

SUPREME COURT OF INDIA

Mithusinh Pannasinh Chauhan

Vs.

Gujarat State Road Transport

C.A.No. 7201-7202 of 2015

(J.Chelameswar and Abhay Manohar Sapre,JJ.,)

18.09.2015

JUDGMENT

Abhay Manohar Sapre,J.,

1. Delay condoned. Leave granted.
2. These appeals are directed against the common final judgment and order dated 14.03.2012 passed by the High Court of Gujarat at Ahmedabad in First Appeal No. 1536 of 2001 and First Appeal No. 1819 of 2001 which arise out of the award dated 30.05.2000 passed by the Motor Accident Claims Tribunal (MACT), Panchmahals at Godhra in Motor Accident Claim Petition No. 1071 of 1987.
3. By impugned judgment, the High Court partly allowed the appeal filed by the respondent–Corporation and reduced the compensation awarded to the appellant–claimant herein by the MACT and in consequence directed him to refund the excess awarded amount with interest at the rate of 12% p.a. to the respondent-Corporation and in consequence dismissed the appeal filed by the appellant herein for seeking enhancement of the compensation awarded by the MACT.
4. In order to appreciate the issue involved in these appeals, few relevant facts need mention infra,
5. On 13.09.1987, when the appellant–claimant was going on his bicycle from Godhra to Popatpura, at that time, respondent No.2, who was driving S.T. Bus No. GRU-8749 belonging to Gujarat State Road Transport Corporation (in short “Corporation”) came from Lunawada side and hit the appellant as a result of which he fell down and sustained serious injuries. The appellant was taken to the hospital at Godhra but later on transferred to Baroda Hospital and from there to Civil Hospital at Ahmedabad for further treatment. He sustained a serious head injury as a result of which he lost his memory. Now, he is neither able to speak and nor able to move properly. He underwent medical treatment in hospital for a long time. At the time of accident, he was aged about 35 years and was working as a Constable in SRP.

His earning was Rs.1400/- p.m. Due to the accident and resultant injuries sustained, the appellant unfortunately lost his job also.

6. The appellant then filed a claim petition being Motor Accident Claim Petition No. 1071 of 1987 before the Motor Accident Claims Tribunal, Panchmahals at Godhra under Section 166 of the Motor Vehicle Act, 1988 (In short, “the Act) for award of compensation and claimed a sum of Rs. 4 lakhs under various heads. By award dated 30.05.2000, the MACT partly allowed the appellant’s claim petition and held that accident in question was caused due to negligence of respondent No.1 therein (respondent No.2 herein) that the appellant had suffered 50% disability in his body due to injuries sustained and accordingly awarded to him a total sum of Rs.2,19,000/- as compensation which included expenses in receiving treatment and compensation for injuries sustained.

7. Dissatisfied with the compensation awarded by the MACT, the appellant filed an appeal being F.A. No. 1819 of 2001 for enhancement of claim awarded by the MACT whereas the Corporation-respondent No.1 herein filed F.A. No. 1536 of 2001 against that part of the award which allowed the claim petition in part and awarded Rs.2,19,000/- contending that it was on the higher side and hence be reduced.

8. By the common impugned judgment, the High Court partly allowed the appeal filed by respondent- Corporation and held that the claimant is entitled to Rs.1,15,200/- towards future loss of income instead of Rs.1,80,000/- awarded by the MACT and directed the claimant to refund the excess amount of Rs.64,800/- with interest at the rate of 12% p.a. to the respondent–Corporation. As a consequence, the appeal filed by the appellant herein for enhancement for compensation, was dismissed.

9. Aggrieved by the judgment passed by the High Court, the appellant- claimant has filed these appeals by way of special leave.

10. Heard Mr. Nikhil Goel, learned counsel for the appellant and Mr. R.P. Bhatt, learned senior counsel for respondent-1(Corporation).

11. Learned counsel for the appellant-claimant while assailing the legality and correctness of the impugned order contended that the High Court erred in allowing the appeal filed by the respondent-Corporation thereby erred in reducing the compensation awarded to the appellant by the MACT and further erred in dismissing the appellant’s appeal. It was his submission that having regard to the nature of the injuries sustained by the appellant in the accident and the percentage of permanent disabilities caused to the appellant due to the injuries on his body such as loss of speech and memory, his inability to move freely and lastly loss of permanent job of Constable on account of these disabilities, the MACT should have awarded Rs.4,00,000/- as claimed by the appellant in his claim petition rather than awarding Rs.2,19,000/- including expenses incurred on treatment. Learned counsel contended that since the MACT failed to award Rs.4,00,000/-, the High Court should have corrected the said error by enhancing the compensation amount to Rs.4,00,000/- by allowing the appellant's appeal and in consequence dismissing the respondent's appeal.

12. Learned counsel pointed out that the appellant had proved the nature of injuries so also the resultant disabilities caused to him due to sustaining of such injuries by examining Dr. Usha Goswami and also from his own evidence which remained rebutted for want of any evidence adduced by the respondents and hence taking into account the appellant's monthly salary, age 35 years, percentage of permanent disability duly proved (50% assessed by the MACT and 30% assessed by the High Court), expenses incurred in receiving long medical treatment in several hospitals proved by documents (Ex-P-1 to Ex-P-58), future loss of income and lastly compensation payable under the head of pain and suffering, a sum of Rs.4,00,000/- claimed by the appellant was just and reasonable compensation and hence it should have been awarded by the MACT or in any event by the High Court by modifying the award of the MACT in appellant's favour.

13. In contra, Mr. R.P. Bhatt, learned senior counsel appearing for respondent No.1 while supporting the impugned judgment contended that it does not call for any interference. His submission was that having regard to the nature of injuries sustained by the appellant and the resultant permanent disability caused to the appellant and the loss caused, what was awarded by the MACT was on the higher side and, therefore, it was rightly reduced by the High Court by allowing the respondent's appeal.

14. Having heard the learned counsel for the parties and on perusal of the record of the case, we find force in the submissions of the appellant.

15. We have examined the evidence adduced by the parties with a view to see the nature of injuries and the resultant disability caused to the appellant due to such injuries.

16. This issue was dealt with by the High Court in Para 6 and we find no good ground to differ with this finding of the High Court, which is otherwise not under challenge. It reads as under :

“As far as disability is concerned, Dr. Usha Goswami who has examined the claimant was Professor in Psychology Department and she is a head of the Psychology Department in the Civil Hospital, Ahmedabad. She categorically stated that due to injury, the claimant has lost his service and he is not able to speak properly and he had lost his memory and he is unable to move properly outside. However, the disability certificate was not produced by the claimant before the Tribunal. Therefore, in absence of disability certificate, 50% disability was assessed by the Tribunal which is on higher side. It should be 30% as the claimant is not able to speak and lost his memory.....”

17. Having rendered the aforementioned finding in appellant's favour, the High Court, in our opinion, should not have reduced the compensation awarded by the MACT but it should have enhanced the compensation by allowing the appellant's appeal.

18. In our considered opinion, in a case where the appellant has proved that he has lost his speaking power as also lost his memory retention power due to causing of head injury and further he is not able to move freely at the age of 35 years and lastly due to these injuries, he has also lost his job, we fail to appreciate as to how and on what reasons the MACT and the High Court could come to a conclusion that a compensation of Rs.4,00,000/- claimed by the appellant was on a higher side and thus reduced it to Rs.1,54,200/-. Indeed we found no reason.

19. In our considered opinion, keeping in view of the nature of injuries sustained by the appellant, resultant permanent disabilities caused to him to the extent of 50% or 30% due to such injuries which are held proved by the appellant coupled with the amount spent by him in receiving medical treatment also duly held proved (Ex-P-1 to Ex-P-58) by him, loosing the permanent job due to injuries sustained by him, future loss of income caused as a result of the injuries and lastly the continuous mental pain and agony suffered by him, a sum of Rs.4,00,000/- claimed by the appellant by way of compensation is just and reasonable.

20. In a case of this nature, in our opinion, the injuries sustained by the claimant-appellant herein are more painful because he has to live his remaining life with such disabilities, which he did not have before accident. This undoubtedly deprives him to live his normal life. The Courts below failed to take note of this material fact while determining the compensation, which in our opinion, calls for interference by this Court.

21. We are not impressed by the submission urged by the counsel appearing for respondent No.1 as in our opinion in the absence of any rebuttal evidence adduced by respondent No.1 and in the light of the findings recorded by the Courts below mentioned supra, the submission is found to be devoid of any merit and it is accordingly rejected.

22. In view of foregoing discussion, the appeals filed by the claimant succeed and are hereby allowed. Impugned order is modified in appellant- claimant's favour by awarding a sum of Rs.4,00,000/- by way of compensation against respondent No.1-Corporation. An awarded sum, i.e. Rs.4,00,000/- (Rs. 4 lakhs) would carry interest at the rate of 6% per annum payable from the date of claim petition till realization. No costs.