries received by him, he had to undergo excessive treatment at different hospitals. It is the case of the claimant that because of the injuries received in the said accident he has received injury in his ear which has resulted into loss of hearing and could not work for two months and has also acquired 50% permanent disability for injuries to his ear and has also received 15% permanent disability due to fracture on his leg.

2. The claimant, therefore, preferred the present claim petition being M.A.C.P. No. 380 of 1993 u/s 166 of the Motor Vehicles Act, 1988 (the Act) and raised consolidated claim of Rs. 7,76,387.17 under different heads such as loss of income, permanent disability and other losses. The claimant adduced oral as well as documentary evidence. The Appellants herein as well as Respondent No. 3- insurance company filed a joint written statement and defended the claim so raised by the claimant. The Tribunal, after appreciating the evidence so adduced before it, by the impugned judgment, awarded Rs. 2,61,300/- along with interest @ 12% from the date of the application till realization.

3. It may be noted that originally the present appeal was preferred by the driver of the truck Appellant No. 1, owner of the truck -Appellant No. 2 as well as the present Respondent No. 3- Insurance company. Thereafter this Hon"ble Court vide order dated 11.08.2008 passed in Civil Application No. 2784 of 2008 permitted the original Appellant No. 3-Insurance Company to be transposed as Respondent No. 3 in the present appeal and hence, the present appeal is filed by the original opponents i.e. the driver and the owner of the truck.

3. Heard Mr. Sunil Parikh, Learned Counsel, for Mr. R.H. Mehta for the Appellants and Mr. Vibhuti Nanavati, Learned Counsel for Respondent No. 1 and Mr. Y.N. Ravani, Learned Counsel for Respondent No. 2. We have also perused the original record and proceedings.

4. At the outset it may be noted that Learned Counsel for the Appellants has submitted that he does not dispute the injuries received by the claimant and so also he does not dispute the treatment taken by the claimant for his ear as well

as the fracture on right knee. It was, however, submitted that the Tribunal has erred in considering the future loss and has wrongly applied the multiplier of 13. Learned Counsel, however, has not been able to point out anything adverse from the evidence on record. No other contention is raised.

5. As against this, Learned Counsel Mr. Nanavati has supported the judgment and award of the Tribunal. It was submitted that the Tribunal has rightly appreciated the evidence on record and taking into consideration the nature of injuries sustained by the claimant, the Tribunal has rightly assessed future loss and correctly applied multiplier of 13. It was submitted that the appeal is devoid of merits and deserves to be dismissed.

6. On appreciation of evidence on record, we find that the claimant was sitting on the front seat of the ambassador car, which has been completely damaged. We find that the Tribunal is right in coming to the conclusion that because of the injuries the claimant had to undertake treatment from ENT surgeon as well as orthopedic surgeon and could not attend his business for two months. We also find that the Tribunal, after considering the evidence as regards the income of the claimant, more particularly the assessment orders of the Income Tax during the period 1991-1992, which clearly indicates that the monthly income of the claimant was Rs. 3,100/-, the Tribunal has correctly considered the future loss by considering permanent disability to the tune of 40%, based on the evidence on record the Tribunal has rightly assessed the future loss of income at Rs. 14,880/-. It is an admitted position that the age of the claimant was 48 years on the date of accident and the Tribunal, taking into consideration the ratio laid down by the Apex Court in the case of U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, has applied 15 years multiplier. We find that though, as per the schedule, the claimant would be entitled to the multiplier of 13, however, taking into consideration the permanent disability acquired by the claimant because of the accident, we do not deem it fit to disturb the said finding.

7. On re-appreciation of evidence we find that the basic contention of the claimant that the truck was being driven in the wrong side is incorrect. In First Appeal No. 1723 of 1997 arising out of M.A.C.P. No. 340/1993 is filed by the owner and driver of the car, opponent No. 2 herein, after examining the said aspect in detail we have come to the conclusion that the Tribunal has erred in coming to the conclusion that the truck was being driven in wrong side. It is also pertinent to note that the Tribunal has erred in coming to the conclusion that Appellant No. 1 herein, the driver of the truck was solely negligent. The car was being driven by opponent No. 2 herein and in the above referred to First Appeal on re-appreciation of evidence on record we have found that both, the drivers of the truck as well as the driver of the car are composite negligent. Considering the evidence on record and taking into consideration the size of the vehicles involved, we have come to the conclusion that both the drivers of the truck and the car are composite negligent in the ratio of 75:25.

8. Resultantly, Appellant No. 1 herein as well as opponent No. 2 herein, Dr. Arvind kumar S. Mehta, would be jointly and severally liable in the ratio of 75% and 25%.

9. In view of the above we hold that the original claimant is entitled to compensation of Rs. 2,61,300/-. However, the Appellants shall be liable to the extent of 75% of the said amount, whereas Respondent No. 2, the owner of the car, would be liable to the extent of 25% of the said amount and consequently the insurance company of the car, which is the very insurance company i.e. National Insurance Company. Under the circumstances, the ultimate amount of compensation would remain the same with the right to recover also from the insurance company of both the vehicles involved in the accident. We find that the Tribunal has awarded interest @ 12% as per the prevailing bank rate than, and the same requires to be maintained.

10. In view of the foregoing, the appeal is partly allowed as aforesaid. Award stands modified to the aforesaid extent. However, considering the facts and circumstances of the case, there shall be no order as to costs.

11. Record and proceedings be sent to the Tribunal forthwith.