
(2023) 09 GUJ CK 0053
In the Gujarat High Court
Case No : R/First Appeal No. 4564 Of 2006

Suresh Parshottam Darji

APPELLANT

Vs

Kashmirsingh Kartarsingh Shikh & 4 Other(S)

RESPONDENT

Date of Decision : 18-09-2023

Acts Referred:

Citation : (2023) 09 GUJ CK 0053

Hon'ble Judges : Ilesh J. Vora, J

Bench : Single Bench

Advocate : Mehul S Shah, Hemant S Shah

Final Decision : Allowed

Judgement

Ilesh J. Vora, J

1. Being dissatisfied with the quantum of compensation, awarded by the Tribunal, the appellant original injured claimant has filed the present appeal seeking enhancement of compensation.

2. The appellant and others sustained injuries in a road accident, which took place on 09.04.1999 between tanker and Maruti car. The appellant, being an occupant of the car, had received injuries, resulting into fracture of right thumb and wrist. It is the case of the appellant that, at the relevant time, by profession he was doing tailoring work and his monthly earning was Rs.10,000/- to Rs.15,000/-. It is further the case of the appellant that on account of sustaining with the said injuries, the treatment was continued for long and was twice operated by the different hospital and had spent huge amount towards medicine, transportation and was attended by family members. It is his case that on account of sustaining the said injuries, he suffered and sustained permanent partial disablement to the extent of 30% and to that extent his earning capacity has been reduced as he could not properly execute his tailoring work. The Tribunal after considering the oral as well as documentary evidence on record, assessing monthly income of Rs.5000/- and considering the disablement 15%

body as a whole, awarded Rs.1,52,000/-towards future economic loss and has also awarded Rs.20,000/-towards medical expenses and Rs.12,500/- towards pain shock and suffering. In all, under various heads, the Tribunal awarded Rs.2,06,500/- with interest at the rate of 9%, directing the the respondents herein to pay the same jointly and severally.

3. Being dissatisfied with the aforesaid amount of compensation, the appellant has preferred the present appeal seeking enhancement of the compensation.

4. This Court has heard learned counsel Mr.Henil M.Shah and Mr.Hemant Shah for the respective parties.

5. Mr. Henil Shah, learned counsel for the appellant, has submitted that the award and judgement passed by the Tribunal in contrary to the evidence on record and settled principle of just compensation. That considering the avocation of the appellant, the compensation is to be determined with the loss of earning capacity and not loss of physical capacity and, therefore, the Tribunal has erred in overlooking the said aspects, while assessing the amount under the head of future economic loss. That the Tribunal has also ignored the long medical treatment and has awarded meager amount under the head of pain, shock and suffering and medicines etc. That the Tribunal, while computing the amount under the future economic loss did not consider the prospective income.

6. In view of the aforesaid contention, learned counsel Mr. Henil Shah submitted that the findings recorded by the Tribunal are contrary to the evidence on record and, therefore, the case is made out for enhancement of the amount of compensation under the various heads.

7. On the other hand Mr. Hemant Shah, learned counsel appearing for the Insurance Company, supported the findings recorded by the Trial Court and contended that the amount of compensation is just reasonable and equitable, which does not require inference.

8. Having heard the learned counsel for the respective parties and on perusal of the material placed on record, the issue, which arises for consideration is whether amount of compensation as determined by the Tribunal needs any enhancement?

9. In the facts of the present case, the appellant is by profession doing tailoring work. Before the Tribunal, except the certificate of training, nothing was produced to prove his income of Rs.10,000/- to Rs.15,000/-. The incident alleged occurred in the year of 1999. The learned Tribunal while determining the monthly income observed that the appellant claimant failed to prove his income and finally by determining monthly Rs.5000/- income, and considering the 18% disablement body as a whole, awarded Rs.1,62,000/- towards future economic loss. This Court is of the considered view that, before the Tribunal, either the claimant or the doctor, has not deposed that on account of sustaining of the fracture of injury over the right hand, the applicant could not at all execute the

professional work of tailoring. Thus, in order to get the maximum benefit of disablement, it is imperative on the part of the claimant to prove and establish that his earning capacity has been reduced on account of the said disablement. When particular part of the body i.e. live or limb has not become unfit for the use of nature of tailoring work, the Tribunal has rightly awarded the reasonable amount under the head of future economic loss by considering functional disability to the extent of 18%. The findings recorded by the Trial Court to determine the amount of future economic loss are based on evidence on record and it cannot be termed as arbitrary or contrary to the facts and law.

10. The appellant claimant is claiming enhancement of the amount under the different heads. The Tribunal, after considering the evidence on record, awarded Rs.20,000/- towards medical expenses and Rs.12,000/- towards pain, shock and suffering. The actual bills of expenses produced before the Tribunal was of Rs.10,979.75 paise and the Tribunal awarded Rs.20,000/- towards medicines, which amount is quite reasonable. The amount towards the pain, shock and suffering has been awarded on lower side, as the appellant claimant was treated for long at different hospitals and, therefore, this Court deems it necessary to increase the amount under this head and accordingly, Rs.7,500/- shall be considered as enhanced amount under the head of pain, shock and suffering. So far as other heads are concerned, the Tribunal has not committed any error while awarding the amount towards special transportation and attendant loss.

11. For the reasons record and upon re-analysis of the evidence on record, except the above modification, the compensation awarded by the claim Tribunal under the different heads remain unchanged.

12. In the result, the appeal is allowed in part by enhancing the compensation from Rs.2,06,500/- to Rs.2,14,000/-. The enhanced amount of compensation of Rs.7,500/- shall carry the interest rate of 6%. The Insurance Company shall deposit the enhanced amount with interest within three months. The learned Tribunal shall disburse the entire amount. Decree be drawn accordingly.