

(2019) 07 GUJ CK 0083
In the Gujarat High Court
Case No : R/First Appeal No. 1974 Of 2005

Samatbhai Ramshibhai Ambaliya Decd.Through The Lrs	APPELLANT
Vs	
Devshibhai Jivabhai Chavada And 3 Other(S)	RESPONDENT

Date of Decision : 25-07-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2019) 07 GUJ CK 0083

Hon'ble Judges : R.M.Chhaya, J;B.N. Karia, J

Bench : Division Bench

Advocate : Bharat V Shah, Rathin P Raval, Sp Majmudar, Amee Yajnik

Final Decision : Partly Allowed

Judgement

1. Feeling aggrieved by the judgment and award dated 21.04.2005 passed by the Motor Accident Claims Tribunal (Aux), Rajkot in MACP No. 448 of

2002, the original appellant filed the present appeal under section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the "Act").

2. The record indicates that the original appellant Samatbhai Ramsbhai Ambaliya expired on 23.08.2006 and hence, the heirs and representatives of

the original appellant were brought on record by an order dated 27.01.2009 passed by this Court.

3. The following facts emerge from the record of the appeal :

3.1 That on 16.02.2002, at about 8.30 am, when the original appellant Samatbhai Ambaliya along with his family members were going to the temple for

darshan in rickshaw bearing registration no. GJ10AT9256 from Nandana and at that time, a tempo bearing registration no. GJ3AX93 being

driven in full speed on Limdi Highway dashed and collided with the rickshaw and as a result thereof, the original appellant sustained serious injuries

over the body and accordingly the original appellant was initially taken to Government Hospital at Khambhalia and thereafter he was shifted to

Government Hospital at Ahmedabad in Paraplegia Department on 17.02.2002. He was treated at Ahmedabad for a period of 48 days and ultimately,

he was discharged from the hospital at Ahmedabad on 05.04.2002 and thereafter was treated at Jamnagar.

3.2 The FIR came to be lodged with Kalyanpur Police Station being No. 14/02 on 16.02.2002 and the original claimant preferred the claim petition

under section 166 of the Act, which came to be registered as MACP No. 448 of 2002 and claimed compensation of Rs. 25,00,000/-. The original

appellant was examined at exhibit 53. The original appellant-claimant also relied upon documentary evidence such as complaint at exhibit 54,

panchnama at exhibit 57, insurance of rickshaw at exhibit 58, treatment certificate of Khambhaliya hospital at exhibit 59, injury certificate issued by

the Jamnagar Hospital at exhibit 60, Injury certificate issued by the Government Hospital at Ahmedabad at exhibit 61, discharge certificate of the

hospital at Ahmedabad at Ahmedabad 62, 63, discharge card-MLC of the orthopedic hospital at exhibit 64, MRI of cervical spine at

Ahmedabad at exhibit 65, disability certificate at exhibit 75, certificate of the doctor at Rajkot at exhibit 76, village form no.7/12 and 8A at exhibit 67

and 68, oral deposition of the doctor with cross-examination at exhibit 74 and oral deposition of Rajsai Ramsai Ambaliya (attendant) at exhibit 78.

3.3 The Civil hospital issued injury certificate at exhibit 61, which indicates that the original appellant had sustained injuries in the nature of quadriplegia

and cervical spinal injury as the function of the bowel and bladder of the original appellant were not functioning.

3.4 Thereafter, the original appellant was admitted to orthopedic hospital in Jamnagar on 08.04.2002 and was discharged on 03.05.2002 where he was

diagnosed with cervical spinal injury with quadriplegia and sphincter disturbance with conservative management and physiotherapy. Thereafter, Dr.

N.P. Trivedi, after examining the relevant papers and nature of injuries sustained by the original appellant issued disability certificate at exhibit 75

observing that the original appellant was treated continuously and he was unable to sit, stand, walk, run, climb independently and he was completely

bedridden and not able to pass urine independently. In support of the disability certificate exhibit 75, the said doctor gave his oral evidence at exhibit 74

before the Tribunal.

3.5 The Tribunal considering the income of the original claimant at Rs.2,000/Â per month and also considered 90% disability and applying multiplier of 15, awarded Rs.3,24,000/Â as compensation under the head of future loss of income and thus awarded total compensation of Rs. 6,31,400/Â with 9% interest. Feeling aggrieved by the said order, the original appellantÂclaimant preferred this appeal and as aforesaid, during the pendency of this appeal, as the original appellant expired, his legal representatives and heirs have been brought on record.

4. Heard Mr. Vishal Mehta, learned counsel for Mr. Bharat V. Shah, learned advocate for the appellants and Mr.Jatin Yadav, learned advocate for Mr. S.P.Majmudar, learned advocate for respondent no.1 and Mr. Rathin Raval, learned advocate for respondents no.2 and 4. Though served, no one appears for respondent no.3. Also perused the original record and proceedings.

5. Mr. Vishal Mehta, learned advocate for the appellant has contended as under Â?

5.1 That the Tribunal has erred in determining the monthly income of the original appellant at Rs. 2,000/Â. Relying upon the oral deposition of the original claimant at exhibit 53 as well as the extracts of village form no. 7/12 and 8A at exhibit 67 and 68, it was contended by Mr. Mehta that considering the date of accident being 16.02.2002, income of the original appellant ought to have been determined at Rs. 3,000/Â per month. Mr. Mehta relied upon the judgment of the Apex Court in the case of State of Hariyana vs. Jasbir Kaur reported in (2003) 7 SCC 484 and contended that in similar fact situation, the Apex Court has determined the income of the agriculturist at Rs.3,000/Â? per month.

5.2 Mr. Mehta further contended that the Tribunal has also committed an error in assessing the disability of the original claimant. Mr. Mehta, relying upon the disability certificate at Exhibit 75 as well as the deposition of the Doctor who had granted the said disability certificate at exhibit 74, contended that the original claimant was suffering from cervical spinal injury and quadriplegia resulting into nonÂ functioning of both the legs and hands and paralysis of the entire body below the neck. Mr. Mehta referring to the deposition of the Doctor at exhibit 74 contended that even the Doctor has clearly opined that the original claimant had permanent disability of

the body as a whole to the extent of 100%. Mr. Mehta contended that the Tribunal has not given any reasons and has misread the evidence at exhibit 74 and 75.

5.3 Mr. Mehta also contended that the Tribunal has also erred in not granting any prospective income and relying upon the judgment of the Apex

Court in the case of National Insurance Company Ltd. Vs. Pranay Sethi, reported in 2017 (16) SCC 680 as well as the judgment of the Apex Court in

the case of Jagdish vs. Mohan reported in (2018) 4 SCC 571, it was contended by Mr. Mehta that the original claimant would be entitled to increase in

income by way of prospective income to the extent of 40%.

5.4 Mr. Mehta also contended that the age of the original appellant was 35 years even as per the record and therefore, multiplier would be 16 and not

15 as wrongly granted by the Tribunal.

5.5 Mr. Mehta further contended that the original claimant had to undergo hospitalisation of about 75 days and had to undergo continuous treatment

and therefore, the Tribunal has committed an error in awarding only Rs. 1,25,000/Â as compensation under the head of pain, shock and suffering,

which deserves to be enhanced to Rs.3,00,000/Â?.

5.6 Mr. Mehta also contended that considering the fact that hospitalisation was for 75 days, the amount of compensation awarded under the head of

transportation, special diet and attendant charges is also less, which should be enhanced to Rs.1,00,000/Â?.

On the aforesaid grounds, it was therefore contended by Mr. Mehta that the appeal be allowed and the impugned judgment and award be modified to

the aforesaid extent.

6. Per contra, Mr. Raval has opposed this appeal. Mr. Raval contended that in absence of any evidence, merely based upon 7/12 extracts and village

form no. 8A and in absence of any evidence as regards income, the Tribunal has committed no error in determining the income of the original claimant

at Rs.2,000/Â. Mr. Raval contended that considering the date of the accident, the income determined by the Tribunal, may be as a guesswork, is

correct and the same does not require any modification. Mr. Raval submitted that determination of the income depends on facts of each case and the

income is to be determined on the basis of the evidence or other circumstances arising from a particular case. According to Mr. Raval, the facts as

were there before the Hon'ble Apex Court in the case of State of Hariyana (supra) are not found in the case on hand and therefore, according to Mr.

Raval, the judgment of the Apex Court in the case of State of Hariyana (supra) would not be applicable to the present case. Mr. Raval also contended

that considering the date of accident to be 16.02.2002 and on facts of this case, the Tribunal has rightly not awarded any prospective income. It was

also contended that the Tribunal has rightly appreciated the evidence on record and more particularly the deposition of the Doctor at exhibit 74 and

disability certificate at exhibit 75 and has rightly come to the conclusion that the original claimant suffers from permanent disability of the body as a

whole to the extent of 90%. It was also contended that the Tribunal has rightly applied the multiplier of 15 considering the age of the original claimant

on the date of the accident. According to Mr. Raval, the Tribunal has awarded just compensation even under other heads and the same requires no

modification by this Hon'ble Court in the present appeal. According to Mr. Raval, the appeal being meritless, deserves to be dismissed.

7. Mr. Yadav, learned advocate for respondent no.1 has submitted that the liability is upon the insurance company and therefore, this Court may pass appropriate order.

8. No other or further submissions have been made by learned advocates appearing for the parties.

9. Upon considering the evidence on record and reÂ appreciation of the same, it is found that the original claimant did not adduce any evidence as

regards income. However, the fact remains that as per the village form no.7/12 and 8A at exhibit 67 and 68, the original claimant was owner and

occupier of 6 acres of agricultural land. Considering the degree of injuries received by the original claimant after the accident, it would have been

physically impossible for the original claimant to continue with his vocation of agriculture himself and it clearly appears that he would have been

dependent on either hired labour or somebody else. In facts of this case, considering the judgment of the Apex Court in the case of State of Hariyana

(supra) and also considering that the accident occurred on 16.02.2002, in our opinion, the income of the original claimant can safely be assessed at

Rs.2,500/Â? per month.

10. As far as disability is concerned, the disability certificate at 75 clearly recites

that the original claimant has permanent disablement of 100% in the body as a whole. It also shows that the original claimant after the accident was unable to sit, stand, walk, run, climb independently and was bedridden and not even able to pass urine and stool independently. It is also noted by the Doctor that the original claimant had no motor power in both upper and lower limbs and was paralysed below the neck. It also shows that he was required to be assisted for all his daily routine activities. Even considering the deposition of Doctor Nimish Trivedi, who had issued the disability certificate at exhibit 75, it is found that the original claimant was completely disabled. Considering the observations made by the learned Tribunal as regards disability, we find that there is no reason assigned or given by the learned Tribunal for slicing down the disability of permanent of body as a whole from 100% to 90%. In facts of this case, considering the gravity of injuries sustained by the original claimant and upon re-appreciation of the evidence, more particularly, the disability certificate at exhibit 75 and deposition of the Dr.Trivedi at exhibit 74, we deem it fit to hold that the original claimant suffer permanent disability of the body as a whole to the extent of 100%.

11. The record indicates that prior to the accident in question, the original claimant was doing agricultural activities as per the oral deposition of the original claimant at exhibit 53 as well as the extracts of village form no. 7/12 and 8A at exhibit 67 and 68. In facts of this case and relying upon the judgment of the Apex Court in the case of Pranay Sethi (supra), we are of the opinion that original claimant would also be entitled to prospective income to the extent of 40% of the income.

12. The record indicates that the age of the original claimant was 35 years old on the date on the accident and as per the judgment of the Apex Court in the case of Sarla Verma vs. Delhi Road Transport Corporation reported in (2009) 6 SCC 121, the appropriate multiplier would be 16 and not 15.

13. The record indicates that the original claimant had to take extensive treatment for 6 months at a stretch. The record also indicates that such treatment increased agony of the original claimant and upon re-appreciation of the evidence on record, we are of the opinion that the compensation under the head of pain, shock and suffering deserves to be enhanced to Rs. 2,00,000/- instead of Rs.1,25,000/-. In addition to that, considering the

prolonged treatment and long hospitalisation, the original claimant must have incurred some more expense towards attendant charges and in facts of

this case and upon appreciating the evidence on record and more particularly as to the hospitalisation of the original claimant, the compensation under

the head of transportation, special diet and attendant charges can be increased from Rs.50,000/- to Rs.75,000/-.

14. Having come to the aforesaid conclusion therefore, the appellants would be entitled to compensation towards future loss of income as under :-

Rs.2,500/- (monthly income) + Rs.1,000/- (prospective income) = Rs.3,500/-
X 100% disability = Rs.3,500/- X 12 = Rs.42,000/- (yearly income) x

16 (multiplier) =

Rs.6,72,000/-

Thus, the appellant would be entitled to total compensation as under :-

Future Loss of Income :- Rs.6,72,000/-

+ Actual loss :- Rs. 45,000/-

+ Pain, shock and suffering :- Rs.2,00,000/-

+ Medical expenses :- Rs.1,00,000/-

+ Transportation, special

diet and attendant charges:-

Rs. 75,000/-

Rs. 7,92,000/-

Total Rs.10,92,000/-

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15. Thus, the total compensation would come to Rs. 10,92,000/-. As the Tribunal has awarded Rs. 6,31,400/-, the appellant would be entitled to an

additional amount of Rs.4,60,600/-. The appeal is thus partly allowed. The impugned judgment and award is modified to the aforesaid extent. The

respondent insurance company is hereby directed to deposit the additional amount as awarded by this Court being Rs.4,60,600/- with 9% interest

from the date of filing of the claim petition till its realisation with proportionate cost within a period of three months from the date of receipt of this

order. However, there shall be no order as to costs in this appeal. Registry is directed to transmit the original record and proceedings forthwith to the

Tribunal.