

## GUJARAT HIGH COURT

Hon'ble Judges: S.V. Pinto, J.

New India Assurance Co.Ltd.Through Versus Nandlal Hariramji Salvi

FIRST APPEAL No. 4405 of 2008 ;

CROSS OBJECTION No. 107 of 2008 ;

FIRST APPEAL No. 4405 of 2008 ; \*J.Date :- APRIL 21, 2023

- [MOTOR VEHICLES ACT, 1988](#) Section - [173](#) , [166](#)

**Motor Vehicles Act, 1988 - S. 166, 173 - motor accident - appeal for enhancement of compensation - injured was an advocate and 65 years old - Tribunal considered permanent disability at 16.5% - monthly income considered by Tribunal to be of Rs. 7000/- per month of claimant - claimant is a practicing advocate - income for the assessment year 2000-2001 shows income of Rs. 63006/- - after accident, claimant may not have been able to work for some time - Tribunal has rightly considered income of claimant to be of Rs. 7000/- per month - Tribunal has applied multiplier of 5 when in fact, claimant is entitled for multiplier of 7 - hence, amount of future loss of income considering disability of 16.5%, would come to Rs. 97,020/- (Rs. 7000/- x 16.5% = 1155 x 12 x 7 = 97,020/-) instead of Rs. 69,300/- as awarded by Tribunal - Tribunal has considered that claimant could not attend Court for a period of 6 months and has suffered a loss of income - hence, amount of Rs. 42,000/- instead of Rs. 60,000/- ought to be awarded to claimant towards actual loss of income - appellant insurance company is directed to deposit enhanced amount of Rs. 9720/- at the rate of 6% per annum - impugned judgment and award modified - appeal of insurance company dismissed.**

**Imp.Para:** [ [9](#) ] [ [10](#) ] [ [11](#) ]

### **Cases Relied on :**

1. Sarla Verma Vs. Delhi Transport Corporation & Anr., 2009 6 SCC 121

### **JUDGMENT :-**

1 This appeal has been preferred by the appellant the New India Assurance Company Limited under section 173 read with Section 166 of the Motor Vehicles Act ("the Act" for short) being aggrieved and dissatisfied by the judgment and award passed in Motor Accident Claims Petition No.448 of 2000 by the learned Motor Accident Claims Tribunal (Aux.), Vadodara on 11.4.2008.

**2** The original claimant has also filed Cross Objection No.107 of 2008 in First Appeal No.4405 of 2008 for enhancement of the amount of compensation awarded by the learned Tribunal.

**3** The brief facts of the case that emerge from the record are as under.

3.1 That on 11.9.1999, the claimant was travelling in Maruti car No.GJ 6 A 1126 and coming from Udaipur to Kesariya and while they reached Baragauv village on National Highway No.8 at Rajasthan, the car was being driven on the correct side of the road in medium speed and just near the turning at Baragauv village, the opponent No.1 came driving Tanker No.RJ 27 G 2686 in full speed, in a rash and negligent manner on the wrong side of the road as he was overtaking another vehicle and hit the Maruti car and the accident occurred. That the claimant and occupants of the car were injured and the claimant has filed the application under section 166 of the Act seeking inter alia compensation for injuries sustained as a result of the motor vehicular accident.

**4** The learned Tribunal, after having considered the evidence on record, held the driver of the offending vehicle as sole responsible for the accident in question and awarded compensation by considering the income of the claimant at Rs.7000/- per month. Considering the injuries sustained, the learned Tribunal has assessed permanent disability body as a whole at 16.5% and considering the age of the claimant to be of 65 years, the learned Tribunal has adopted multiplier of 5. Accordingly, the learned Tribunal awarded a sum of Rs.69,300/- under the head of loss of future income, Rs.1,00,000/- under the head of pain, shock and suffering, Rs.37,000/- under the head of medical expenses, Rs.60,000/- under the head of actual loss of income, Rs.5000/- under the head of transportation and Rs.10,000/- towards special diet charges. Thus, in all, the learned Tribunal has awarded a sum of Rs.2,96,300/- by way of compensation with 7.5% interest from the date of application till realization.

**5** Being aggrieved and dissatisfied by the aforesaid award, the appellant insurance company has approached this Court by way of this appeal.

**6** I have heard learned advocate Ms.Masumi Nanavaty, learned advocate for Mr.Vibhuti Nanavati, learned advocate for the appellant and Mr.Mohsin Hakim, learned advocate for Mr.MTM Hakim, learned advocate for respondent Nos.3 and 4. Though served, respondent Nos.1 and 2 have not appeared.

**7** It is mainly contended by Ms.Masumi Nanavaty, learned advocate appearing for the appellant insurance company that the learned Tribunal has erred in considering the future loss of income even though it has been established by the claimant himself that in spite of the accidental injuries, his professional income has gradually increased. It is, therefore, submitted that there was no loss of income on account of the alleged disability. Ms.Nanavaty has further submitted that the learned Tribunal ought to have considered the income of the claimant at Rs.4500/- per month instead of Rs.7000/- per month and has further submitted that the learned Tribunal has also erred in awarding the amount of compensation on other

heads such as pain, shock and suffering. She, therefore, urged this Court to allow the appeal.

**8** On the other-hand, Mr.Mohsin Hakim, learned advocate for respondent Nos.3 and 4 has submitted that the amount awarded by learned Tribunal is extremely on the lower side, disproportionate and not in consonance with the facts and evidence on record and the learned Tribunal has erred in computing the income of the claimant at Rs.7000/- per month. That the learned Tribunal has not properly assessed the earning capacity and misinterpreted the income tax returns. The learned advocate has further submitted that the claimant's deposition was recorded vide Exh.60, but the opponents including the appellant insurance company have not challenged the same by cross examining the claimant on the point of income, disability, expenses etc and no witnesses were examined by the opponents to rebut the evidence of the claimant. Moreover the learned Tribunal has also erred in applying the multiplier in case of the claimant and lastly, the learned advocate has requested this Court to enhance the amount of compensation.

**9** I have gone through the record and proceedings of the present appeal and find that there is no dispute with regard to the age of the claimant as considered to be of 65 years by the learned Tribunal as the date of birth in the Income Tax Returns produced at Exh. 67 shows the date of birth of the claimant as 26.06.1935. The accident occurred on 11.9.1999 hence the age of the claimant is rightly held to be of 65 years as the claimant had completed 64 years and was in his 65th year. The main challenge is with regard to the monthly income considered by the learned Tribunal to be of Rs.7000/- per month of the claimant. Admittedly, the claimant is a practicing advocate and the claimant has produced income tax returns for the assessment years 2000-2001, 2001-2002, 2002-2003, 2003-2004, 2004- 2005, 2005-2006 and 2006-2007 and his income from the profession is shown as Rs.63,006/-, Rs.91,226/-, Rs.99,607/-, Rs.1,04,888/-,Rs.1,01,000/-, Rs.1,29,852/- and Rs.2,01,500/- respectively and the income tax returns are produced at Exh.67. The learned Tribunal has considered these income tax returns and held that the claimant has income of Rs.7000/- per month. Learned advocate Ms.Nanavati has vehemently argued that the income of the claimant must be considered at Rs.4500/- per month, whereas learned advocate Mr.Hakim has urged this Court to consider the income of the claimant to be Rs.8700/- per month. It is pertinent to note that the accident in question had taken place on 11.9.1999 and the income tax returns produced at Exh.67 are for the assessment year 2000-2001 onwards. The income for the assessment year 2000-2001 shows income of Rs.63006/- and it is apparent that after the accident the claimant may not have been able to work for some time. The learned Tribunal has held that the claimant would not have worked for 6 months and considering the income tax returns of 2000-2001 and 2001-2002 it appears that the learned Tribunal has rightly considered the income of the claimant to be of Rs.7000/- per month also considering the fact that the claimant is an advocate practicing for many years in the courts at Vadodara. Moreover, both the learned advocates have agreed that the learned Tribunal has applied the multiplier of 5 when in fact, the claimant is entitled for multiplier of 7 as per the judgment of the Honourable Supreme Court in

the case of Sarla Verma and others Vs Delhi Transport Corporation and another, reported in (2009) 6 SCC 121. Hence, the amount of future loss of income considering disability of 16.5%, would come to Rs.7000/- x 16.5% = 1155 x 12 x 7 = 97,020/- instead of Rs.69,300/- as awarded by the learned Tribunal.

**10** The learned Tribunal has considered that the claimant could not attend the Court for a period of 6 months and has suffered a loss of income but this amount also seems to be erroneous as when the learned Tribunal has held income of the claimant to be Rs.7000/- per month and concluded that the claimant would not have worked for 6 months, the amount of Rs.42,000/- instead of Rs.60,000/- ought to be awarded to the claimant towards the actual loss of income.

**11** In view of the above discussion, First Appeal No.4405 of 2008 filed by the appellant New India Assurance Company Limited fails and the same is hereby dismissed. Cross Objection No.107 of 2008 is partly allowed. The impugned judgment and award passed by the learned Motor Accident Claims Tribunal (Aux.) Vadodara dated 11.4.2008 in Motor Accident Claims Petition No.448 of 2000 is hereby modified to the aforesaid extent. The appellant insurance company is hereby directed to deposit the enhanced amount of Rs.9720/- before the learned Tribunal within a period of 12 weeks from the date of receipt of the order. The rate of interest on the enhanced amount is to be at the rate of 6% per annum. The learned Tribunal is directed to disburse the said enhanced amount to the claimant by RTGS/NEFT after due verification. Record and Proceedings be sent back to the concerned learned Tribunal forthwith. There shall be no order as to costs. Rule is made absolute to the aforesaid extent.