

(2010) 12 GUJ CK 0259
In the Gujarat High Court
Case No : First Appeal No. 2904 of 2010

Sadanand Anandrao Shrigondekar

APPELLANT

Vs

Nazim Amiruddin and Others

RESPONDENT

Date of Decision : 14-12-2010

Acts Referred:

Citation : (2010) 12 GUJ CK 0259

Hon'ble Judges : K.S. Jhaveri, J

Bench : Single Bench

Advocate : Sudhakar B. Joshi and Chaitanya S. Joshi, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J

1. This appeal has been filed against judgment and award dated 30.09.2009 passed in MACP No. 484 of 1995 by the Motor Accident Claims Tribunal, Fast Track Court No1, Vadodara, whereby the claim petition was partly allowed.

2. The facts in brief are that on 22.12.1994 at about 12.15 p.m., the Appellant claimant was going towards Gas Office to Fire Brigade Center side by driving Luna No. GAS-6223. At that time, opponent No. 1 came from wrong direction by driving Maruti No. GJ-6-K-2745 with full speed and also in rash and negligent manner and he dashed with the Luna, as a result of which, claimant sustained injuries. The Appellant-claimant has therefore filed the petition for compensation in the sum of Rs. 5,00,000/- alongwith costs & interest @ 18% p.a. before the Motor Accident Claims Tribunal, Vadodara. The said application was partly allowed. Hence, this appeal.

3. Counsel for the Appellant submitted that the Tribunal has wrongly held that the Appellant was negligent to the extent of 20%. In this regard, the tribunal observed as under:

Para 9:-Now a days, driving motor vehicles has become an essential part of the human activities and it is impossible to avoid certain number of accident. But, it is certainly the duty of a person, who drives a vehicle on the highway, to use what is reasonable care under all the circumstances to avoid causing harm or damage to others. Here, in this case, looking to the deposition of the claimant and his cross-examination as well as documentary evidence produced on record, it appears that the opponent No. 1 was negligent in driving his vehicle and claimant was also negligent in driving his vehicle. Both drivers have not taken proper care to avoid the accident. Moreover, opponent No. 1 has not stepped into witness box for explaining way & manner of the accident. Thus, I am of the view that, the accident took place between Maruti and Luna and considering the way and manner of happening of accident, opponent No. 1 held liable to the extent of 80% and claimant also held liable to the extent of 20% respectively for causing the accident. Therefore, I answer issue No. 1 in the affirmative.

Thus, the Tribunal has considered all the relevant materials on record as is evident from the aforesaid paragraph.

4. As regards the income aspect is concerned, the evidence on record shows that the claimant was serving as Computer Operator on contract basis and the witness admitted that every month only one visit was given to the claimant and for one visit Rs. 200/- were paid. Therefore, considering other evidence also the Tribunal has taken the income at Rs. 2,000/- per month which is just and proper.

5. With regard to disability, Dr. K.N. Patel, who treated the claimant, was not examined. However, looking to the available evidence, the disability is taken at 17% and nothing is pointed out to take a different view of the matter.

6. Looking to the age of the claimant, the multiplier of 15 is also just and proper especially in view of the decision in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another,

7. In the premises aforesaid, I do not find any merits in the appeal. The same is, therefore, dismissed.