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**(2010) 11 GUJ CK 0069**  
**In the Gujarat High Court**  
**Case No : First Appeal No. 2431 of 1987**

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|-----------------------------------------|----|------------|
| Saifuddin Shabbirhusen Geswala          | Vs | APPELLANT  |
| Paresh Upendrakumar Sanghvi and Another |    | RESPONDENT |

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**Date of Decision :** 25-11-2010

**Acts Referred:**

**Citation :** (2010) 11 GUJ CK 0069

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

**Bench :** Single Bench

**Advocate :** D.F. Amin, for the Appellant; V.H. Thakore and Shalin N. Mehta, for the Respondent

**Final Decision :** Dismissed

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## Judgement

K.S Jhaveri, J.—By way of present appeal, the appellant-original claimant has challenged the judgment and order of Workmen Compensation Commissioner, Godhra dated 30/6/1986 in Workmen Compensation Case No. 563 of 1985 whereby the application of the original claimant was partly allowed and awarded Rs. 5,040/-along with interest at the rate of 9% from the date of application till its realisation. The opponent No. 1 was also directed to pay penalty of 25% of the total compensation amount.

2. The facts of the present case are that the appellant-original claimant is working as driver with opponent No. 1 on the Matador owned by opponent No. 1. On 29/10/1963 at about 1:30 p.m. when the Matador came near Godhra-Salia fatak the break of Matador failed and due to this failure of break, the Matador met with an accident and the appellant herein sustained injuries on left leg, chest and sustained serious injuries on head. He became unconscious because of said accidental injuries and admitted to the hospital at Dahod. Thereafter he was transferred from Dahod Hospital to Indore Hospital. He has got fracture of left leg and had to stay as indoor patient at Indore Hospital for fifteen days. Thereafter he was advised to attend the hospital two times in one month for further treatment. Because of accidental injuries the appellant has become

unable to drive vehicle. He has lost his earning capacity up to 100%. Therefore, the appellant has filed Workmen Compensation Application No. 563 of 1985 for recovery of compensation of Rs. 1,20,000/-with interest at the rate of 18% and also for 50% penalty from the opponents. The authorityafter considering the case of the claimant and after considering the medical evidences produced on record has partly allowed the application of the claimant and awarded compensation of Rs. 5,040/-with interest at the rate of 9% from the date of application and also awarded 25% penalty i.e. Rs. 1,260/-. Aggrieved by the same, appellant-original claimant has filed present appeal.

3. Learned Counsel for the appellant has submitted that the amount of compensation awarded by the Commissioner is unjust and deserves to be enhanced. He has also submitted that the learned Workmen Compensation Authority has erred in holding that the claimant has failed to prove his income. He has also submitted that the Workmen Compensation Authority has committed error in assessing the disability of only 15% though the injury was not covered under Schedule-I and ought to have assessed the disability of 30% as per the evidence on record. Learned Counsel for the appellant has further contended that the authority has committed error in coming to the conclusion that there was disability of 15% as a whole.

4. I have heard the matter at length and perused all the documents available on record. While considering the application of the appellant-original claimant it has become clear as per evidence available on record including medical evidence that the left leg of the appellant was damaged to the tune of 30% in comparison with the right leg. It was also admitted by the doctor that appellant can drive the vehicle with some difficulty and thereby disability of the claimant was assessed as 15% as a whole. As regards salary income is concerned, the evidence produced by the appellant himself shows he was earning Rs. 750/-per month. The appellant was unable to prove that he was earning Rs. 800/-as suggested by him. The respondent No. 1 has admitted that he is paying Rs. 750/-per month. The appellant has failed to produce any document on record to take a different view of the matter. In para-9, the learned Commissioner has discussed all the evidence in detail and after considering the provisions of the Act has granted the compensation on the basis of Schedule and other provision. I am in complete agreement with the decision impugned. No case is made out to interfere. The appeal is devoid of any merits and deserves to be dismissed. The appeal is therefore dismissed.