
(2010) 07 GUJ CK 0024
In the Gujarat High Court
Case No : First Appeal No. 1289 of 1985

Vijaykumar Arvindsinh Raoliji	Vs	APPELLANT
Ramanbhai Chaturbhai Raval and Another		RESPONDENT

Date of Decision : 29-07-2010

Acts Referred:

Citation : (2010) 3 GLH 486 : (2011) 52 GLR 593

Hon'ble Judges : Ravi R. Tripathi, J

Bench : Single Bench

Advocate : Rajni H. Mehta, for the Appellant; Maya S. Desai, for M.D. Pandya, for Defendant Nos. 1 and 2, for the Respondent

Judgement

Ravi R. Tripathi, J.—Present First Appeal is filed by one Vijaykumar Arvindsinh Raoliji through his next friend and guardian Shri. Arvindsinh Madhavsinh Raoliji (father) being aggrieved by judgment and award dated 18th October, 1984 passed by the Motor Accident Claims Tribunal (Aux.), Baroda in Motor Accident Claims Application No. 5 of 1982. The learned Tribunal was pleased to award an amount of Rs. 1,77,925/- together with proportionate costs and running interest @ Rs. 6% per annum from the date of application till realization from both the opponents, who are jointly and severally liable to pay the same.

1.1. Learned Tribunal was pleased to pass the following order :

... Out of the principal amount, a sum of Rs. 1,75,000/- shall be invested in any Schedule Bank by way of fixed deposit on long-term basis. The guardian of the minor shall be at liberty to withdraw the periodical interest accruing on it, but shall not be entitled to withdraw the whole or any part of it or shall not be entitled to create any encumbrance thereon during the period of fixed deposit. The Bank also shall not allow him to do so without obtaining the prior permission of this Tribunal. The period of fixed deposit shall be extended from time to time till the minor Vijaykumar attains the age of majority.

The amount of interest shall be utilized for the upkeep, maintenance, welfare and

education of the minor Vijaykumar.

Rest of the amount of the award with costs and interest shall be paid in cash to the guardian and father of the minor Vijay viz. Arvindsinh Madhavsinh Raoliji.

If the amount of the award is not deposited by the Insurance Company (sic. G.S.R.T.C., as there is no Insurance Company as party-opponent) within a period of two months thereof, interest will be chargeable at the rate of 12% per annum from the date of application.

Deficit Court-fees, if any, shall be recovered from the said guardian and father of the minor...

2. The facts giving rise to the present proceedings are that on 9th July, 1981 at about 2-15 p.m. near village Sakarda, the applicant a child aged about 5 years, named Vijaykumar with his father Arvindsinh Madhavsinh Raoliji and his mother, were sitting under a "Banyan" tree. At that time, an S.T. Bus bearing Registration No. GTE-5301 came with excessive and uncontrollable speed, rashly and negligently driven by opponent No. 1. The driver was unable to control the offending vehicle with the result, the offending bus ran towards the claimant on the wrong side of the road and caused an accident. The child Vijaykumar sustained severe bodily injuries on the head and various other parts of the body.

2.1. On account of the said accidental injuries, the child lost complete vision of the right eye and the vision in the left eye is also impaired to a great extent. Besides, the left leg was required to be amputated in a gradual manner, and finally it came to be amputated very close to the hip-joint. The child was given treatment at the S.S.G. Hospital for about four and half months, and thereafter, he was required to consult other private doctors including Orthopaedic Surgeon and Ophthalmologist.

2.2. Initially, the claim was quantified at Rs. 1,50,000/- but later on, the same was increased to Rs. 4 lakh.

2.3. The First Appeal is filed for the remaining amount of Rs. 2,22,075/-.

2.4. The Motor Accident Claims Application was contested by the Opponent the Gujarat State Road Transport Corporation (hereinafter referred to as "G.S.R.T.C.") by filing Written Statement vide Exh. 10. Later on, the written statement to the amended plaint was also filed vide Exh. 48. As is recorded by the learned Tribunal vide Para 5, it is admitted that on 9th July, 1981, the Applicant and other persons were sitting nearby the Universal Stone Factory and the Opponent No. 1 was in-charge of the offending bus, which was plying between Cambay-Baroda and that, at the relevant time, the said bus was coming towards Baroda. However, it is denied that the vehicle was driven by the Opponent No. 1 in rash and negligent manner with excessive and uncontrollable speed. It is also contended in the written statement that the child Vijaykumar and others ran away from the spot on seeing the bus coming towards them. It is also stated in the written statement that on the day of the accident, at the

relevant time, the Opponent No. 1 was in-charge of the bus and was proceeding towards Baroda from Cambay, at that time, at the place of accident, there was a tractor on the left hand side of the road while facing towards Baroda. Two children abruptly came on the road from the front side of the tractor and on seeing minor crossing the road from left to right, the Opponent No. 1 had slowly negotiated the right turn, but on account of rain, the road was wet and slippery and the driver lost control over the bus. After applying brakes, he made an attempt to move the bus on the correct side of the road and under such circumstances, this unfortunate accident occurred. It is also stated in the written statement that there was no dashing from the front side of the bus. The parents of the minor were along with him and it was the duty of the parents to take care of the child while he was crossing the highway where there was heavy vehicular traffic. It is also stated in the written statement that the claim under the different heads is on higher side and that, the claim of Rs. 4 lakh as per amended plaint is highly exorbitant. It is finally urged that the application be dismissed.

2.5. The learned Tribunal, on appreciation of the evidence led before it, framed the following issues :

- (1) Whether the applicant proves that the Opponent No. 1 during the course of employment of Opponent No. 2, drove S.T. Bus No. GTE-5301 rashly and or negligently, and thereby, caused injuries to minor Vijaykumar Arvindsinh Raoliji?
- (2) What amount if any the applicant is entitled to receive as compensation and from which of the Opponent or Opponents?
- (3) What order?

2.6. The learned Tribunal answered the issue No. 1 in affirmative and while answering the issue No. 2, awarded an amount of Rs. 1,72,925/- from both the Opponents. Later on, the Tribunal added an amount of Rs. 5,000/- for loss of marriage prospects totalling the compensation to Rs. 1,77,925/-.

3. The present First Appeal is filed seeking enhancement of amount of compensation to Rs. 4 lakh i.e. an additional amount of Rs. 2,22,075/-. Learned Advocate Mr. Parikh for the Appellant vehemently submitted that this is one case, wherein, even awarding of full amount of compensation of Rs. 4 lakh will not be sufficient inasmuch as the life of the child aged 5 years is rendered so miserable that no amount of compensation can mitigate the misery, which are fallen on a boy of 5 years. The learned Advocate for the Appellant submitted that the boy was required to be operated more than once and was subject to gradual amputation of leg on account of increasing complications and finally, his leg was amputated very close to the hip-joint. Not only that, on account of injuries sustained on head, he lost vision of one eye and the vision in the other eye was so impaired that he was not able to see beyond the distance of 10 to 15 feet and as it is brought on record by the deposition of doctor Ms. D.M. Desai - Exh. 79, the boy was able to count fingers at a distance of 3 feet with the help of glasses. The learned Advocate for the Appellant submitted that the Tribunal is right in

referring to various decisions in Para 26, in which the Tribunal has quoted the Head Note, wherein, it is observed that, "the claimant is left with a totally defunct life which is worse than death and which resembles an empty egg-shell with its contents taken out.

3.1. The learned Advocate for the Appellant submitted that the Tribunal has awarded an amount of Rs. 50,000/- for pain, shock and sufferings for loss of vision in an eye. An amount of Rs. 50,000/- for pain, shock and sufferings for amputation of leg; Rs. 30,000/- for loss of earnings on account of loss of vision by taking the income at Rs. 125/- per month, multiplied by 12 is equal to Rs. 1,500/- and multiplied by 20 (multiplier). Rs. 36,000/- for loss of earnings on account of amputation of leg by taking Rs. 150/- as earnings per month, multiplied by 12 is equal to Rs. 1,800/- and multiplied by 20 (multiplier). Rs. 425/- for loss of salary of the father of the claimant who was required to be on leave for 21 days. Rs. 5,000/- for Transport Charges, Medicines etc., Rs. 1,500/- for Future Medical Expenses, Rs. 5,000/- for Loss of Marriage Prospects, the total comes to Rs. 1,77,925/-.

3.2. The learned Advocate for the Appellant invited attention of the Court to a decision of the Hon'ble the Apex Court in the matter of R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others, . The learned Advocate for the Appellant submitted that the Tribunal ought to have awarded an amount of Rs. 1,50,000/- under the head of pain, shock and sufferings for amputation of leg, and similarly for total loss of vision in one eye and an impairment to a major extent in the other eye also an amount of Rs. 1,50,000/-, totalling it to Rs. 3 lakh. This would have made the total compensation of Rs. 4 lakh, providing some solace and to fall back on the same in future, more particularly, in absence of the parents. The claimant-minor Vijaykumar is the only child of the parents. He has no brother and the father having undergone a Family Planning operation, there is no question of he having any supporting hand for future.

4. The learned Advocate for the Opponent (G.S.R.T.C.) vehemently opposed this First Appeal. The learned Advocate submitted that it is not on record that the victim has suffered loss of vision in one eye and a major damage to the vision in the second eye on account of accidental injuries. In this regard, taking a clue from a suggestion made to Dr. Ms. D.M. Desai - Exh. 79, the learned Advocate submitted that there is nothing on record to show that the victim has suffered the loss of total vision in one eye and the major damage in the other eye on account of accidental injuries. The learned Advocate also argued with all vehemence that no case papers have come on record, and therefore, there is all the probability that the boy did not have a vision in one eye and that his vision in the other eye, which is contended to have impaired to a major extent was like that since birth. In support of this submission, learned Advocate invited attention of the Court to the statements recorded by the police of the mother and the grandmother of the child.

4.1. It is true that the police has recorded a statement of the mother of the

victim-Bai Sharda-wife of Arvindsinh Madhavsinh Raoliji, wherein, it is stated that, "the S.T. bus had hit my son Vijay on account of which, my son Vijay had sustained injuries on both the legs and hands and he was bleeding". The learned Advocate wanted this Court to believe by reading this part of the statement that the victim had not suffered any injury on the head as it is not mentioned. Similarly, in the statement of Bai Mani, mother of Bai Sharda, wherein also it is stated that, "my son-in-law's son was hit by an S.T. bus and in that, son Vijay had sustained injuries on hands and legs and he was bleeding".

4.2. This submission is not only found to be without any merit but to an extent whimsical, and if not whimsical, totally inhuman, certainly painful because the S.T. Corporation has filed written statement to the application (claim petition is filed on 22-7-1981) as early as on 7-8-1982. In the claim application itself, in Para 10 it is mentioned that on account of accident, left leg of the minor is amputated above knee-joint. On both the hands, there is bandage and there is injury on the head. Later on, this claim petition is amended by an application which is Exh. 25, which was moved on 23-2-1983, which was granted by the Tribunal on the same day. To this amended application, the G.S.R.T.C. has filed reply on 16-9-1983.

4.3. In the amendment application, it was specifically mentioned that earlier an application to get compensation of Rs. 1,50,000/-, is filed but as, on account of this accident and the injuries sustained therein, the left leg of the claimant is required to be amputated above knee-joint and for amputating that leg, in all, three times, operation was required to be performed and in the last operation, upto the hip-joint the leg is amputated. It is also mentioned in the amendment application that on account of the accident to the applicant, one eye is totally lost and the other eye is also likely to be lost in toto. In the written statement filed to the amended application, there is not a word mentioned that the minor had infirmity in vision since his birth. This is created by the fertile brain of the learned Advocate appearing for G.S.R.T.C. at the time of recording of evidence of Dr. Ms. D.M. Desai - Exh. 79 to whom, a suggestion was made in the cross-examination, which is replied by the doctor by saying that, "I do not agree that Vijaykumar was completely blind in respect of his right eye from his birth... ". This Court is of the opinion that there has to be limit in stretching any matter to such an extent.

4.4. The father of the minor is examined at Exh. 59 and he has stated in his examination-in-chief that, "on minor sustaining injuries, he was immediately brought to Baroda at Saiyaji General Hospital. Vijaykumar was kept in the hospital for four and half months; the doctor has operated leg and plaster was applied but after 3-4 days Vijaykumar was serious, and therefore, the doctor advised that his leg is required to be amputated and after obtaining our consent, his leg was amputated from the knee-joint. After few days, there was pus formation, and therefore, the doctor amputated the leg from the thigh. As there was still pus formation, his leg was amputated from the hip-joint; on the right side leg, there was only impact of accident (no bleeding). As there was injury in

the head, his eyes were protruding and there was pus coming out from ear and nose. The doctor, while treating Vijay, had pressed right eye-ball to its original place and was going to treat the left eye but I had restrained him from doing so. Vijay was not able to see from his right eye when he was discharged from the hospital. He was not able to see even from the left eye, and therefore, I had taken him to the Government hospital at Anand for treatment. After having taken treatment for about eight days, as there was no improvement, the doctor had advised to take minor Vijay to Ahmedabad to get checked by Dr. P.N. Nagpal. The minor Vijay was admitted in the private hospital of Dr. Nagpal at Ahmedabad. He was kept therefore five days. Dr. Nagpal had operated him on left eye on account of which, Vijay gained some vision and he was able to see a little. After five days, he was discharged and doctor asked to come again for check-up after two months. After two months, when I went to doctor, he stated that at present, operation cannot be undertaken. The doctor did not say as to when the operation will be undertaken. At present Vijay is able to see only up to a distance of 10 to 15 feet, beyond that he is not able to see. His one eye is totally lost.

4.5. Despite this evidence, to suggest to a doctor that minor was having an infirmity in the eyes since birth is certainly inhuman and uncalled for.

4.6. To refer to the statements of the mother and the mother's mother to contend that minor had sustained injuries only on hands and legs is also stretching the matter too far. It is very difficult to visualize a situation in which a minor is entangled in a wheel of an S.T. bus is dragged to a distance after which the S.T. bus stops and the boy fell down from the wheel and in such situation, to expect the mother of a minor to be calm and compose to depose as to on which parts of the body, the minor had sustained injuries is too much. To contend before the High Court with a view to oppose the enhancement appeal of claim amount by contending that no medical papers have come on record, is also not befitting to an officer of the Court, more particularly, when this contention, "the boy had not sustained injuries on head", is not found in a written statements at Exhs. 10 and 25.

5. Taking into consideration the totality of the circumstances emerging in this case, this Court is of the opinion that the amount of pain, shock and sufferings, which is awarded of Rs. 50,000/- for amputation of leg and loss of vision of Rs. 50,000/- is required to be increased to Rs. 1,50,000/- each as is awarded by the Hon'ble the Apex Court in the matter of R.D. Hatangadi (supra).

5.1. The First Appeal is filed for Rs. 2,22,075/-. The amount which is awarded for loss of earnings on account of loss of vision in one eye and amount for loss of earnings on account of amputation of leg is also on a much lower side being Rs. 30,000/- and Rs. 36,000/- From the photograph at Exh. 60, it is clear that the boy has no left lower limb. That being so, it will not be possible to have help of any artificial limb and on account of loss of vision and diminishing vision in the second eye, it will not be possible for him to have any earnings till the end of his life, and therefore, an additional amount of Rs. 2,22,075/- is awarded under the

head of loss of earnings under the aforesaid two heads.

6. In the result, the First Appeal is allowed. The S.T. Corporation is directed to deposit this additional amount within four weeks of the receipt of the certified copy of this judgment and order with proportionate costs and interest.

6.1. Taking into consideration the time-gap in between the judgment and award by the Tribunal and judgment of this Court, this Court is of the opinion that no orders for investment are required to be passed. But in the peculiar facts of the present case, as the victim is almost in a crippled position, the learned Advocate for the Appellant requested that with a view to see that a regular income is received by the victim, this amount may be ordered to be invested in a long term Fixed Deposit. The victim must be of 34 years of age as on day. That being so, the Tribunal is directed to deposit this amount for a minimum term earning maximum interest with one further renewal on expiry of that term.