

(2016) 12 GUJ CK 0008
In the Gujarat High Court

Case No : First Appeal No. 1261 Of 2016 With Civil Application No. 1588 Of 2016
In Civil Application No. 12366 Of 2016 With Civil Application No.
12366 Of 2016 In Civil Application No. 8470 Of 2015

Rathod Rupaba Gulabsang

APPELLANT

Vs

Laxmanbhai Adesinhbhai Gohelresi

RESPONDENT

Date of Decision : 05-12-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2017) 2 TAC 249

Hon'ble Judges : R.P. Dholaria, J.

Bench : Single Bench

Advocate : Mr Paresh M. Darji, Advocate, for the Appellant(S) No. 1; Mr G.C. Mazmudar, Advocate and Mr H.G. Mazmudar, Advocate, for the Defendant(S) No. 3

Final Decision : Allowed

Judgement

R.P. Dholaria, J. (Oral)—Admit. Mr. H.G. Mazmudar, learned advocate waives service of notice of admission for and on behalf of respondent No.3. As Mr.Paresh Darji, learned advocate for the appellant and Mr.H.G. Mazmudar, learned advocate for the respondent Nos.3 have requested to take up the appeal for final hearing at admission stage, therefore, the matter has been taken up for final hearing today

2. This appeal has been preferred by the appellant-claimant against the judgment and award dated 13.03.2015 passed by the Motor Accident Claim Tribunal (Aux) and 3rd Additional District Judge, Anand in Motor Accident Claim Petition No.6795 of 2006, wherein the learned Tribunal has awarded compensation of Rs.2,77,434/.

3. The original claimant has preferred present appeal inter alia 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 also contended that the claimant has sustained physical as well as neurological disability to the extent of 62%, however, no award has been made towards the loss of amenities of life. It is further contended that the learned Tribunal has taken very conservative view in awarding compensation and there is scope for enhancing compensation. Lastly, it is prayed to enhance the compensation.

4. The brief facts of the case are that on 26.2.2005, at about 7:30 p.m., present appellant was returning back after purchasing bidi from shop situated in front of her house and when she was passing nearby her house at that time opponent No.1 came driving his Suzuki motorcycle No.GJ7AD610 in a rash and negligent manner with excessive speed, as a result, the aforesaid motorcycle dashed with the present appellant and the appellant-claimant received grievous injuries and she was taken to the Shree Krishna Hospital, Karamsad, where she was treated for her injuries.

5. Heard Mr.Paresh Darji, learned advocate for the appellant and Mr.H.G. Mazmudar, learned advocate for the respondent Nos.3 Insurance Company.

6. Mr.Paresh Darji, learned advocate for the appellant reiterated his ground mentioned in the memo of appeal for seeking enhancement of the compensation and he has urged that the amount of compensation is required to be enhanced as such.

7. On the other hand, Mr.H.G. Mazmudar, learned advocate for the respondent Nos.3 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 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.

8. Having heard learned counsel for the respective parties and having gone through the impugned judgment as well as record and proceedings of learned Tribunal, the learned Tribunal has particularized the amount of compensation in the impugned judgment and award. It is established that the claimant sustained disability to the extent of 62% and she sustained fractures on her right leg below the knee and grievous injuries on rear side of her head and some other injuries, due to which she had to remain as indoor patient for more than one month. In that view of the matter, the learned trial Court could have awarded more amount towards the heads of pain, shock and suffering as the claimant sustained fractures over her body and due to which she received physical as well as neurological disability to the extent of 62%. Moreover, the learned Tribunal failed to award any amount under the head of loss of amenities of life.

9. On going through the judgment and award it appears that the learned Tribunal

has awarded following compensation under various heads:

Rs.2,04,600/-

towards future loss of income

Rs.7,500/-

towards actual loss of income

Rs.25,000/-

towards mental pain, shock and suffering.

Rs.15,334/-

towards medicines and medical expenses.

Rs.25,000/-

towards attendance charges, special diet and transportation.

Rs.2,77,434/-

Total.

10. In view of the aforesaid factual position and taking into consideration that the amount particularized by the learned Tribunal does not disclose any compensation towards the head of loss of amenities of life and it also appears that the learned Tribunal has awarded less amount towards the head of pain, shock and suffering. In that view of the matter, this Court deems it fit and appropriate to enhance the award of compensation to the extent of Rs.25,000/- towards the loss of amenities, enjoyment of life and Rs.25,000/- more towards the head of pain, shock and suffering. Thus, the amount of compensation awarded is as under:

Rs.25,000/-

towards loss of amenities, enjoyment of life.

Rs.2,04,600/-

towards future loss of income

Rs.7,500/-

towards actual loss of income

Rs.50,000/-

towards mental pain, shock and suffering.

Rs.15,334/-

towards medicines and medical expenses.

Rs.25,000/-

towards attendance charges, special diet and transportation.

Rs.3,27,434/-

Total.

11. In view of the above, the claimant is entitled to receive an amount of Rs.3,27,434/- However, the learned Tribunal has awarded an amount of Rs.2,77,434/, therefore, the claimant is entitled to receive an enhanced amount of Rs. 50,000/- (Rs.3,27,434 - Rs. 2,77,434) and on rounding of it comes to Rs.3,27,500/-.

12. For the reasons recorded above, the present appeal succeeds in part. The amount of compensation of Rs.2,77,434/awarded by the learned Tribunal is enhanced to Rs.3,27,500/- with interest at the rate of 9% p.a. thereon from the date of claim petition till realization. The balance enhanced amount of compensation with interest and costs if any from the date of application till realization to be deposited by the respondent with the learned Tribunal within a period of two months from today and on such deposit, the same shall be paid to the original claimant by account payee cheque on proper identification and verification. Present appeal is allowed to the aforesaid extent. No order as to costs. The Registry is directed to return the R & P, if any, forthwith to the learned Tribunal.

13. In view of the above, Civil Application Nos. 1588 of 2016 and 12366 of 2016 also stand disposed of as having become infructuous.