

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/FIRST APPEAL NO. 2688 of 2018**

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IFFCO TOKIO GENERAL INSURANCE CO. LTD.

Versus

SATISHBHAI HIMMATBHAI VAGHELA

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Appearance:

MR PALAK H THAKKAR(3455) for the PETITIONER(s) No. 1

for the RESPONDENT(s) No. 2

MR.HIREN M MODI(3732) for the RESPONDENT(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE R.M.CHHAYA****Date : 31/07/2018****ORAL ORDER**

1. Being aggrieved by the common judgment and award dated 22.06.2017 passed by the Motor Accident Claims Tribunal (Aux), Vadodara in MACP No.1500 of 2006, the appellant has challenged the impugned award.
2. The facts reveal that as per the case of the respondent-original claimant, the claimants were travelling as the owners of the goods loaded in goods carriage tempo bearing registration No. GJ-06-Z-6724 on 28.06.2006. The owner and driver-cum-owner of the said vehicle, respondent no.2 herein was driving the said vehicle in a rash and negligent manner because of which he lost control over the steering and turtled, which resulted into accident. FIR came to be lodged with Nasvadi Police Station. The original claimant claimed Rs.3,00,000/- by way

of compensation on the basis of the fact that due to the accident, he received serious injuries on different parts of the body and was admitted to SSG Hospital at Vadodara and had to undergo surgery and had to stay as indoor and outdoor patient. It was the case of the original claimant that he suffered permanent partial disability to the tune of 50% and that he was agriculturist and was also carrying out business of general store and was earning Rs. 1,10,000/- per annum.

3. The original claimant was examined at exhibit 24 and as a matter of record pursis came to be filed for disability to the tune of 25% at exhibit 26. The claimant also relied upon the true copy of the FIR, panchnama, insurance policy, injury certificate issued by SSG Hospital, medical certificate by Navrang Hospital, discharge summary by Navrang Hospital, revenue records, original bills, revenue records, election card, treatment papers of SSG Hospital, Certificate of Aatmiya Hospital, and original disability certificate being exhibits 28 to 44 respectively. The Tribunal after appreciating the evidence on record, awarded Rs. 1,03,210/- as total compensation under different heads as more particularly set out in para 28 of the judgment and award. Being aggrieved by the said award, the insurance company has filed the present appeal.

4. Heard Mr. Palak Thakkar, learned advocate appearing for the appellant and Mr. Hiren Modi, learned advocate appearing for respondents no.1. As the liability is not denied by the appellant and therefore the appeal is directed only against claimant and presence of respondent no.2 driver-cum-owner is not essential for deciding the present appeal.

5. The learned counsel for the appellant has provided the copies of the relevant evidence, which was adduced before the Tribunal and at the joint request of both the learned counsels, the appeal was taken up for final disposal.

6. Mr. Palak Thakkar, learned counsel appearing for the appellant contended that the insurance company is not at all liable for the award of compensation as the original claimant was not travelling as authorised passenger in the tempo and even though the sitting capacity was only of one, others were also travelling and thus, there was breach of terms and conditions of the policy as well as the Act. It was contended that the Tribunal has committed an error in determining the monthly income of the deceased at Rs. 3,750/- even though there was no evidence to that effect. On the aforesaid ground, it was contended that the appeal be allowed and the claim petition be dismissed.

7. Per contra, Mr. Hiren Modi, learned counsel

appearing for the original claimant contended that the appeal is meritless as the Tribunal has rightly assessed the income at Rs.3,750/- per month by adopting minimum wages standard as it existed on the date of the accident. Mr. Modi contended that the Tribunal has rightly relied upon the ratio laid down by the Apex Court in the case of Kishan Gopal and Anr. vs. Lala & Ors reported in 2013 ACJ 2594 and has rightly calculated the income and thus, the compensation granted under the head of future loss of income is based on sound reasoning, which does not require any substitution by this Court in exercise of its appellate powers. Mr. Modi contended that on the contrary, considering the FIR at exhibit 28 and the panchnama at exhibit 29, the Tribunal has rightly come to the conclusion that the original claimant was travelling in the tempo with goods owned by him, i.e., lentils and therefore, the contention raised by the learned counsel for the appellant that the original claimant was travelling as unauthorised passenger is contrary to the evidence on record. Mr. Modi also contended that though the Tribunal has recorded that the original claimant had to undergo extensive treatment as indoor and outdoor patient at two hospitals, the Tribunal on the contrary has awarded a meager amount of Rs.10,000/- under the head of pain, shock and suffering, which deserves to be enhanced appropriately. Mr. Modi

therefore contended that the appeal being meritless, deserves to be dismissed.

8.No other or further submissions have been made.

9.Upon examining the contention of calculation of excessive income by the Tribunal, the original claimant was examined at exhibit 23. Though a broad statement is made in the deposition that the original claimant earned Rs.1,10,000/- per annum, no evidence was led. The record indicates that the original claimant was a trader and a self employed person wherein no skill as such is required. Admittedly, the accident has occurred on 28.06.2006 and even the minimum wages standard prevailing at the time of the accident was Rs.2,500/- only. Even if notional basis of minimum wages is considered as considered by the Tribunal, the income of the original claimant is Rs.2,500/- per month and therefore, the Tribunal has committed an error in assessing the same on notional basis at Rs.3,750/- per month and it should be assessed at Rs.2,500/- per month only. Considering the agreed disability to the extent of 11% therefore, the respondent claimant would be entitled to compensation under the Future Loss of Income as under -

Rs.2,500/- (income) X 11% X 12 X 15=
Rs.49,500/-

10.Upon appreciating the evidence being FIR at

exhibit 28 and panchnama at exhibit 29, clearly spells out that the original claimant-complainant was travelling in the tempo with lentils belonging to him loaded in the said tempo. In light of such clear cut evidence therefore, the contention raised by Mr. Palak Thakkar, learned counsel appearing for the appellant-original claimant that the original claimant was unauthorised occupant of the tempo deserves to be negated and the Tribunal has committed no error in coming to the conclusion that the lentils belonged to the original claimant. From the impugned award, it clearly transpires that the claimant received treatment at SSG Hospital at Vadodara, exhibit 37 and was treated as indoor and outdoor patient, but as the claimant has failed to produce any documentary evidence to prove the exact cost of the same, the compensation awarded under the head of pain, shock and suffering as Rs.10,000/-, in opinion of this Court, is proper and the same does not require to be enhanced. However, as the income of the original claimant is now determined by this Court at Rs.2,500/- per month, the actual loss of income would be Rs.5,000/-. Thus, the respondents-claimants would be entitled to total compensation as under-

Future loss of income	- Rs. 49,500/-
Pain, shock and suffering	- Rs. 10,000/-

Medical expenses	- Rs.	1,310/-
Actual loss of income	- Rs.	5,000/-
Special diet, transportation and attendant	- Rs.	10,000/-

Total		Rs. 75,810/-
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11. As the Tribunal has awarded Rs.1,03,210/-, the impugned judgment and award stands modified to the extent that the claimant would be entitled to total compensation of Rs. 75,810/- and the appellant insurance company would be be entitled to refund of Rs.27,420/- with interest at the rate of 9% p.a. The Tribunal is directed to refund the additional amount of Rs.27,420/- with interest at the rate of 9% p.a. to the appellant-insurance company.

12. The appeal is thus partly allowed and the impugned judgment and award stands modified to the aforesaid extent. However, there shall be no order as to costs.

(R.M.CHHAYA, J)

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