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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO. 3496 of 2007

FOR APPROVAL AND SIGNATURE:

HONOURABLE THE CHIEF JUSTICE MR. BHASKAR BHATTACHARYA	Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
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 ?	No
5	Whether it is to be circulated to the civil judge ?	No

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CHENSINH BHAVARSINH CHUDAVAT

Versus

SHREENATH TRAVELS & ORS.

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Appearance:
MR AMIT V THAKKAR, ADVOCATE for the Appellant.
MR PREMAL R JOSHI, ADVOCATE for the Respondent No. 1
MR DAKSHESH MEHTA, ADVOCATE for the Respondent No. 2
MRS VASAVDATTA BHATT, ADVOCATE for the Respondent No. 3

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CORAM: **HONOURABLE THE CHIEF JUSTICE MR. BHASKAR BHATTACHARYA**

Date : 28/08/2014

CAV JUDGMENT

1. This appeal under Section 173 of the Motor Vehicles Act is at the instance of a claimant in a proceeding under section 166 of the Motor Vehicles Act and is directed against an award dated 26th September 2006 passed by the Motor Accident Claims Tribunal (Main), Anand, in MAC Petition No.322 of 2006 (old No.2616 of 1990) thereby partially allowing the claim-application and awarding a sum of Rs.1,18,000/- as compensation with interest at the rate of 7.5% *per annum* from the date of filing of the application till realization with proportionate costs.

2. The following facts are not in dispute:-

2.1 On 3rd May, 1990, the appellant was travelling in a luxury bus No.RSJ-7371 from Devgadh Mandari to Surat. The said luxury bus was driven by opponent No.1 in a rash and negligent manner and at an excessive speed. When the bus reached near the place of accident, one ST bus No.GJ-1T-9429 was coming from opposite side which was driven by opponent No.4 and there was head-on-collision between the two buses. For the aforesaid accident, the appellant sustained serious injuries on his person and there was fracture on left leg. He was admitted in Civil Hospital in Surat and thereafter, was shifted to Mahavir Hospital at Surat and his left leg was amputated. The appellant had to spend Rs.15,000/- toward medical expenses. At the time of accident, the appellant was doing business of provisions and

grocery items and, according to him, he used to earn Rs.2500/- a month. According to the claimant, because of amputation of left leg, he is unable to do any kind of business and hence, initially claimed compensation of Rs.2 lakh which, however, subsequently was enhanced to Rs.4 lakh.

2.2 The learned Tribunal below, on consideration of the materials on record, came to the conclusion that the accident occurred because of equal contributory negligence on the part of the opponent No.1 and opponent No.4. The Tribunal, however, was of the view that as the learned advocate for the claimant had not produced any insurance particulars of offending vehicle/ luxury bus No.RSJ-7371, therefore, the claim against the insurer of the luxury bus should be dismissed and the name of the insurer was deleted. The Tribunal, therefore, came to the conclusion that opponent Nos.2 and 5 are jointly and severally liable to pay the compensation. The claim petition against opponent No.3, the insurer of the luxury bus was dismissed.

2.3 As regards the quantum of compensation, the Tribunal accepted the case that the appellant was admitted on 6th May 1990 in the hospital and was discharged on 17th May 1990 and his left leg above knee was amputated. The Tribunal took note of the fact that the appellant produced disability certificate being Exh.33 wherein 80% permanent partial disability of left leg has been assessed by the Doctor and the applicant had produced purshis at Exh.30 wherein he

had made an endorsement that if 35% partial disability of the body as a whole is considered, he has no objection. After recording such statement, the Tribunal was of the view that considering 35% permanent partial disability, the yearly loss of income will be Rs.4200/- (35% of Rs.12, 000/-) and considering the age of the applicant being 19 years, the multiplier of 15 will be just and proper and, therefore, the applicant will be entitled to Rs.63, 000/- (Rs.4200 X 15) towards future loss of income. The Tribunal further awarded Rs.20,000/- towards permanent pain, shock and suffering and Rs.5,000/- towards attendant charges, Rs.5,000/- towards special diet, Rs.5,000/- towards conveyance charge, Rs.5,000/- towards medical expenses, Rs.5,000/- towards actual loss of income for five months and Rs.10,000/- towards loss of enjoyment of life. Thus, the total amount of compensation was Rs.1,18,000/-. While arriving at such a figure, the Tribunal was of the view that as the appellant did not produce any documentary evidence to prove that at the time of accident, he was doing business of grocery and used to earn Rs.2500/- a month, the Tribunal was left with no other alternative but to assess the notional income of the appellant at the rate of Rs.12,000/- *per annum*.

3. Being dissatisfied, the claimant has come up with the present appeal.

4. Mr. Thakkar, the learned advocate appearing on behalf of the

appellant, strenuously contended before this court that from the selfsame accident, several claim-applications were filed and due to bifurcation of District Kheda where the accident occurred, some of the matters, namely, MAC Petition Nos.2389 of 1990, 2390 of 1990 and 2433 of 1990 were decided by the Motor Accident Claims Tribunal at Kheda. Mr. Thaker pointed out that on the basis of the evidence on record, it was held in those cases that the insurance company of the luxury bus was equally liable along with the Gujarat State Road Transport Corporation, but the learned Tribunal in the present case failed to notice the aforesaid judgments which were very much produced before the Court and even referred to by the Tribunal in the award impugned. By relying upon the aforesaid decisions passed in those MAC Petitions decided earlier, Mr. Thakkar contended that the finding of the Tribunal that insurer of the luxury bus should be exonerated is totally incorrect.

4.1 Mr. Thakkar next contends that his client, having lost his left leg from above knee, has become permanently disabled and for the above reason, the Tribunal should have awarded Rs.4 lakh claimed by his client. In other words, according to Mr Thakkar, an award of a sum of Rs.1,18,000/- was shockingly low after taking into consideration the fact that he was in the hospital for 11 days and lost one leg.

4.3 Mr. Thakkar, therefore, prays for enhancement of the

amount of compensation to Rs.4 lakh.

5. The aforesaid contention of Mr. Thakkar has been seriously disputed by Mrs. Vasavdatta Bhatt, the learned advocate appearing on behalf of the Gujarat State Road Transport Corporation, the owner of the State bus as well as Mr Mehta, the learned advocate appearing on behalf of the insurer of the luxury bus and, according to them, the Tribunal below, in the facts of the present case, rightly assessed the amount of compensation.

6. Therefore, the question that arises for determination in this appeal is, whether in the facts of the present case, the Tribunal below was justified in awarding the aforesaid amount of compensation.

7. As pointed out by the Supreme Court in the case of **R. D. Hattangadi vs. M/s. Pest Control (India) Pvt. Ltd. and others** reported in **AIR 1995 SC 755**, for assessing compensation due to injury arising out of the accident consequent to rash and negligent driving of the driver of the offending vehicle, the Court should proceed in the following way:

> *"Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which is capable of being calculated in*

terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include: (i) damages for mental and physical shock, pain suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters, i.e., on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life."

7.1 In the said decision, the Supreme Court felt that it was really difficult to assess the exact amount of compensation for the pain and agony suffered by the victim and for having become a lifelong handicapped. No amount of compensation, the Supreme Court proceeded, could restore the physical frame of the appellant and for that reason, it has been said by the Courts that whenever any amount is determined as the compensation payable for any injury suffered during an accident, the object is to compensate such injury "so far as money can compensate" because it is impossible to equate the money with the human sufferings or personal deprivations and money cannot renew a broken and shattered physical frame.

7.2 In that connection, the Supreme Court relied upon the following observations in the case of **Ward vs. James**, 1**965 (1) All ER 563**, where it was said:

> "*Although you cannot give a man so gravely injured much for his "lost years", **you can, however, compensate him for his loss during his shortened span, that is, during his expected "years of survival". You can compensate him for his loss of earnings during that time, and for the cost of treatment, nursing and attendance.** But how can you compensate him for being rendered a helpless invalid? He may, owing to brain injury, be rendered unconscious for the rest of his days, or, owing to back injury, be unable to rise from his bed. He has lost everything that makes life worthwhile. Money is no good to him. Yet Judges and Juries have to do the best they can and give him what they think is fair. No wonder they find it well-nigh insoluble. They are being asked to calculate the incalculable. The figure is bound to be for the most part a conventional sum. The Judges have worked out a pattern, and they keep it in line with the changes in the value of money.*"
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> (Emphasis supplied).

7.3 The Supreme Court also pointed out that in its very nature, whenever a Tribunal or a Court is required to fix the amount of compensation in cases of accident, it involves some guess work, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused, but all the aforesaid elements have to be viewed with objective standards. At that stage, the Court, by relying upon its own decision in the case of **C.K. Subramonia**

Iyer vs. T. Kunhikuttan Nair, AIR 1970 SC 376, decided in connection with the Fatal Accidents Act, cautioned that in assessing damages, the Court must exclude all considerations of matter which rested in speculation or fancy though conjecture to some extent was inevitable. The Supreme Court also relied upon the following observations of the Halsbury's Laws of England, 4th Edition, Vol. 12 regarding non-pecuniary loss stated at page 446 of the volume :-

> "*Non-pecuniary loss: the pattern. Damages awarded for pain and suffering and loss of amenity constitute a conventional sum which is taken to be the sum which society deems fair, fairness being interpreted by the courts in the light of previous decisions. Thus there has been evolved a set of conventional principles providing a provisional guide to the comparative severity of different injuries, and indicating a bracket of damages into which a particular injury will currently fall.* ***The particular circumstance of the plaintiff, including his age and any unusual deprivation he may suffer, is reflected in the actual amount of the award. The fall in the value of money leads to a continuing reassessment of these awards and to periodic reassessments of damages at certain key points in the pattern where the disability is readily identifiable and not subject to large variations in individual cases.*****"**
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> (Emphasis Supplied).

8. Bearing in mind the aforesaid principles, we now propose to consider what should be the amount of “just compensation” in the facts of the present case.

9. In the case before us, the definite case of the appellant was that he was aged 19 years at the time of accident and for the last two years prior to the accident, he was carrying on a business of grocery shop in the name of *Ambica Provision* and his monthly income from such business was Rs. 2500/-. He has further stated that he used to purchase materials from Parasmal Seth, address- Kukeri, taluka-Chilkhali. He has also produced bills showing such purchase from Parasmal Seth which were marked as 12/8. In cross-examination, mere suggestion was given to him that he used to earn Rs. 800/- a month from labour work. There was no specific suggestion given to him that he had no business in the name of *Ambica Provision* or that the bills produced by him showing purchase of materials from *Parasmal Seth* were forged or manufactured one. No counter evidence was given by the respondents disputing the fact that the appellant had no business of grocery. In such circumstances, finding of the tribunal below that he was earning an amount of Rs. 1000 a month for the purpose of calculating the compensation cannot be accepted. We cannot lose sight to the fact that his one leg from above knee has been amputated. According to workmen's compensation Act, such injury should be treated to be 50% permanent disability but the tribunal on the basis of joint purshis *treated such disability to be 35% by overlooking the fact that there cannot be any* estoppel or waiver against law. The tribunal also did not take into consideration, the future prospect of the appellant. Tribunal should also take into

consideration that from the year 1994, after the introduction of Section 163A of the Act, even for an infant just born, the notional income is Rs. 15000/- per annum for the purpose of calculating compensation even in a case where he is not required to prove negligence whereas an young man aged 19 years who has proved negligence of the offending vehicle and who is running a business of grocery for the last two years has been held to be having income of Rs. 12000/- per annum for the purpose of determining the compensation. Such finding is a perverse finding of fact against the materials on record.

10. The learned tribunal below failed to consider that he is now required to engage another person for the purpose of helping him in running his business and throughout his life he will be facing the same difficulties. The tribunal also did not feel the difficulty of a *one legged person* while fighting the battle of life at every stage, be it while getting into a transport vehicle or while leading his life partner to the platform of marriage. The tribunal failed to consider that he is required take the help of artificial limb and the prospect of his future has been shattered for the mere negligence of the drivers of the two vehicles where he had no fault of his own. The inputs on his business will automatically be reduced by 50% in comparison to a normal person of his same caliber. The appellant claimed a sum of Rs. 4 lakh. Today, the Supreme Court has accepted the position of law that even the loss of consortium of a wife for the death of her husband occurred

in the year 1994 should be valued minimum Rs. 1 lakh after giving monitory compensation under other heading. (See Kalpanaraj vs. Tamil Nadu Estate Transport Corporation reported in 2014(5) SCALES 479).

11. A person who started his business independently of his own at the age of 17 years must be held to a promising youth whose dream has been crashed by the negligence of the two drivers at the young age of 19 years. Such a capable person must be compensated, in my opinion, by payment of Rs. 4 lakh even if the accident occurred in the year of 1990 if he has been transformed to a 50% permanently disabled person for such an accident. The tribunal while delivering judgment long after 16 years from the date of accident failed to consider the fall in the value of money in one hand while the fall of rate of interest on the other, which was 14% per annum in the year 1990 (*vide* Indira Bikash Patra, Kishan Bikash Patra, 10% tax free bond issued by the Reserve Bank of India) to 5% savings bank interest and 8% fixed deposit interest prevailing in the year 2006.

12. It appears that the price of negligence of wrongdoers inflicted upon “a young entrepreneur reducing him to a half” has been fixed to be Rs. one lakh and eighteen thousand with interest at the rate of 7.5% per annum which is grossly inadequate.

13. In such circumstances, I enhance the same to Rs. 4 lakh with interest at the rate of 12% per annum from the date of filing the claim application till December 31, 1999 and at the rate of 9% per annum from 1st January, 2000 till realization. The Gujarat State Road Transport Corporation and the Insurer of the Luxury Bus involved in the accident are directed to bear the burden equally and the enhanced amount be deposited in the Tribunal below within two months from today and the Tribunal shall forthwith thereafter disburse the amount to the claimant by accounts payee cheque, upon proper verification.

13.1 The appeal is allowed accordingly. In the facts of the case, there will be, however, no order as to costs.

Sd/-

(BHASKAR BHATTACHARYA, CJ.)

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