

(2019) 01 GUJ CK 0023
In the Gujarat High Court

Case No : R/First Appeal No. 29 Of 2019, Civil Application No. 1 Of 2018

Reliance General Insurance Company Ltd	APPELLANT
Vs	
Laxmanlal Kuryaji Adivasi	RESPONDENT

Date of Decision : 09-01-2019

Acts Referred:

Citation : (2019) 01 GUJ CK 0023

Hon'ble Judges : S.G. Shah, J

Bench : Single Bench

Advocate : Vibhuti Nanavati

Final Decision : Disposed off

Judgement

1. Heard learned Advocate Mr.Vibhuti Nanavati for the appellant insurance company of vehicle No.GJ-7-R-2487. The appellant has challenged the judgment and award dated 6th July, 2018 in Motor Accident Claims Petition No.54 of 2014 by the Motor Accident Claims Tribunal of Arvalli at Modasa. By such impugned judgment and award, the Tribunal has awarded an amount of Rs.5,74,800/- as compensation in favour of the injured claimant being respondent No.3 herein. Respondent Nos.1 and 2 are respectively driver and owner of the vehicle under reference.

2. The sum and substance of the appeal by the appellant insurance company is to the effect that Tribunal has erred to follow the rule laid down by the Hon'ble Supreme Court of India in the case of Rajkumar Vs. Ajaykumar reported in 2011 (1) SCC 343 and that Tribunal ought to have awarded only Rs.2,60,520/-. However, there is no dispute regarding negligence on the part of the driver of the vehicle under reference. Thereby, the appeal is restricted to the quantum of compensation only and therefore, practically there is no dispute with reference to nature of incident; its result and liability of the insurance company to pay compensation to the injured victim by indemnifying its insurer - owner of the vehicle under reference. Therefore, factual details of accident are required to be

reproduced herein when it is well prescribed both in the pleadings as well as in the impugned judgment. However, for the sake of reference only it is to be recollected here that on 19th January, 2014 when claimant was driving his Maruti Car No.GJ-01-HA-2977 in moderate speed on correct side of the road from Modasa to Meghraj, near the outskirts of village Shinavad, the driver of Jeep No.GJ-7-R-2487 had came in rash and negligent manner and in full speed endangering the human life and violating the traffic rules on wrong side of the road and dashed with the Maruti Car of the claimant. In such accident, the claimant has received grievous injuries, which ultimately resulted into 12% disablement of right upper limb; 16% disablement of left upper limb and 34% disablement of right lower limb. Therefore, though such disablement is to be clubbed and combined as per the principle of combination of different disablement for considering disability of entire body as per the principles laid down by well-known Doctor Henry H. Kessler which was resulted into 51% of disablement for entire body. The parties have agreed to consider only 23% as disability for body as a whole though simple 50% of all these disability would also come to 31%. Thereby, the Tribunal has failed to apply proper principle for consideration of disablement. So far as earning capacity of claimant is concerned, since he was serving as Manager in Dena Bank on the date of accident, but retired in couple of months, the Tribunal has taken his last salary as his earning capacity and considering 23% disability, applying 5 as suitable multiplier, considering the age of the victim for arriving at amount of Rs.5,44,800/-. The basic grievance of the appellant is for such calculation. However, it cannot be ignored that even as per the decision in the case of Rajkumar (Supra) when there is no financial loss to the salaried person multiplier of 5 is allowed by the Supreme Court and therefore, when the Tribunal has awarded amount of compensation for future loss considering 5 as suitable multiplier, I do not see any reason to interfere with any such award. It cannot be ignored that the Tribunal has relied upon the decision in the case of Gujarat State Road Transport Corporation Vs. Jagdishbhai Dharmadas, First Appeal No.2724 of 2008, In the Hon'ble High court of Gujarat, Coram: Hon'ble The Chief Justice Mr.Bhaskar Bharracharya, dated 12.09.2013.

3. It cannot be ignored that the Tribunal has also failed to award just and reasonable compensation for pain, shock and suffering when Rs.15,000/- is awarded for disablement is more than 20%. It can also not to be ignored that the Tribunal has not awarded any amount towards actual loss of income and also towards medical treatment and medicines etc. considering that victim has got benefit from his bank. Therefore, if at all there is any reason or substance to interfere with in the impugned award on quantum, it is clear that even if sum is reduced on one hand there is need to enhance and to award just and reasonable compensation on other different heads for which either improper or less amount is awarded or nothing is awarded by the Tribunal.

4. In view of above facts and circumstances, I do not see any reason or substance in the appeal so as to admit it and keep it pending for couple of years

for its dismissal on above reasons.

5. In view of disposal of main matter, connected Civil Application does not survive and hence, the same stands disposed of accordingly.