

(2014) 02 GUJ CK 0019
In the Gujarat High Court
Case No : First Appeal No. 4282 of 2009

Vilasbhai Thore

APPELLANT

Vs

Shivabhai Tejabhai Harijan

RESPONDENT

Date of Decision : 24-02-2014

Acts Referred:

Citation : (2014) 3 GLR 2025 : (2014) 4 RCR(Civil) 944

Hon'ble Judges : Kaushal Jayendra Thaker, J

Bench : Single Bench

Advocate : Bharat Jani, Advocate for the Appellant; Karuna V. Rahevar, Advocate for the Respondent

Judgement

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Kaushal Jayendra Thaker, J.—By way of this appeal, the appellant has challenged the judgment and award dated 30-9-1999 passed by the M.A.C. Tribunal, Ahmedabad in M.A.C. Petition No. 1414 of 1996. The brief facts of the present case are that on 26-10-1996, the appellant was travelling in a Maruti Car bearing registration No. GJ-1-PP-2516 while going from Ahmedabad to Nadiad. It was being driven by the present appellant on the left hand side of the road at a moderate speed. When they were coming from the direction of Kheda towards Nadiad, at about 5-15 p.m. and were climbing the slope of a bridge of river Shedhi, at that time, one truck bearing registration No. GJ-3T-3279 owned by the opponent No. 2, insured by opponent No. 3 and driven by the present appellant No. 1 came from the opposite direction at a great speed and collided with the car. The present appellant had sustained injuries. The car was owned and driven by the present appellant. The injured were taken to the hospital; they had to undergo medical treatment and incurred expenditure for medicines and medical treatment and also suffered disability and therefore, the claim petition was filed. By the impugned award, the Tribunal has awarded Rs. 55,750/- with running interest at the rate of 15% per annum from the date of filing of the petition till realisation, against the claim of Rs. 4,00,000/-. Hence, this First

Appeal.

2. The claimant of M.A.C.P. No. 1414 of 1996 - present appellant was the driver and owner of Maruti Car bearing registration No. GJ-1-PP-2516 at the relevant time. He has claimed a compensation of Rs. 4 lacs.

3. The issue of negligence decided by the Tribunal, reads as under:

"So far as the question of negligence is concerned, Pankajbhai Ramanlal Shah, petitioner of M.A.C.P. No. 1432 of 1996 is examined at Exh. 37. Deepakkumar Keshavlal Bhavsar, petitioner of M.A.C.P. No. 1431 of 1996 is examined at Exh. 55 and Vilasbhai Thore, petitioner of M.A.C.P. No. 1414 of 1996, is examined at Exh. 72. Reiterating the contents they have stated in their deposition, inter alia, that on 26-10-1996 at about 5-50 p.m. They were travelling in a Maruti Car bearing registration No. GJ-1-PP-2516 while going from Ahmedabad to Nadiad. It was being driven by Opponent No. 4 of M.A.C.P. Nos. 1431 and 1432 of 1996 Vilasbhai Thore on the left hand side of the road at a moderate speed. Near Kheda camp on the highway, one truck bearing registration No. GJ-3T-3279 came from the opposite direction to a great speed and collided with the jeep. The petitioners sustained injuries. All the petitioners have been cross-examined at length on behalf of the Insurance Company. It transpires from their cross-examination that the collision between the two vehicles took place when Maruti Car was climbing a slope of river Shedi. Over and above the oral evidence, the petitioners have produced a copy of complaint at Exh. 39, a copy of the panchnama at Exh. 39. From the oral as well as the documentary evidence, it is abundantly clear that the collision between the two vehicles took place when the car was climbing the slope of river Shedi. It is a fact that when there is a slope on a bridge or a culvert and if two vehicles are coming from the opposite directions, one cannot see the vehicle coming unless the coming vehicle comes at the top of the slope or the vehicle wherein one is travelling reaches to the top because, on both the sides of the bridge there is a slope. It is, therefore, advisable that the vehicles coming from both the directions should drive their respective vehicles in the extreme left hand side and should reduce the speed unless the road ahead is totally visible. This accident appears to have taken place because the drivers of both the vehicles did not take their respective vehicles on the extreme left hand side nor reduced the speed. The driver of the truck could not see Maruti Car coming from the opposite direction nor the driver of the Maruti car could see the driver of the truck on the other side because of the slope. Suddenly when they saw the other vehicle, it was too late and the drivers could not control their respective vehicles because of their speed and that is how the collision took place. In my opinion, therefore, it is a case of contributory negligence and it appears to be a head-on-collision, and therefore, the drivers of both the vehicles are equally responsible for the accident. I, therefore, attribute 50% negligence to the drivers of both the vehicles. Exh. 40 is a copy of the policy of Oriental Insurance Company Ltd. It shows that at the relevant time, the opponent No. 2 was the owner and opponent No. 3 was the insurer of the

offending vehicle. Exh. 41 is a certificate of insurance issued by opponent No. 6- United India Insurance Company Ltd. which shows that at the relevant time, the opponent No. 5 was the owner and opponent No. 6 was the insurer of the Maruti Car in question. Thus, all the opponents are liable to pay compensation to the petitioners. In M.A.C.P. No. 1414 of 1996 the driver of the Maruti Car himself is the petitioner, and therefore, the owner and insurer of the said vehicle have not been joined as opponents. I, therefore, decide issue No. 1 accordingly."

4. This is one of the bone of the contention that the Tribunal has not considered the fact that there were two vehicles of unequal magnitude involved in the accident.

5. The concept of contributory negligence requires to be considered in this case. The vehicles were not of equal magnitude. It was an involvement of truck of one side which was coming down of the slope and there were marks of brakes of car, and therefore, it can be said that the driver of the car had taken pre-caution, whereas the driver of the truck lost the control and collision took place. The contributory negligence of small vehicle is less compare to a big vehicle. The driver of the big vehicle has to take more caution. In light of the facts and circumstances as emerges before this Court, the driver of the truck was more negligent than the driver of the car, and therefore, the negligence of driver of the car can be attributed to 30% instead of 50%.

6. As far as the contention of the appellant is concerned, the accident occurred way back in the year 1996. The First Appeal was listed in the year 2009 which was given First Appeal (Stamp) No. 2195 of 2000, but it appears that the objections were removed much after.

7. The second contention raised by Ms. Mohini Bhavsar for Mr. B.G. Jani that the Tribunal has erred in considering the multiplier where the age of the applicant is admitted to be 28 years. This fact is not controverted, and therefore, as per the decision of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , multiplier of 17 will manure for the benefit of the present appellant. As far as 10% disability is concerned, I do not find any considerable deviation, and therefore, the same is accepted as normally it would be half disability as assessed by the doctor, more particularly, in this case, Dr. Upadhyaya for whom, this Court would not opine anything else. Hence, all that requires to be changed is Rs. 6,000 x 5, which comes to Rs. 30,000/-, and out of this slashing of the amount as the Tribunal has considered the contributory negligence is not 50% but 30%, the amount which now comes is Rs. 1,41,500 multiplied by $3 \times 100 = 47,016/-$ rounding to Rs. 47,000/-, and therefore, that would be the entitlement of the appellant. Therefore, an additional amount of Rs. 47,000/- will have to be paid to the appellant with 7.5% interest.

8. Learned Advocate Ms. Rehvar for the Insurance Company has submitted that looking to the facts and circumstances of the case, the issue of contributory negligence has been rightly dealt with by the Tribunal and looking to the facts of

the case, both the drivers have been held contributory negligence of 50% and the reasons given by the Tribunal cannot be found fault with.

9. It goes without saying that two vehicles of different magnitude have dashed with each other. The car was on the left side of the road whereas the truck was on wrong side which is born out from the judgment of the Tribunal. In light of this fact, it cannot be gain said that both the drivers were equally responsible for the accident just because the vehicles had collided on the side of the driver. The panchnama ought to have been appreciated by the learned Tribunal, wherein the Truck has come on the side of the car and therefore, this fact cannot be looked aside, and therefore, in view of catena of decisions to the effect that the accident took place between bigger and small vehicle where it is an admitted position of fact that the bigger vehicle would throw the smaller vehicle and hence 30% negligence is attributed to the present appellant instead of 50% and the award is modified to this effect only.

10. So far as award on other count is concerned, I do not find any abnormality or perversity which requires any interference by this Court. It goes without saying that this Court can grant just and proper compensation, however, as the appellant has restricted the claim to the tune of Rs. 50,000/-, and if the amount calculated is above Rs. 50,000/-, the same shall stands restricted to Rs. 50,000/-. In the result, this appeal is partly allowed with no order as to costs. The contributory negligence of the appellant is not 50% but 30%, and the amount which now comes is Rs. 1,41,500/- multiplied by $3 \times 100 = 47,016/-$ rounding to Rs. 47,000/-. Therefore, an additional amount of Rs. 47,000/- will have to be paid to the appellant with 7.5% interest.