

(1984) 10 GUJ CK 0002
In the Gujarat High Court
Case No : F.A. No. 1544 of 1980

State APPELLANT
Vs
Narishvarbhai Desaibhai and Others RESPONDENT

Date of Decision : 10-10-1984

Acts Referred:

Citation : (1986) ACJ 127

Hon'ble Judges : R.J. Shah, J

Bench : Single Bench

Advocate : G.D. Bhatt, Asstt. Govt. Pleader, for the Appellant; R.H. Mehta, for the Respondent

Final Decision : Dismissed

Judgement

R.J. Shah, J.—This appeal arises at the instance of the State which was opponent No. 2 in Motor Accidents Claim Application No. 71 of 1979 as the said application came to be decided against opponent Nos. 1 and 2 by a judgment dated 2nd May, 1980 passed by the Motor Accidents Claims Tribunal No. II, Vadodara.

2. It was alleged by the Applicant who is Respondent No. 1 herein in the said application that a vehicular accident had taken place on 19th December, 1977 at about 5.45 a.m. near Karjan opposite Bharat Cotton Oil Production Factory on National Highway No. 8. The Applicant had alleged that when he was going on a bicycle at the said time and place he was knocked down by a police van bearing No. GTV 7561 driven by the present Respondent No. 3 According to the Applicant, the said van had come from the back side and knocked down the Applicant as a result of which he had sustained several injuries. Applicant had therefore filed an application for compensation in the sum of Rs. 15,000/-. The aforesaid Tribunal was pleased to dismiss the application against present Respondent No. 2, insurance company but had awarded Rs. 8,687/- as compensation to the Applicant with running interest at the rate of 6 per cent per annum from the date of application till realisation with proportionate costs. Being aggrieved by the said judgment and order, the State has come in appeal.

3. At the outset, it may be noted that no appeal has been preferred by the driver of the said vehicle who is Respondent No. 3 in the present appeal. The driver therefore has not challenged the finding regarding rash and negligent driving of the said police van at the relevant time.

4. The record shows that the Applicant had himself filed an affidavit in the said proceedings and had also been cross-examined. The Applicant also had examined witness Purshottam Natha in support of his case. Going through the evidence of the Applicant as well as the aforesaid witness it appears that the Tribunal had correctly concluded that their evidence inspire confidence and witness Purshottam Natha supported the version of the accident as narrated by the Applicant. On the other hand, one finds that the driver of the said van has changed his version of the accident from time to time and as it suited him. The driver and the State had filed a joint written statement at exhibit 12 and in the said written statement it was alleged that at the time of the accident one motor truck with full lights was coming from the opposite direction and on account of that the eyes of the Applicant were dazzled and so he had fallen down and had sustained injuries. The stand taken therefore was that no collision as a matter of fact had occurred between the offending vehicle and the Applicant. Despite the same, in his cross-examination, the driver of the police van came out with a different version to the effect that he had not seen the Applicant riding the bicycle and that he only saw the bicycle lying on the road and therefore stopped the offending vehicle. The panchnama at exhibit 36 clearly shows that the bicycle was heavily damaged and that there was some damage to the offending vehicle on its front left side. It has not been claimed by the said driver that the said damage to the offending vehicle was done at some other place and time. It is therefore clear that opponent No. 1 has no regard for truth and he is giving false evidence with a view to save himself from the consequences. The finding of the Tribunal therefore on the aspect of rash and negligent driving on the part of the opponent No. 1 is unassailable.

5. So far as the quantum of compensation is concerned, the Tribunal has only awarded Rs. 8,687/- as against the claim of Rs. 15,000/-. On the count of pain, shock and suffering and what the Tribunal has described as cosmetic deformity Rs. 5,500/- were awarded. It is urged on behalf of the State that the award on the said count is on the higher side.

6. On record, we have a medical certificate at exhibit 37 dated 21st June, 1978. It pertains to the Applicant and the injuries described therein are as under:

(1) CLW on rt. knee encircling medial side, posterior side and lateral side of 12" ? 4".

(2) Punctured wound on the medial side of rt. ankle of ?" ? ?".

(3) Small abrasion of ?" ? ?" on rt. side elbow ankle and knee.

It also states that the Applicant was admitted in the hospital on December

19,1977 and was discharged on April 21, 1978. In other words, the Applicant was an indoor patient for a period of little more than 4 months. Dr. N.P. Sharma who has joined the State service in October 1967 has deposed at exhibit 33 in the aforesaid claim petition. At the time when he deposed, he was Professor in Plastic Surgery in S.S.G. Hospital and Medical College, Baroda. He had examined the Applicant on 5th March, 1978 as the Applicant was referred from Surgical-A unit. On 8th March, 1978 scraping of the wound was done and skin grafting was performed. The skin grafting was done again on April 1, 1978 and ultimately patient was discharged on 21st April, 1978. Dr. Sharma is not certain whether the Applicant had any disability. But he has admitted that there was deformity of the right leg of the Plaintiff and that it had become thinner than the left leg, the reason being that the skin that was lost was thicker than the one that was applied by grafting. Dr. Sharma has further deposed that there was a disability but he was unable to assess the extent thereof. In view of the evidence of Dr. Sharma which has gone unchallenged, it is clear that the Applicant who was aged about 25 at the relevant time has sustained permanent deformity of the right leg. It is true that there is no reliable evidence to show that on account of the said deformity there was or not any resultant functional disability. All the same, considering the fact that he was an indoor patient for a long period of 4 months and also considering that there was permanent deformity of the right leg, it cannot be said that the award in the sum of Rs. 5,500/- on the combined head of pain, shock and suffering and deformity is on the higher side. In *Farley v. N.E. Metropolitan Hospital Board*, The Times November 9, 1954 (CA) (See *Munkman's Damages for Personal Injuries and Death*, 5th Edition, p. 256), a married woman aged about 30 had both legs very badly burnt and scarred by hot water bottles in the hospital and had series of skin grafting operations. She was unable to walk for long or to dance and an ugly scar was left on one thigh. Cassela, J. had assessed the damages at ? 7,000. The Court of Appeal thought too much had been given for disfigurement and reduced the award to ? 3,000/-. Considering the ratio of the said decision also, it cannot be said that the award of Rs. 5,500/- on the combined head of pain, shock and suffering and permanent disfigurement is on the higher side.

7. The other sums awarded are of Rs. 942/- for loss of income from 19th December, 1977 to 12th April, 1978. Rs. 200/- for expenses regarding medicine, Rs. 200/- for transport charges and Rs. 1,845/- for expenses incurred during hospitalisation. The Applicant has deposed on oath that his pay is Rs. 230/- per mensem including D. A. and other allowances. At the relevant time, he was serving as a sweeper. Considering the circumstances of the present case and the period of treatment, it does not seem that the award on the aforesaid counts is on the higher side. On the aspect of quantum therefore it is not necessary to interfere with the award passed by the Tribunal.

8. It is claimed on behalf of the State that the insurance company ought to have been made liable in respect of the claim made by the Applicant. The insurance company has examined witness Chandrakant at exhibit 42. He is an officer in

Respondent No. 2, insurance company. He has deposed that the insurance in respect of the offending vehicle had expired on 8th November, 1977. Witness Chandrakant has stated that the offending vehicle was first insured for the period from 9th November, 1976 to 8th November, 1977. The aforesaid would show that the said vehicle was not insured in between the period from 9th November, 1977 to 19th December, 1977. The evidence of witness Chandrakant has gone unchallenged and so there is no reason to disbelieve the same. As stated above, the accident had taken place on 19th December, 1977 and so it is evident that on the day when the accident had taken place the offending vehicle was not insured. The Tribunal was therefore right in holding that Respondent No. 2 insurance company cannot be held liable in respect of the accident in question. The Appellant had therefore failed in its attempt to challenge the said award on the grounds aforesaid.

9. No other submission was made on behalf of the Appellant.

10. In the result, the appeal fails and is hereby dismissed with no order of costs in favour of Respondent No. 2.