

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****FIRST APPEAL NO. 130 OF 1984****For Approval and Signature:****HONOURABLE MR.JUSTICE R.S.GARG**

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1 Whether Reporters of Local Papers may be allowed  
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of  
the judgment ?

4 Whether this case involves a substantial question of  
law as to the interpretation of the Constitution of  
India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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**NARAYAN H. KARAMCHANADANI - Appellant(s)****Versus****RAMESH J. PATEL & ORS. - Respondent(s)**

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**Appearance :**

Ms. Hetvi Sancheti for Shri Jayprakash Umot for Appellant(s).

Ms. Archana Acharya for Respondent(s) : 1 & 3.

None for Respondent(s) : 2 though served.

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**CORAM : HONOURABLE MR.JUSTICE R.S.GARG****Date : 31/08/2007****ORAL JUDGMENT**

The claimant, being aggrieved by the award dated 17<sup>th</sup>

August, 1983 passed by the learned Motor Accident Claims Tribunal No.IV (Auxiliary), Ahmedabad in M.A.C.T. Application No.140 of 1982, is before this Court with a submission that the learned Tribunal below erred in awarding only a sum of Rs. 34,000/- though the claimant was entitled to much more.

2. As the respondents have not filed any cross appeal, nor have filed any cross objections in this matter, this Court is not required to look into the rashness, negligence, cause of the accident and liability of the respondents to pay the compensation amount to the appellant. This Court would only see that whether the learned Tribunal below was justified in awarding Rs.34,000/- and whether there is any scope for enhancement.

3. After taking me through the evidence and the findings recorded by the learned Tribunal below, Ms. Hetvi Sancheti, learned Counsel for the appellant, submitted that the learned Tribunal below was unjustified in not awarding proper amount under the head of loss of future income, erred in not awarding proper amount under the head of medical expenses and further erred in awarding less amount under the head of pain, shock and suffering. She also submitted that under the head of current loss of income, the learned Tribunal below only awarded a sum of Rs.6,000/-, while, in fact, the claimant was entitled to a sum of

Rs.9,000/-.

4. Ms. Archana Acharya, learned Counsel for respondent Nos.1 and 3, submitted that the learned Tribunal below was not unjustified in not awarding higher amount under the head of future loss of income because it has come on the record that the claimant has not suffered any loss in earning the income. According to her, the learned Tribunal below was justified in awarding a sum of Rs.3,000/- under the head of future expenses to meet the further operation for removal of plate/screws. She submitted that the claimant was bed-ridden for two and half months and despite that, the learned Tribunal has granted him current loss of earnings for four months, therefore, there is no scope for any enhancement.

5. On being asked as to why the claimant did not undergo the operation immediately after the fracture, the bones were united and the utility of plate and screws came to zero, the learned Counsel for the appellant submitted that the claimant was mortally afraid/scared, therefore, he did not undergo the operation. She, however, submitted that the doctors have now suggested that the operation has become inevitable, therefore, the claimant has to undergo the operation. Though the learned Tribunal has awarded a sum of Rs.3,000/- under the head of future expenses for medical help and to meet the expenses, but, taking

into consideration the nature of claim and that the future operation would be the after-effect of the injury suffered by the claimant, I hold that the claimant would be entitled to the actual expenses, which the claimant may have to bear at the time of the operation. The claimant, after undergoing the operation, may file an application before the lower Court for recovery of the said amount. The learned Tribunal below shall issue notice to the respondents and after effecting service of the notice, would give proper opportunity to the parties to substantiate their claim and defence. The Insurance Company would be entitled to examine further X-ray reports, would also be entitled to call the doctor to verify the operation and to verify the real expenses, which the claimant would be required to undergo. However, out of the said amount, a sum of Rs.3,000/-, already awarded in favour of the claimant, shall be deductible.

6. Insofar as the future loss of income is concerned, the submission of the learned Counsel for the appellant was that apart from the business activities, the appellant was working as a Rent Collector, was earning a sum of Rs.1,500/- per month and because of the disability suffered by him, he had to leave that work, therefore, under this head, the claimant would be entitled to claim something.

7. It is to be seen from the records that prior to the accident,

the earnings of the claimant were around Rs.1 Lakh in gross, but, after the accident, now his earnings have crossed a sum of Rs.5 Lakhs. I would not say that the curse has become a boon, but, the fact still would be that he has not suffered any loss of income.

8.           Though it was vehemently contended that the appellant had suffered pain, shock and suffering for a period of 25 years, that is, from the date of the accident till date, but, in the opinion of this Court, the claimant, who could have undergone the operation within a period of six months to one year from the date when the bone had united, if does not undergo the operation, then, he has to thank himself for being scary of undergoing the operation.

9.           So far as the loss of current income is concerned, I must agree with the learned Counsel for the appellant and award a sum of Rs.3,000/- in addition to what has already been awarded, being loss of current income for a period of two months. The claimant would be entitled to 6% interest per annum on the said amount from the date of claim petition till the date of realisation. The respondent shall be jointly and severally liable to pay the amount, which this Court has granted, to which the claimant would be entitled after undergoing the operation.

10.          The appeal to the extent indicated above is allowed. No

costs.

***[R.S.Garg, J.]***

*kamlesh\**