

(2013) 10 GUJ CK 0130

In the Gujarat High Court

Case No : First Appeal No's. 110 and 1165 of 2004

Rinaben Vishwanath Bhandari

APPELLANT

Vs

Mohmed Hanif Malang Mansuri and Others

RESPONDENT

Date of Decision : 14-10-2013

Acts Referred:

Citation : (2013) 10 GUJ CK 0130

Hon'ble Judges : M.D. Shah, J

Bench : Single Bench

Advocate : D.N. Pandya, for the Appellant; K.K. Nair, Advocate for the Respondent No. 3, Rule Served for the Respondent No. 4-5 and Rule Served by D.S. for the Respondent No. 1-2, for the Respondent

Final Decision : Dismissed

Judgement

M.D. Shah, J.—Both these appeals have been filed by the claimants under Sec. 173 of the Motor Vehicles Act, 1988 being aggrieved and dissatisfied with the common judgments and award dated 27-12-2001 passed by the Motor Accidents Claims Tribunal (Aux.), Bharuch, in MACP Nos. 204 of 1991 and 320 of 1991. Both the claim petitions have been filed by the claimants claiming compensation for injuries suffered by them in an accident which occurred on 24-3-1990 at about 5 "O clock near Bholav Octroi Naka on National Highway No. 8. It was inter alia contended that the claimants were returning after completion of their audit work in GIDC on Suzuki Motor cycle No. GJ-15-1454 driven by the claimant of MACP No. 204 of 1991 in which the claimant of MACP No. 320 of 1991 was a pillion rider. It was further contended that when they reached near Bholav Octroi Naka, a rickshaw No. GRV-2686 coming from the opposite direction driven in rash and negligent manner dashed with the said motor cycle causing serious injuries to the claimant of MACP No. 204 of 1991 and simple injuries to the claimant of MACP No. 320 of 1991. After hearing the learned advocates appearing for the parties and considering oral as well as documentary evidence on record, the impugned common judgments and award was passed by the

Tribunal.

2. I have heard learned advocates for the claimants as well as the insurance company and have also taken into consideration the relevant documents such as FIR and panchnama and other evidence.

3. The learned advocate for the appellants, Mr. Pandya has restricted his arguments only on the quantum awarded. He contended that due to the injuries, the claimant of MACP No. 204 of 1991 was kept in ICU for six days in Dr. Amin's Hospital, Baroda. He was also admitted as an indoor patient in Dr. Jwalit Sheth's hospital for one month for his injuries on forehead, left eye and ear. He also suffered injuries on leg, head, fracture on right hand and has become paralytic on his left side. His disability has been assessed by the doctor at 40%. Considering the tremendous pain, shock and suffering suffered by the claimant for considerably long period of time, it is requested that some good may be enhanced under this head. Considering the income of the claimant and his age and other relevant factors, it requested that amounts under other heads may also be reasonably enhanced.

4. As regards the claimant of MACP No. 320 of 1991, it is submitted that she received injuries on knee, elbow and on eye brows and was advised rest for six weeks. It is further submitted that she suffered disability to the extent of 10% on the body as a whole. It is further submitted that she earns by doing private tuitions and was doing her articleship in C.A. It is therefore requested that some amount may be enhanced in this case also.

5. Mr. Pandya has relied on a decision rendered by this Court in the case of Vijaykumar Babulal Modi Vs. State of Gujarat (Deleted) and Gujarat State Road Transport, in support of his submissions.

6. Mr. K.K. Nair, learned advocate for the Insurance Company has submitted that appropriate order may be passed in each case.

7. This Court has gone through the impugned common judgments and award, oral and documentary evidence and also decision relied on by Mr. Pandya.

8. It seems that in First Appeal No. 1165 of 2004 which arises from MACP No. 204 of 1991, the claimant has suffered grievous injuries and has become physically handicapped. His disability has been assessed by the doctor at 40%. However, the Tribunal has considered his disability only to the extent of 20%. Considering the injuries suffered by the claimant, his income and age, this Court is of the opinion that if an amount of Rs. 60,000/- is additionally awarded, ends of justice would be met.

9. As far as First Appeal No. 110 of 2004 which arises from MACP No. 320 of 1991 is concerned, the claimant does not appear to have suffered any serious injuries. No medical papers of treatment undergone by the claimant in this case have also been produced on record. Therefore, this Court is of the view that just and adequate compensation has been awarded by the Tribunal considering all the

relevant factors and, therefore, no interference is warranted in the findings arrived at by the Tribunal in this case and hence, First Appeal No. 110 of 2004 deserves to be dismissed.

10. Thus, First Appeal No. 1165 of 2004 is partly allowed. The claimant in this case is entitled to an additional compensation amount of Rs. 60,000/- with interest as awarded by the Tribunal on the said additional amount. The impugned judgment and award is modified only to the aforesaid extent. The remaining part of the impugned judgment and award would remain unaltered. The Insurance Company shall deposit the additional amount with interest within a period of eight weeks from today.

11. First Appeal No. 110 of 2004 is, however, dismissed.

12. Office to send back the records and proceedings, if any, forthwith. Office is also directed to place a copy of this judgment in each matter.