
Legal Heirs of Khodabhai Khegarbhair Vankar & Ors. Versus Vs Executive Engineer & Ors.

First Appeal No. 1040 of 2013

Court: Gujarat High Court

Date of Decision: Dec. 24, 2024

Acts Referred:

Motor Vehicles Act, 1988 " Section 166, 173

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

Bench: Single Bench

Advocate: Yogendra Thakore, Vibhuti Nanavati, Hardeep L Mahida

Final Decision: Partly Allowed

Judgement

J. C. Doshi, J",

1. The present First Appeal, under Section 173 of Motor Vehicles Act, 1988, has been preferred by the legal heirs of deceased - Khodabhai",

Khegarbhair Vankar challenging judgment and award dated 09.08.2010 passed by the Motor Accident Claims Tribunal, Patan in Motor Accident Claim",

Petition No.4057 of 2002 (Old MACP No.1356 of 2000), whereby, learned Tribunal assessed compensation in tune of Rs.6,60,000/- and opponent",

no.4 and 5 of the claim petition are directed to pay said compensation along with interest at 7.5% p.a. and cost from the date of petition till realization.,

The claim petition was filed by deceased - Khodabhai, however, he expired in natural cause after impugned judgment and award was passed by the",

learned Tribunal and therefore, the appeal is filed by his legal heirs and representatives.",

2. The brief facts of the case are as under.,

2.1 On 02.06.2000, deceased - Khodabhai was going on Bullet No.GJ-2-3550 from Modera to Chanasma and when he reached at the place of",

accident, one Scooter being No.GJ-2-N-9022 came in rash and negligent manner and dashed with deceased, as a result, he received serious injuries.",

2.2 FIR of incident was registered before the concerned Police Station.,

2.3. The claimant filed claim petition under section 166 of MV Act being MACP No.4072 of 2002 claiming compensation of Rs.20,00,000/- along with",

interest jointly and severally from the opponents.,

2.4. After appreciating evidence on record, learned Tribunal was pleased to pass judgment and award in tune of Rs.6,60,000/-with 7.5% interest from",

the date of claim petition.,

2.5. Being aggrieved and dissatisfied with impugned judgment and award dated 09.08.2010, the legal heirs of - original claimant has filed present",

appeal.,

3. Learned advocate Mr.Thakore for the appellant assailed impugned judgment mainly on the ground that learned Tribunal ought to have taken income,

of the deceased at Rs.8466/- instead of Rs.5000/- per month. He would submit that deceased was claimant before the learned Tribunal and he has,

proved his income by producing salary certificate. He submits that since it is statutory evidence on record, learned Tribunal cannot depart and take",

any other figure as income of the claimant. He would further submit that deceased received serious injuries from road accident and Doctor opined that,

he became paraplegic and had no capacity to do any work and therefore, learned Tribunal ought to have assessed 100% functional disability. It is",

submitted that learned Tribunal erred in sticking with physical 75% disability assessed by Doctor. It is submitted that physical disability and functional,

disability, both are different and distinct. Physical disability may be assessed 75% but since deceased claimant become paraplegic due to road",

accident, learned Tribunal ought to have considered wholly incapacity to work, which lead to 100% functional disability. It is submitted that learned",

Tribunal failed to grant loss of future prospects corresponding to the age of the deceased - claimant. It is submitted that in view of judgment of,

Hon'ble Apex Court in National Insurance Company Ltd. Vs. Pranay Shethi reported in [(2017) 16 SCC 680], 30% rise is required to given for loss of",

future prospects. It is also submitted that learned Tribunal ought to have assessed pain, shock and suffering, transportation charges, actual loss of",

income, attendant charges rationally.",

3.1. Upon above submissions, it is submitted to enhance amount of compensation granted by learned Tribunal.",

3.2. Second submission of learned advocate Mr.Thakore for the appellants was to the extent that learned Tribunal has wrongly assessed 20%,

contributory negligence of the deceased - claimant in causing road accident. He would submit that driver of offending vehicle did not enter into,

witness box. Claimant has asserted that driver of offending vehicle was fully negligent in causing road accident. Such assertion has not been rebutted,

by driver of offending vehicle or by other side by adducing evidence by entering into witness box and in absence thereof taking 20% negligence of,

claimant - deceased based on panchanama on record is incorrect approach on the part of learned Tribunal and deserves to be quashed and set aside.,

3.3. Mainly on above submissions, it is submitted to allow the appeal and enhance amount of compensation and also to quash finding of learned",

Tribunal assessing 20% negligence of the deceased - claimant.,

4. Per contra, learned advocate Mr. Vibhuti Nanavati for the Insurance Company argued that claimant was government servant. As per his cross",

examination, he admitted that he continued his service even after receiving injuries from road accident. It is submitted that claimant has also admitted",

that he has received salary subsequent to road accident and therefore, it indicates that injury received from road accident has not adversely affected",

earning of the claimant. In this circumstances, learned Tribunal has rightly taken Rs.5000/- per month towards income factor of claimant and such",

finding is not required to be interfered with. He would further submit that Medical Officer has assessed physical disability and since claimant,

continued his work subsequent to injury received from road accident, there is no reason to take 100% physical or functional disability. So far as",

attendant charges is concerned, he would submit that deceased survived for 11 years after road accident, therefore, multiplier of 11 can be taken to",

assess attendant charges.,

4.1 Mainly on above submissions, it is submitted to pass necessary orders.",

5. I have heard learned advocates for both the sides and also gone through evidence on record and re-appreciated the same.,

6. The fact which is coming from the pleading is that deceased - claimant - Khodabhai Vankar was aged 48 years at the relevant time and serving as,

overseer in Water Supply and Sewerage Board, Patan. On 02.06.2000, deceased was riding bullet No.GJ-2-3550 and going from Modera to",

Chanasma and when he reached near Rupero lake on Chanasma -Patan road, one scooter no.GJ-2-N-9022 came in rashly and negligently and dashed",

with bullet motorcycle, as a result, deceased - claimant received serious injuries. He was shifted to Civil Hospital, Patan and from there, he was",

shifted to VS Hospital, Ahmedabad and subsequently he stayed as indoor patient in Dr.Mukeshbhai Patel's hospital from 03.06.2000 to 01.07.2000.",

Doctor has opined paraplegic. Mainly on this fact, the petition under section 166 of MV Act was moved against opponent no.1 and 2 being owner and",

insurer of bullet motorcycle and opponent nos.4 and 5 being owner and insurer of scooter involved in road accident.,

7. Learned Tribunal on pleading of parties framed issue at Exh.19, which reads as under :-",

(i) Whether it is proved that the claimant sustained injuries on account of rashness or negligent driving on the part of the driver of the,

vehicle / vehicles involved in the accident ?,

(ii) What amount, if any, the claimant is entitled to by way of compensation and from which of the opponent ?",

(iii) What order and award ?,

8. Apart from entering into witness box, claimant has produced documents from Exh.26 to Exh.45. Driver of scooter did not enter into witness box.",

8.1. Learned Tribunal after assessing and examining evidence on record exonerated opponent nos.1 and 2 and passed awarded stated supra against,

opponent nos.4 and 5.,

9. At the outset, Dr. Mukesh Patel, issued medical certificate at Exh.29 which demonstrate paraplegic injury. Said certificate reads as under :-",

This is to certify that K.K.Vankar is admitted in my hospital from 03.06.2000. He is still under treatment. He has cervical spinal cord injury",

with paraplegic."",

10. MRI Impression recorded by Gujarat Imaging Center dated 21.07.2000 produced on record at Exh.32 reads as under :-,

Impression",

MR findings are suggestive of posterior herniation of C3-C4 intervertebral disc causing compression over ventral aspect of cervical dural,

theca and exiting nerve roots. Changes of myelomalacia at C3-C4 level.,

Thickening of ligamentum flavum at C6-C7 level.,

As compared to previous MRI dated 3.6.2000, no significant changes have been noted in extent and degree of herniation."",

11. Certificate of Medical Board dated 15.10.2003 at Exh.37 declares deceased - claimant to be unfit for job. Final certificate issued by Sheth,

N.L.General Hospital, Patan declares that claimant was physically disabled upto 75% body as whole.",

12. Conjoint reading of above documents produced by claimant establish that claimant was unfit for job and was 100% functional disability. Spinal cord,

and vertebra numbers of which stated supra windswept that deceased - claimant had become infirm and frail to the extent that he could not move on,

his own. Perusing impugned judgment passed by the learned Tribunal, it appears that necessary appreciation of medical documents which are not",

rebutted are missing.,

13. To assess the quantum of compensation to be awarded to the claimant, this Court has to assess whether the permanent disability caused has any",

adverse effect on the earning capacity of the appellant as held by Hon'ble Apex Court in the case of Sandeep Khanuja v/s. Atul Dande [(2017) 3,

SCC 351]. Relevant paragraph of the said judgment reads as under :-,

“The crucial factor which has to be taken into consideration thus is to assess whether the permanent disability has any adverse effect on,

the earning capacity of the injured. We feel that the conclusion of the MACT on the application of aforesaid test is erroneous. A very,

myopic view is taken by the MACT in taking the view that 70% permanent disability suffered by the appellant would not impact the earning,

capacity of the appellant. The MACT thought that since the appellant is a chartered accountant he is supposed to do sitting work and,

therefore his working capacity is not impaired. A person who is engaged and cannot freely move to attend to his duties may not be able,

to match the earning in comparison with the one who is healthy and bodily able. Movements of the appellant have been restricted to a large,

extent and that too at a young age.

14. Reference to judgment of Hon'ble Apex Court in the case of Raj Kumar v/s. Ajay Kumar [(2011) 1 SCC 343] also deserves to be considered.,

Hon'ble Apex Court held that where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation for loss of",

future earnings would depend upon the impact and effect of the Permanent Disability on his earning capacity. The Hon'ble Apex Court observed as,

under :-,

"Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of",

future earnings, would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not",

mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the,

cases, the percentage of economic loss, that is, percentage of loss of earning capacity, arising from a permanent disability will be different",

from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent",

disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent",

disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of",

earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation. What,

requires to be assessed by the Tribunal is the effect of the permanently disability on the earning capacity of the injured; and after assessing,

the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of",

earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on",

appreciation of evidence and assessment, the Tribunal may find that percentage of loss of earning capacity as a result of the permanent",

disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said",

percentage for determination of compensation.

15. In the present case, deceased - claimant has suffered 75% physical disability as per medical certificate. Medical Board has declared him unfit for",

job he was doing prior to road accident. Looking to this aspect, according to this Court, deceased - claimant should be treated as wholly incapacitated",

to do any work which he was doing prior to road accident. It was argued before this Court by learned advocate Mr.Nanavati that in view of cross,

examination whereby claimant has admitted that he was continued in service so also given salary is concerned, it is found out that he was given token",

salary by employer out of generosity, and could not be treated that he was in service and doing work which he was doing prior to road accident. The",

injury which the claimant has sustained has made him paraplegic. Since lower part of body has become paraplegic, deceased - claimant is to be",

treated as wholly incapacitated to do any work. Learned Tribunal ought to have considered deceased - claimant as fully dysfunctional.,

16. Salary certificate issued by Gujarat Water Supply and Sewerage Board is produced at Exh.34. According to this certificate, basic salary of the",

claimant was Rs.5750/-, DA - Rs.2185/-, HRA - Rs.431/- and medical allowance Rs.100/-, in total the claimant was getting Rs.8466/- per month and",

Rs.40/-was deducted towards professional tax. Therefore, Rs.8400/- is required to be taken as income of the claimant.",

17. Learned Tribunal Learned Tribunal has considered salary certificate as well as income tax return filed by the claimant to taken income at,

Rs.5000/- after deducting different allowances granted to the claimant. In the case of Meenakshi v/s. The Oriental Insurance Co. Ltd. [2024 INSC,

573], the Hon'ble Apex Court after referring its earlier judgment held that emoluments and other benefits being part of service granted to the victim of",

road accident should be considered as his income.,

18. In view of above, according to this Court, learned Tribunal erred in taking Rs.5000/- as monthly income of the claimant. As per statutory",

documents being salary certificate, learned Tribunal ought to have considered Rs.8400/- as monthly income of the claimant. As discussed herein-",

above, there is no quarrel on the aspect that claimant was 48 years of age at the time of road accident. Learned advocates for both the sides had",

admitted proposition of age. Even for the claimant being fixed salaried person, Hon'ble Apex Court in the case of Kavita Nagar v/s. The Oriental",

Particulars,Amount (Rs.)

Future dependency Loss Rs.8400/- + 30% rise = Rs.10,920/- per month and

applying multiplier of 11, total amount would be Rs.14,41,440/-,"14,41,440/-

Medical bills,"1,25,000/-

Future medical bills,"50,000/-

Pain, shock and suffering","2,00,000/-

Transportation charges,"25,000/-

Actual loss of income (Rs.8400/- x 6),"50,400/-

Attendant charges,"1,32,000/-

Special diet,"25,000/-

Total"20,48,840/-

Less: 20% self negligence of deceased claimant,"4,09,768/-

Less : amount already awarded by Tribunal,"6,60,000/-

Additional amount which is awarded,"9,79,072/-