

(2013) 10 GUJ CK 0172
In the Gujarat High Court

Case No : First Appeal No's. 1792 and 1793 of 2013

Zaverbhai Ranabhai Rajput	Vs	APPELLANT
Samit Thakorbbhai Patel and 1 Another		RESPONDENT

Date of Decision : 21-10-2013

Acts Referred:

Citation : (2013) 10 GUJ CK 0172

Hon'ble Judges : M.D. Shah, J

Bench : Single Bench

Advocate : H.M. Parikh, for the Appellant; Rasesh H. Parikh, Advocate for the Appellant No. 1, Ms. Lilu K. Bhaya, Advocate for the Defendant No. 2 and Notice Served for the Defendant No. 1, for the Appearing Parties

Final Decision : Partly Allowed

Judgement

M.D. Shah, J.—By this first appeals, the appellant herein-original claimants have challenged the judgment and award dated 30.03.2013 passed by the learned M.A.C.T. (Auxi.), 7th (Ad-hoc) Additional District Judge, Nadiad in M.A.C.P. No. 774 of 2011 and M.A.C.P. No. 777 of 2011. Claim petition was filed by the claimants on account of accident which took place on 30.03.2011. It is the case of the original claimants that they were going on scooter with moderate speed. When they reached near Resham Hotel, at that time original opponent No. 1 came driving his scooter in rash and negligent manner. As a result, accident occurred. Both the claimants sustained injuries. After recording evidence, learned Tribunal by judgment dated 30.03.2013 partly allowed the claim petitions and awarded compensation of Rs. 1,61,400/- in favour of the original claimant of M.A.C.P. No. 774 of 2011 and Rs. 57,140/- in favour of the original claimant of M.A.C.P. No. 777 of 2011. Against the said award, original claimants have preferred this appeals for enhancement of compensation.

2. It is submitted by learned advocate for the appellant herein-claimants that so far as M.A.C.P. No. 777 of 2011 is concerned Tribunal has not properly considered and appreciated the evidence on record. It is also submitted that age

of the claimant was 60 years at the time of accident and Tribunal has committed error in applying multiplier of 9. It is also submitted Tribunal has not properly considered monthly income of the claimant. Therefore, it is requested to allow first appeal.

2.1 It is submitted by learned advocate for the appellant herein-claimants that so far as M.A.C.P. No. 774 of 2011 is concerned Tribunal has not properly considered and appreciated the evidence on record. It is also submitted that claimant was 35 years at the time of accident. It is also submitted that proper multiplier is not applied by the Tribunal. Therefore, it is requested to allow first appeal.

3. It is submitted by learned advocate for the respondent-Insurance company that award passed by the Tribunal is just and proper and not required to be interfered by this Court and so it is requested to dismiss the appeals.

4. This Court has gone through the judgment and award dated 30.03.2013 passed by the learned Tribunal together with oral as well as documentary evidence on record.

5. Heard Mr. Parikh learned advocate for the appellants and Ms. Bhaya, learned advocate for the respondent-Insurance Company.

6. It is not in dispute that in the accident, both the claimants sustained injuries. Age of the claimant Zaverbhai was 60 years and claimant Manubhai was 35 years at the time of accident. This Court has gone through the decision of Hon'ble Apex Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, So far as M.A.C.P. No. 777 of 2011 (First Appeal No. 1792 of 2013) is concerned claimant received serious injury and he remained in hospital for 14 days. He went under operation also. Considering age of claimant, evidence on record and considering decision of the Hon'ble Supreme Court in the case of Sarla Verma (Supra), in opinion of this Court, original claimant is entitle to get Rs. 15,000/- as additional compensation and it would meet the ends of justice.

7. So far as M.A.C.P. No. 774 of 2011 (First Appeal No. 1793 of 2013) is concerned, claimant received injuries. Considering the age of the claimant and considering the evidence on record and ratio laid down by the Hon'ble Supreme Court in the case of Sarla Verma (supra), in opinion of this Court, original claimant is entitle to get Rs. 10,000/- as additional compensation and it would meet the ends of justice. In view of above, the first appeals are partly allowed. The original claimants of M.A.C.P. No. 777 of 2011 (First Appeal No. 1792 of 2013) are entitled to get additional compensation of Rs. 15,000/- with interest @ 7.5% per annum on the additional compensation from the date of filing of the claim petition. The original claimants of M.A.C.P. No. 774 of 2011 (First Appeal No. 1793 of 2013) are entitled to get additional compensation of Rs. 10,000/- with interest @ 7.5% per annum on the additional compensation from the date of filing of the claim petition. Judgment and award dated 30.03.2013 passed by

the learned M.A.C.T. (Auxi.), 7th (Ad-hoc) Additional District Judge, Nadiad in M.A.C.P. No. 774 of 2011 and M.A.C.P. No. 777 of 2011 is modified to the aforesaid extent. The remaining part of the judgment and award would remain unaltered. Record and Proceedings, if any, be sent to the concerned Tribunal forthwith.