
(2024) 10 GUJ CK 0031

Gujarat High Court

Case No: First Appeal No. 3211 of 2010

Vaghari
Parshottambhai
Mohanbhai

APPELLANT

Vs

Vs Driver Of Matador
No GJ-3-T-675, Rabari
Sagrabhai Devsibhai
& Ors.

RESPONDENT

Date of Decision: Oct. 9, 2024

Acts Referred:

- Motor Vehicles Act, 1988 - Section 165, 166, 168, 173

Hon'ble Judges: J. C. Doshi, J

Bench: Single Bench

Advocate: Yogendra Thakore, G C Mazmudar, H G Mazmudar

Final Decision: Allowed

Judgement

J. C. Doshi, J

1. Aggrieved and dissatisfied with the judgment and award rendered by the Motor Vehicle Accident Tribunal (Auxiliary) at Patan on 12/10/2009

M.A.C.P. No. 3822 of 2002 (old M.A.C.P No. 400 of 2000), the appellant has filed this appeal questioning the legality and validity of the same

whereby the tribunal dismissed the claim petition on the ground that claimant did not remain present to lead the evidence.

2. Brief facts of the case are that 3. that on 15/04/1997 at about 9:30 O'clock when the appellant was going to Becharaji from village Mitha to meet

his relatives and when they reach near Mitha Cross Road at that time the opponent Matador bearing registration No. GJ-3-T-675 came with a full

speed in rash and negligent manner and dashed with the appellant due to which the appellant had received serious injuries on right hand, left leg. head

and chest. Thereafter, the appellant was transferred to the Mehsana Civil Hospital and thereafter due to the serious injuries the appellant was

transferred to the hospital of Dr. Kamlesh Gurjar (Orthopedic Hospital).

3. Thereafter, the appellant had claimed for a compensation of Rs.1,00,000/- by filing claim petition which came to be dismissed.

4. Learned advocate for the appellant Mr.Thakore would submit that tribunal committed serious error in dismissing the claim petition for non-

production of the evidence. He would further submit that it is a legal duty of the tribunal to award just and fair compensation to the victim of the road

accident once it is established that claimant has received injuries out of the road accident and therefore he would submit that tribunal has committed

error. He would further submit that considering the oldness of the claim petition, this Court, in First Appeal, being writ at large to the jurisdiction may

award the global compensation considering the injuries sustained by the victim as there is no quarrel in regards to that issue. He would therefore

submit to allow this appeal.

5. Learned advocate Mr.Majmudar for the respondent "ABC" insurance company would submit that since the claimant has not lead any evidence before

the tribunal despite the opportunity has been given, the tribunal is correct in dismissing the petition. He would further submit that claim petition was

filed in the year 1997 and it was dismissed in the year 2009. For all these years, though sufficient opportunity was given to the claimant, he did not

remain present to lead the evidence which ultimately compelled the tribunal to dismiss the claim petition and therefore this court may not be entertain

the present appeal.

6. Considering the rival submissions made before this Court ordinarily, this Court would remand the claim petition for fresh hearing and to assess the

just and fair compensation after permitting the claimant to lead the evidence but on factual ground issue of road accident as stated in the claim petition

is unquestioned where the claimant was pedestrian and while he was walking the metadoor dashed from resulted in multiple injuries. The claimant

sought compensation of Rs.1.00 Lakh and filed petition in the year 1997. The insurance company filed written statement before the tribunal that the

facts of the claim petition are put to the strict proof; issue of road accident is not disputed severely. Thus, the trivial issue is involved in the matter and

this court deem it fit to award the just and fair compensation.

7. It is noteworthy to mention that the provisions of the Motor Vehicles Act, 1988 which gives paramount importance to the concept of "just and

fair" compensation. It is a beneficial legislation which has been framed with the object of providing relief to the victims or their families. Section

168 of the Motor Vehicles Act deals with the concept of "just compensation" which ought to be determined on the foundation of fairness,

reasonableness and equitability. Although such determination can never be arithmetically exact or perfect, an endeavor should be made by the Court

to award just and fair compensation irrespective of the amount claimed by the claimants.

8. This Court in First Appeal also possesses jurisdiction of the tribunal under Section 165 and 166 of the MV Act and can also exercise by this Court

under Section 173 of the MV Act being the first appellate Court by assessing just and fair compensation. The injury certificate produced on record

would suggest that out of the road accident, the claimant received fracture of pelvis, right scapula and elbow and it is proved that claimant received

disablement and therefore since the claim petition is filed in the year 1997 I deem it fit to grant global compensation of Rs.40,000/- with interest @ 9%

p.m. from the date of filing of the petition since the insurance company has no dispute about its liability to pay the compensation for and on behalf of

the owner of the vehicle, as also the insurance policy was in force on the date of road accident.

7. For the foregoing reasons, the present appeal is allowed. Impugned judgment and order is quashed and set aside. The claimant is held entitled to

recover the amount of compensation of Rs.40,000/- with 9% interest from the date of filing of the petition till realization jointly and severally from the

respondents. The insurance company is directed to deposit the decretal amount within six weeks from today before the tribunal concerned. Upon

such deposit, the Tribunal shall disburse the entire amount to the claimants, by account payee cheque / NEFT / RTGS, after proper verification and

after following due procedure. While making the payment, the Tribunal shall deduct the courts fees, if not paid, in accordance with rules/law.

R & P be sent back.