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DURATION 05- 05- 16
EXH : 38 /A

BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL, (AUXI.) BHUJ-KACHCHH.

M.A.C.P. No. 413/2013.

Dilubha Tejmalji Jadeja,
Age: 53 years , Occupation: Agriculture
R/o. village: Parjau,
Taluka:- Abdasa- Kachchh. ...Claimant.

V/s.

(1) Salim Ishak Hingorja,
Age: Adult, Occupation: Driving,
R/o. Balapar, Budadhro,
Taluka:- Abdasa- Kachchh.
(Driver of Truck No. GJ-12-AT-5928)

(2) Vala Bhachu Mata
Age: Adult, Occupation: Transport
R/o. Dhaneti, Taluka:- Bhuj- Kachchh.
(Owner of Truck No. GJ-12-AT-5928)

(3) Universal Sompo General Insurance Co.Ltd.,
201- 208, Crystal Plaza, opposite Infinity Hall,
Link Road, Andheri (West), Munbai.
...Opponents.

Claim Petition for claim of Rs. 43,55,000/-

Appearance :
Mr. S.T.Patel, the Learned Advocate for the applicant.
Mr. D.K.Buch, the Learned Advocate for the opponent No.3.

J U D G M E N T

1. The applicant has filed present claim petition to recover compensation for the vehicular injuries sustained on dated 10/01/2011. Applicant has claimed compensation of Rs. 43,55,000/- from the Opponents under section 166 of the M.V.Act.

2. The factual matrix of the claim petition is stated briefly as under:-

2.1 That on 10/01/2011 at about 14:45 hours, the applicant was going on his Motor Cycle No. GJ-12-L-7783. When he reached near the place of accident, at that time opponent No.1 came along with Truck No. GJ-12-AT-5928 with full speed and in negligent manner and at an excessive speed and dashed the said Truck with the Motor Cycle No. GJ-12-L-7783 of claimant from behind and thereby caused the accident. Due to impact of this accident, the applicant sustained serious injuries and became permanent disable. It is further stated that the accident was occurred due to negligence of opponent No.1 Opponent No.2 is the owner and opponent No.3 is the insurer of said Truck. Finally claimant has claimed Rs. 43,55,000/- towards compensation under the different heads from the opponents.

2.2 The summons of the claim petition were served upon the opponents. Opponent No.1 and 3 did not appear before the Tribunal. Opponent No. 3 i.e. Universal Sompo General Insurance Co.Ltd appeared through its Ld. advocate and filed written statement vide Exh. 16 and denied the fact of the claim petition in to to.

3. The claimant had filed application under Section 140 claiming interim relief vide Exh.6 which was granted vide order dated 26/10/2016.

4. From the above referred pleadings, this Court had framed the following issues vide Exh: 17:

(1) Whether it is proved that the claimant sustained injuries on account of rash and/ or negligent act of the driver of vehicle involved in the accident?

(2) Whether the claimant is entitled to compensation from the opponents or any of them? If yes, what amount and from

whom?

(3) What Award?

6. My findings to the above issues are as under :

(1) In affirmative.

(2) Partly in affirmative.

(3) As per final order.

REASONS

7. Heard the Ld. Advocate for respective parties, perused the record. Read the written argument of Ld. Advocate for the applicant at Exh.-37

8. In order to prove his case, the applicant/ claimant has produced the following oral as well as documentary evidence. :-

8.1 **Oral Evidence**

Sr. No.	Documents	Exh. Marks
1	An affidavit of applicant Dilubha Tejmalji Jadeja	23

8.2 **Documentary Evidence**

Sr.	Documents	Exh. Marks

No		
1	True Copy of Charge-sheet	25
2	True Copy of FIR	26
3	True Copy of Spot Panchnama	27
4	True Copy of RC Book of Truck No.GJ-12-AT-5928	28
5	True Copy of Insurance Policy of Truck No.GJ-12-AT-5928	29
6	True Copy of driving licence of opponent No.1	30
7	True Copy of driving licence of opponent No.1	31
8	Medical Bills	33
9	Prescriptions	34
10	Disability Certificate	Mark-14/1
11	Village Form No.-8-A	Mark-22/1
12	Village Form No. 7/12	Mark-22/2 To 22/5
13	Village Form No.-8-A	Mark-22/6
14	Village Form No. 7/12	Mark-22/7

<u>Issue No. 1 :</u>

9. In support of the claim petition, the claimant has

produced the affidavit of chief–examination at Exh: 23, whereby he has reiterated the averments made in the claim petition. The insurance company has cross–examined the claimant, but nothing has been borne out from the cross – examination. Over and above, affidavit of chief–examination, claimant has produced copy of FIR, copy of spot panchnama, copy of Chargesheet. It is transpired from the FIR at Exh.–26 that the complaint lodged against the driver of Truck No. GJ–12–AT–5928 and it appears from the FIR that the driver of said Truck was driving his Truck in rash and negligent manner and dashed with the Motor Cycle in which the applicant was seated and riding the said Motor Cycle and the claimant sustained injuries in the accident and opponent No.1 flee away with his truck. Now, looking to the charge sheet at Exh.–25 it clearly appears that after the whole investigation police had filed charge sheet against the opponent No.1 and it also appears from the said chargesheet that due to negligence of opponent No.1 the incident was occurred in which applicant sustained serious injuries including fracture injury. Further, the opponent No.3 had not examined opponent No.1 who was driving said Truck at the time of incident and not proved that the opponent No.1 was driving his vehicle in good manner and not violated any rules of M.V. Act. So, it is cardinal principal of law that unless the tort feasor is examined by the Insurance Company adverse inference is required to be drawn against the tort feasor. It is also to be noted that Truck is comparatively heavy vehicle than Motor Cycle. It is also well settled law that the drivers who are moving with heavy vehicle on the road, they bear greater responsibility not only towards the pedestrian, but also towards cyclist and other small vehicle and therefore, to drive their vehicles in such a manner that they can stop them and take them into control within friction of moment to avoid the collision. The driver of heavier vehicles were expected to take more care while driving on the road. At the relevant time of accident, the claimant was going on his Motor Cycle and there was straight road and therefore, the opponent no.1 could visualize the movement of the Motor Cycle and if he had been diligent he could have avoided the accident, but he failed to do so. So, considering these factual aspects and considering the deposition of the claimant at Exh.-23, FIR, place of occurrence panchnama, Chargesheet, relevant medical papers, it becomes clear that, accident has occurred due to negligent driving of opponent No.1 and the claimant has sustained injuries in the said vehicular accident. So, considering this factual aspect and considering the evidence produced before this Tribunal, this Tribunal comes to the conclusion that, opponent No.1 is liable for the said occurrence. Hence, in view of the above referred discussion, I decide issue no. 1 in affirmative.

Issue No. 2 : Quantum

Age

9. Now so far as age of the claimant is concerned, the claimant has shown his age in his claim petition as 53 years. Claimant has produced his driving licence vide Mark-7/8, wherein the date of birth of the applicant is mentioned as 13/10/1962 and the accident was occurred on 10/01/2011. So, looking to the said document, in my humble opinion the age of the claimant would be 48 years, 2 months and 28 days at the time of accident.

Income

9.1 So far as the income is concerned, claimant has stated in his cross-examination at Exh.-23 that, he was doing service in police department and on dated 01/01/2006, he voluntarily retired and at present he is getting morethan Rs. 9000/- as pension. It is not in dispute that monthly pension of the claimant was not affected and same was not reduced. Now, it is an established preposition of law that when injured claimant has sustained permanent disablement because of the vehicular accident and said permanent disablement did not result into loss of his/her earning or injured claimant has not sustained any functional disability, then in such case, injured claimant is not entitled for any compensation under the head of future loss of income.

9.2 Further claimant has stated in his cross-examination at Exh.-23 that previously he was earning Rs. 500000/- from agriculture and at present he is earning Rs. 200000/- to 2,50,000/- from agriculture.

9.3 So far as the income is concerned, this tribunal is aware of principles of awarding Just compensation ,so keeping in view the fact of case that the Tribunal has a duty to grant a just and reasonable compensation. What would, however, be a just and reasonable compensation depends upon the fact-situation obtaining in each case. No hard and fast rule therefor can be laid down. Honb'le Apex court has also held that in the determination of the quantum of compensation, the Court must be liberal and not niggardly inasmuch as in a free country law must value life and limb on a generous scale determination of compensation both the Tribunal and the Court are statutorily charged with a responsibility of fixing a 'just compensation'. At the same time the concept of 'just compensation' obviously suggests application of fair and equitable principles and a reasonable approach on the part of the Tribunals and Courts. This reasonableness on the part of the Tribunal and Court must be on a large peripheral field.

Tribunals in the matter of this exercise should be guided by principles of good conscience so that the ultimate result become just and equitable. The tribunal must also bear in mind that compensation should not be treated to be windfall. It is obviously true that determination of a just compensation cannot be equated to a bonanza. The applicant in his cross-examination at Exh.-23 as mentioned above, he has mentioned that at the time of accident, he was doing agricultural work and he was earning Rs. 5,00,000/- per annum. He has produced Village Form No. 7/12 and Village Form No. 8-A and considering the same it appears that the applicant is the joint owner in the said agricultural land but applicant has not produced any cogent evidence regarding his income from agriculture. The applicant has not produced bills of seeds and pesticides. No documentary evidence produce in order to prove income but It is also required to be kept in mind that, the agricultural income may be considered by deduction of total expenses towards cultivation of crop. Further,It is held by Hon. Supreme Court in the case of New India Insu.Co. Vs. Charlie reported in 2005 ACJ Page 1131(SC) that, the compensation of agriculture income could not computed as normal rules of depreviation of income due to pyhsical disabilities are not applicable. Further agriculture income having due regard to uncertainties like rain, atmosphere, and season and due care of crop etc., Further income may be obtained or protected by supervision and by hired labour also. Therefore, in case of computation of agriculture income this tribunal is of considered opinion that in present case, supervisory loss is required to be considered. I have considered the relevant time of his work, the cost of living and the relevant factor. So, considering the above mentioned factor which are required to be considered at the time of calculation of income of the applicant, I come to the conclusion that at the relevant time of accident, if income of the applicant is to be considered as Rs.9,000/- per month, then it would be just and proper. Moreover, claimant has stated in his affidavit and in his cross examination at Exh.-23 that, he was doing agricultural activity but he has not produced any voucher bill regarding purchase or selling of crop and also not produced any other reliable evidence regarding his income. But considering all over the nature of the work and considering the time of occurrence i.e. in the year of 2011, it would be justiciable to assess loss of income from agriculture of applicant as Rs. 9000/- per month and Rs. 1,08,000/- per annum.

Permanent Disability

9.4 It is the say of the applicant that, due to serious injury sustained in the accident he has become permanent disabled. In support of his version, he has produced the disability certificate issued by Dr. Abhinav Kotak vide Mark-14/1. In this disability certificate permanent disability is assessed as 22% of Left upper limb and 14% by right upper limb but it is transpired from the endorsement below this certificate that, Ld. Advocate for both the side have agreed to assess 15% disability body as a whole of the claimant. Therefore, permanent disability is assessed as 15% body as a whole.

Loss of Income

9.5 Annual income Rs. 1,08,000 X 13 (multiplier taking age of claimant as 48 years as per case of Sarla Verma) X 15% (permanent disability) which comes to Rs.2,10,600/-. So, under the head of loss of income, claimant is entitled to get Rs.2,10,600/-.

Medical Expenses.

9.6 It is the say of the applicant that, due to this accident he has sustained serious injuries and he has spent huge amounts towards treatment expenses but it is pertinent to note that, claimant has produced medical bills of Rs. 22,928/- vide

Exh.-33 but after verifying the said bill and recount the said bill amount, the amount of actual medical bills comes to Rs. 20,118/-. So, in these circumstances, considering the injuries sustained by the claimant and considering the medical bills, this Tribunal come to the conclusion that, it would be justiciable if Rs.20,118/- awarded towards medical bill and medical expenses.

Pain, Shock and Suffering

9.7 Now, so far as pain, shock and suffering is concerned, it is transpired from the record that, claimant has sustained injuries. Therefore, considering the age of the claimant and considering the type of injuries, it would be justiciable to assess Rs.5 000/- towards pain, shock and suffering.

Special diet, Attendant and Transportation

9.8 Moreover, during the hospitalization, he has to eat good food and some of the person may attend in the hospital during he is hospitalized. Moreover, it can be said that, she has spent certain amount for transportation to admit in the hospital and discharge from the hospital. So, under the head of special diet attendant and transportation charges, he is entitled to get Rs.10,000/-.

Actual Loss

9.9 Moreover, due to injuries, he has to take rest but applicant was getting pension at the time of accident and he has not produced any documents to prove actual loss from his agricultural income. So, he is not entitled for any actual loss.

9.10 Therefore, in my humble opinion applicant shall be entitled for compensation under following heads.

1.	Loss of income	Rs. 2,10,600/-
2.	Medical Expenses	Rs. 20,118/-
3.	Pain,Shock and Sufferings	Rs. 5,000/-
4.	Special diet, Attendant and Transportation	Rs. 10,000/-
	Grand Total	Rs. 2,45,718/-

So, the claimant is entitled to get Rs.2,45,718/- and considering it in round figure it comes to Rs. 2,45,700/-.

Liability :

11 As decided above, the present accident had taken place because of rash and negligent driving on the part of the driver of Truck No. GJ-12- AT-5928 i.e. opponent No.1. The copy of f insurance policy of offending vehicle Truck is produced vide Exh.-29 clearly shows that the vehicle Truck involved in the accident was belonging to the opponent No.2

and it was insured with the opponent No.3 i.e. – Universal Sompo General Insurance Company Ltd. at the time of accident. Therefore, the opponent Nos.1 to 3 being driver, owner and Insurer of offending vehicles are jointly & severally liable to pay amount of compensation to the claimant.

Interest

12 The claimants have claimed to award interest at the rate of 18% per annum from the date of application till realization of the amount. Considering the fact of the present case and decision of the higher courts with regard to grant of interest, it would be justiciable to award interest at the rate of 9%. per annum.

13. In view of above referred discussions claimant is entitled for Rs. 2,45,700/- and, therefore, I decide issue No.2 partly in affirmative and for issue No.3, I pass the following order :

O R D E R

(1) The above referred claim petition is hereby partly allowed. The claimant is entitled to recover Rs. 2,45,700/- (Rupees Two Lakh Forty Five Thousand Seven Hundred Only) with the proportionate cost and

with interest at the rate of 9% per annum, from the date of the claim petition till realization from the opponent No.1 to 3 jointly and or severally, who are liable to pay the same.

(2) The opponent No. 1 to 3 are hereby directed to deposit awarded amount within 30 days of the order.

(3) Deficit court fees stamp, if any, be recovered from the awarded amount and interim amount if paid be adjusted.

(4) Out of the remaining amount 40 % amount shall be paid to the claimant by account payee cheque only and remaining 60% amount be kept for the period of five years to claimant as Fixed Deposit receipt in any Nationalized Bank as per choice of the claimant situated at the place where claimant Permanently reside. But if Nationalized bank is not within area of where applicant reside then most nearest Nationalized bank situated at Permanent residence of the applicant as per the usual terms and condition of the choice of the claimant.

(5) The claimants shall be entitled to receive interest of the said Fixed Deposit Receipt.

(6) The applicants will not be entitled to get any loan, advance or withdrawal or can create any encumbrances on the aforesaid FDRs without prior permission of this

Tribunal, and interest accrued from time to time on the said FDRs may be paid in cash to the respective applicants.

(7) Opponents to bear their own costs and pay proportionate costs of petitioner.

(8) Award to be drawn accordingly.

Pronounced today on 2nd May, 2019 in the open Court.

Sd/-

Date: 02/05/2019 (**Ashish J.S.Malhotra**)

Bhuj -Kachchh Presiding Officer,

Motor Accident Claim Tribunal (Auxiliary),

Bhuj-Kachchch.

Hiren Code:GJ-01504