

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/FIRST APPEAL NO. 3085 of 2009****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE SANDEEP N. BHATT**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

ISHWARLAL KASTURLAL PANDYA

Versus

IBRAHIMBHAI FARUKDIN VOHRA & 2 other(s)

Appearance:

MR MTM HAKIM(1190) for the Appellant(s) No. 1

for the Defendant(s) No. 2

RULE SERVED for the Defendant(s) No. 1,3

CORAM: HONOURABLE MR. JUSTICE SANDEEP N. BHATT**Date : 01/04/2022****ORAL JUDGMENT**

1. The present First Appeal, under Section 173 of Motor Vehicles Act, 1988, is preferred by claimant – Ishwarlal Kasturlal Pandya, being aggrieved and dissatisfied with the judgment and award dated 22.10.1999 passed by the Motor Accident Claims Tribunal (Aux.), Vadodara in Motor Accident Claim Petition No.1198 of 1992, by

which the Tribunal has awarded Rs.1,42,000/- with 12% per annum interest, holding Opponent Nos.1 to 3 liable, jointly and severally.

2. Brief facts of the case are as under:

2.1 On 08.12.1991 at about 5:30 p.m., applicant with his Scooter bearing registration No.GJF-9111 was going on the side of Vega Crossing on Dabhoi-Baroda Road. At that time, Opponent No.1 – Ibrahimbhai Farukdin Vohra came by driving his Truck bearing registration No.GJ-7T-7091, in rash and negligent manner and dashed with the Scooter of the applicant, as a result, the scooter was smashed and the claimant sustained injuries on various parts of the body. Thereafter, he had been admitted in S.S.G. Hospital and was undergone for various operations. He has sustained fracture injuries on both the legs and also sustained injuries on head and right hand. At the time of accident, the claimant was having valid and effective driving licence and also having a badge for driving. The claimant was having agricultural land and was earning Rs.1,800 to Rs.2,000/- p.m. Due to the said accident, he has suffered mental pain and shock, loss of income. Thereafter, the claimant has filed the claim petition by claiming compensation of Rs.3,00,000/- for compensation towards loss of income income, pain, shock and suffering, conveyance allowance, medicines, special diets etc.

2.2 Notices were served to all the Opponents. Opponent No.2 – The New India Insurance Company has appeared through its advocate and filed its written statement at Exh.10 and denied the averments made in the claim petition.

2.3 The Tribunal has framed the issues for its determination at Exh.12l. The claimant has deposed at Exh.16 and was also cross-examined by learned advocate the for insurance company. He has also produced the documentary evidence; like F.I.R. at Exh.17, Panchnama at Exh.18. Further, it is also noted by the Tribunal that the driver of the involved Truck has not stepped into the witness box to depose before the Tribunal. Further, the claimant has produced the medical papers of the S.S.G. Hospital at Exh.19-28 & 30 and the necessary papers for treatment from Physiotherapy Department at Exh.29 & 32. Further, he has produced various documentary evidence; like various medical bills at Exh.21-49, disability certificate at Exh.44. Dr. Shailesh J. Parikh has also examined at Exh.43 and he has mentioned disability to the extent 75% on right leg and to the extent 20% on left leg. The claimant has also produced revenue record at Exh.34 to show that he is having the agricultural land.

2.4 After considering documentary as well as oral evidence available, the Tribunal has awarded Rs.1,42,000/- with 12% p.a. interest under various heads to the claimant.

2.5 Being aggrieved and dissatisfied with the insufficiency of the amount awarded by the Tribunal, the present appeal is preferred for further enhancement of Rs.1,50,000/-.

3.1 Learned advocate Mr. M.T.M. Hakim for the appellant – original claimant has submitted that the Tribunal has committed

error in not considering the functional disability of the claimant, who has suffered various injuries and was hospitalized for about 6 days. Further, he has submitted that the claimant was doing job as a truck driver and due to such injuries, he is not able to drive the Truck, therefore, his disability should be considered 100%. Dr. Shailesh J. Parikh at Exh.43 has specifically opined that the claimant is having lot of difficulty in moving his legs as well as hand freely and therefore, the disability in the right foot as well as left foot are also assessed. Accordingly, the Tribunal should have considered the deposition of claimant at Exh.16 and also by considering deposition of Dr. Shailesh J. Parikh at Exh.43 and other documentary evidence, which is available on record and holding that there is 100% functional disability caused to the claimant.

3.2 Learned advocate Mr. Hakim has relied on the judgments of Hon'ble Apex Court in the case of *Mohan Soni v. Ram Avtar Tomar* reported in *2012 1 GLH 399* and *Syed Sadiq & Ors Vs. Divisional Manager, Uniter India Insurance Company Ltd.* reported in *(2014) 2 SCC 735*, by which he has submitted that in case of truck driver, and looking to the injuries caused to the claimant, to the extent 100% functional disability should be considered. Further, he has considered that the claimant was aged about 39 years old and was earning Rs.1,500, which was considered by the Tribunal, where the future prospects to the extent 40% should be added and therefore, after considering 100% functional disability, the amount of Rs.2,100/- p.m. is required to be considered. Further, towards future loss of income, the real amount will come to Rs.25,200 p.a. and

looking to the age of the deceased, multiplier of 16 should be awarded. Accordingly, total amount of future loss comes to Rs.4,03,200/-. Further, he has pointed out that looking to the hospitalization of the claimant that first, he was admitted and remained in the hospital about 6 days and he has implant of four rods in right foot and plasters in hands as well as foot and further, he has also submitted that his scooter was also damaged to the huge extent and therefore, the amount, which is awarded by the Tribunal towards pain, shock and suffering is insufficient, which should be on higher side.

3.3 Further, learned advocate Mr. Hakim has submitted that the Tribunal has erred in awarding meagre amount of Rs.2,000/- towards medical expenses even though, the papers relating to medical treatment are also produced and further Rs.2,000/- conveyance expenses, Rs.2,000/- towards special diets and Rs.3,000/- towards loss of income for two month is awarded by the Tribunal and thus, the Tribunal has come to the conclusion that Rs.1,42,000/- is required to be awarded to the claimant which should be as per the calculation in the decision of the Hon'ble Apex Court in the case of ***Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr.*** reported in ***(2009) 6 SCC 121*** and therefore, as per the decision in the case of ***Syed Sadiq & Ors (supra)***, the Hon'ble Apex Court has awarded towards medical expenses, towards pain, shock and suffering, towards loss of amenities and accordingly, he has prayed to enhance the amount of compensation which is awarded by the Tribunal to the claimant, looking to the facts and circumstances, which is supported

by the abovementioned judgment of the Hon'ble Supreme Court.

3.4 He has relied on the judgment of the Hon'ble Apex Court in the case of *Mohan Soni Vs. Ram Avtar Topmar & Others* reported in *(2012) 2 SCC 267*, para 12 is relevant, by considering the disability of carpenter in that judgment and the Hon'ble Apex Court has considered the disability to the extent 90%. Therefore, by considering various judgments of the Hon'ble Apex Court and by enhancing the amount of compensation, he prays that the present appeal may be allowed.

4.1 Though, the notice is served in the present appeal to respondent No.1 and respondent No.2 and respondent No.3 is served by bailiff and has received the signature on 16.10.2009 by taking the rubber stamp of the respondent No.3 – insurance company.

4.2 On the copy of the notice served by bailiff and accordingly, as per the decision of the Hon'ble Apex Court in the case of *Moni Denial Vs. Usha Rai & Anr.* reported in *2011 1 ACC 485*, the notices severed to respondent No.1 and respondent No.2 but not appearing in the appeal but the respondent No.3 can complied the impugned judgment and award by depositing the amount before the Tribunal. The respondent No.3 – insurance company is not appearing, though insurance company is served in the present appeal. Accordingly, today the matter is proceeded for final hearing.

5.1 In aforesaid circumstances, I have considered the submissions made by learned advocate Mr. Hakim for the appellant. I have

perused record and proceedings. It transpires that it is correct that the Tribunal has calculated the amounts under various heads on the very lower side, looking to the injuries sustained by claimant and his hospitalization period of 6 days initially in S.S.G. Hospital and thereafter, he has received various treatments also by considering that the claimant has gone under various operations in his legs and has implant of four trods in his legs, the amount towards pain, shock and suffering of Rs.25,000/- is found on very lower side and therefore, the amount should be considered Rs.50,000/- towards pain, shock and suffering. The Tribunal has awarded amount of Rs.1,08,000/- p.a. towards future loss of income, after considering 100% disability as per the decisions of the Hon'ble Apex Court in the case of *Mohan Soni (supra)* and *Syed Sadiq & Ors (supra)*, the amount of compensation is required to be enhanced. Accordingly, by considering actual income Rs.1,500/- p.m. of the deceased and by adding to the extent 40% towards future prospective i.e. Rs.600/-, total actual income comes to Rs.2,100/- p.m., where 100% functional disability is considered.

5.2 The annual loss of dependency would come to Rs.25,200/- which should be multiplied by 16 multiplier and at the time of accident, the claimant was aged about 39 years old as per the decision of the Hon'ble Apex Court in the case of *Sarla Verma & Ors. (supra)*, therefore, towards future loss of income comes to Rs.4,03,200/- the therefore, amount of Rs.4,03,200/- is awarded towards future loss of income in addition to that as mentioned above Rs.50,000/- is required to be awarded towards pain, shock and

suffering. As per the judgment in the case of *Syed Sadiq & Ors (supra)*, the Hon'ble Apex Court has awarded some amount towards loss of amenities i.e. Rs.50,000/- looking to that case, in this case, I found it just and proper to award Rs.25,000/- towards loss of amenities of life. As the claimant was hospitalized for more than two and a half months, and also he has to take rest and looking to the totality of the circumstances of the case, I found that towards special diet, transportation, attendant charges and medical expenses, the amount of Rs.20,000/- is required to be awarded to the claimant and the Tribunal has not committed any error in awarding Rs.3,000/- towards loss of income in absence of any other material evidence available on record. Therefore, total amount of compensation comes to Rs.5,02,200/- by calculating the amount which is as under:

Amount of Compensation	Different Heads
Rs.4,03,200/-	Future loss of Income
Rs.50,000/-	Pain, Shock and Suffering
Rs.25,000/-	Loss of Amenities of life
Rs.20,000/-	Special diet, Transportation, attendant charges and medical expenses
Rs.3,000/-	Actual loss of income
Rs.5,02,200/-	Total amount of compensation

5.3 Therefore, the judgment and award of the Tribunal, by which the Tribunal has awarded Rs.1,42,000/- with 12% p.a. interest from the date of application is modified by enhancing the amount of compensation Rs.5,01,200/- with 12% p.a. interest from the date of the application and accordingly, the additional amount of Rs.3,59,200/- with 12% p.a. interest is awarded to the claimant by

allowing this appeal, which would meet the ends of justice.

6. For the reasons recorded above, the following order is passed.

6.1 The present First Appeal No.3085 of 2009 is ***partly allowed***, with no order as to costs.

6.2 The impugned judgment and award is modified to the extent Rs.3,59,200/- is additionally awarded to the claimants with 12% p.a. interest, as noted above.

6.3 The respondent No.3 - insurance company shall deposit the said additional amount of Rs.3,59,200/- to the claimant with 12% p.a. interest, from the date of application within a period of six weeks from copy of receipt of this order.

6.4 On depositing of such amount, the concerned Tribunal shall pay the entire amount to claimant including earlier lying in FDR and/or with the Tribunal, by following due procedure, by account payee cheque, after proper verification.

6.5 Record and Proceedings lying be sent back to the concerned Tribunal, forthwith.

DIWAKAR SHUKLA

(SANDEEP N. BHATT,J)