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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 1871 of 2015

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE J. C. DOSHI

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Approved for Reporting	Yes	No
	Yes	
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versus

GURUMEJSING AJITSING JAAT [DELETED] & ORS.

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Appearance:

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

DELETED for the Defendant(s) No. 1

MR BT VYAS(5540) for the Defendant(s) No. 2

MR GAJENDRA P BAGHEL(2968) for the Defendant(s) No. 2

MS DIMPLE A THAKER(6838) for the Defendant(s) No. 3

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CORAM:HONOURABLE MR. JUSTICE J. C. DOSHI

CAV JUDGMENT

1. The present appeal under section 173 of the Motor Vehicle Act is directed against judgment and award dated 23.07.2014 passed in MACP No.1148 of 1992 by learned MACT, Surat, by which the claimant has been granted compensation of Rs.3,42,028/- with interest @ 9% p.a. from the 04.02.2011 till realization on the awarded amount marking the liability of opponents jointly and severally to pay the compensation.

Brief facts are as under :-

2. Road accident occurred on 23.06.1992. The claimant was going from Kamrej cross road towards bridge of river Tapi riding vehicle No.GJ-05-D-3389 on left side of the road at moderate speed, carefully observing the traffic rules. Truck No.PAT-4022 came from behind driven by its driver at excessive speed, endangering human life and dashed vehicle driven by claimant. Rear wheel of the truck ran over the vehicle as well as claimant. These are the facts of road accident. Complaint of rash and negligent driving was registered before Kamrej Police Station against truck driver. In order to claim the compensation, the claimant has filed claim petition under section 166 of MV Act and claimed the compensation of Rs.10 lakhs with interest and cost for the tortious act of opponent no.1 and liability of opponent no.2 and 3 to pay the compensation.

Claimant's case

2.1. Claimant pleaded that at the relevant time of accident, he was practicing as Junior Advocate and earning Rs.3000/- per month. He was 32 years. The injuries sustained by the claimant reduced his capacity to work and as such practically made him functionally disable. It is also claimed that he has sustained fracture in pelvos resulting into impotency and thereby, he could not enjoy marital or sexual relationship.

2.2. Mainly on above averments, the claimant has preferred claim petition seeking compensation stated supra.



Defendant's case

3. In claim petition, opponent no.1 and 2 though served, did not remain present to oppose claim petition. Insurance Company contested the claim petition by filing written statement and denied allegations levelled in the claim petition and also stated that no cause of action is made out. It was also contended that claim petition was vague and incomplete. So far as income, injury disablement and other aspects on which claimant has claimed compensation are concerned, they are totally denied. Ultimately, it is pleaded to dismiss the claim petition.

Proceedings before MACT

4. Before learned Tribunal, claimant led evidence. Insurance Company did not lead any evidence and therefore, learned Tribunal took monthly income of the claimant to be Rs.1800/- and did not grant any compensation for future prospects. Learned Tribunal took up disability at 24% body as whole and applied the multiplier of 17 to grant total compensation of Rs.3,42,028/- . Being aggrieved, the claimant has preferred first appeal.

Appellant's argument

5. Learned advocate Mr. Modi for the claimant assailed impugned judgment and award claiming to be grant of compensation on lower side. It is submitted that claimant has successfully proved that he was practicing advocate. Further,

claimant has produced copy of the Sanad at Exh.59 to show that he was practising advocate and he was authorized by the Bar Council of Gujarat to practice as a lawyer, yet learned Tribunal considered Rs.1800/- per month as income of claimant treating him alike skilled laborer, thereby learned tribunal committed manifest error in taking up component of monthly income. It is further submitted that learned Tribunal has taken injury at 24% body as a whole, though the injury sustained by the claimant is fracture in pelvis and urethral injury, which ultimately rendered claimant impotent at the young age of 32 years. It is further submitted that claimant has proved that urethral injury and fracture in pelvis by leading evidence of Doctor, yet, learned tribunal did not grant compensation for loss of future prospects as well as compensation in regards to loss of sexual relationship / loss of martial life. It is submitted that claimant has started the process to serve owner of the vehicle since beginning of the claim petition; the owner of the vehicle was residing in State of Punjab, therefore, claimant has requested to serve the owner by publishing the process in government gazette in State of Punjab, but the amount which was deposited by the claimant was found to be insufficient. Thereafter claimant has deposited additional amount to serve the owner. In this process almost 10 years took place. There was no purpose of tardiness on the part of the claimant not to serve the owner within time limit, yet learned tribunal has not granted interest for the time period which took place for serving owner of the offending vehicle, thereby learned Tribunal has committed serious error

5.1. Learned advocate Mr. Modi relied on judgment in the case of **G. Ravindranath v/s. E. Srinivasan and others [2013 ACJ 213]** and judgment of Division Bench of this Court in case of **Sanjaykumar Mansukhlal Mehta v/s. Mamad Juma Kumbhar [First Appeal NO.1092 of 2009]**.

5.2. Upon above submission, learned advocate Mr. Modi submitted to allow the appeal and to enhance amount of compensation as well as to grant interest for the entire time period of claim proceedings..

Respondent's argument

6. Per contra, learned advocate Ms. Thaker for insurance company while supporting impugned judgment would submit that claimant has not produced any evidence that actually he was practicing lawyer or establish that he was practicing in the Court or in Revenue office after taking law degree. It is further submitted that there is total dearth of evidence to prove that in any Court claimant was practicing as a lawyer and earning as claimed in the claim petition. According to claimant, he was Jr. lawyer of Senior advocate Mr. Lalwala but to prove the said fact claimant has not produced any evidence i.e. oral or documentary, therefore, taking of Rs.1800/- monthly income of the claimant, near to rate of minimum wage prevailing at the time of accident by learned Tribunal is just, correct approach. It is submitted that disability certificate produced by the claimant and oral evidence of Doctor to prove disability certificate shows

10 years gap between injury sustained by the claimant and disability assessed by Doctor. She further submitted that Doctor hopelessly failed to prove that injury sustained by claimant resulted into impotency. It is further submitted that 10 years gap may contain many reasons leading to impotency. It is further submitted that without having proved actual injury sustained by claimant which is root cause for impotency, no compensation can be granted on the ground that claimant has lost martial relationship. It is also argued that it is not case where claimant successfully proved loss of future prospects. Learned advocate for insurance company referred to judgment in the case of **New India Assurance Company Ltd. v/s. Hansaben Sureshbhai Prajapati arising out of SLP (C) No.15860 of 2025** and submitted that Hon'ble Supreme Court has approved the concept of not granting interest for the period in which the claimant remained tardy. It is further submitted that claim petition witnessed a large delay on the part of claimant's inaction to proceed swiftly in claim proceedings, therefore, claimant should not be granted any interest for the time period which he remained idle to serve owner of the vehicle. Therefore, it is submitted to dismiss this appeal.

Findings and Analysis

7. I have heard learned advocates for the parties, also perused impugned judgment and award as well as record and proceedings.

8. At the outset, let me refer judgment of Hon'ble Supeme

Court in the case of **N.K.V.Bros.Private Limited Versus M.Karumai Ammal [1980 (3) SCC 457]**, wherein, Hon'ble Apex Court in para 3 has observed about approach of Motor Accident Claim Tribunal to decide cases under the MV Act, it reads as under :-

"3. Road accidents are one of the top killers in our country, specially when truck and bus drivers operate nocturnally. This proverbial recklessness often persuades the Courts, as has been observed by us earlier in other case, to draw an initial presumption in several cases based on the doctrine of res ipsa loquitur. Accidents Tribunals must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable. The Court should not succumb to niceties, technicalities and mystic maybes. We are emphasising this aspect because we are often distressed by transport operators getting away with it thanks to judicial laxity, despite the fact that they do not exercise sufficient disciplinary control over the drivers in the matter of careful driving. The heavy economic impact of culpable driving of public transport must bring owner and driver to their responsibility to their "neighbour". Indeed, the State must seriously consider no-fault liability by legislation. A second aspect which pains us is the inadequacy of the compensation or undue parsimony practised by tribunals. We must remember that judicial tribunals are State organs and Art. 41 of the Constitution lays the jurisprudential foundation for state relief against accidental disablement of citizens. There is no justification for niggardliness in compensation. A third factor which is harrowing is the enormous delay in disposal of accident cases resulting in compensation, even if awarded, being postponed by several years. The States must appoint sufficient number of tribunals and the High Court should insist upon quick disposals so that the trauma and tragedy already sustained may not be magnified by the injustice of delayed justice. Many States are unjustly indifferent in this regard."

9. Apt to note that the Motor Vehicle Act, 1988 is a beneficial piece of Legislation. The concept of just and fair compensation is integral and seminal to the MV Act. The compensation to be awarded under the principle of just and fair compensation to the injured of the road accident or the legal representative/s of the deceased person is based on the principle of fairness, reasonableness and equability. Learned Tribunal to make endeavour to bring back victim to stage of pre-road accident as far as possible. The award must be reasonable and cannot be assessed with moderation though it cannot at the same time be pity and what could be granted must be just, fair and equitable compensation.

10. The appeal at the instance of claimant mainly questions legality of the impugned judgment in regards to finding of income of claimant as well as grant of compensation under head of pain, shock and suffering and not granting loss of future prospects. It is case of the claimant that learned Tribunal has taken conservative approach to grant compensation to victim of road accident. So far as factual aspect is concerned, claimant was riding scooter and dashed by truck from behind, resulting into multiple injuries and same are not disputed. Even issue of total negligence of truck driver is not disputed. Claimant came out with case that he was practicing as junior lawyer to senior lawyer Mr.Lalwala. Claimant claimed that he was earning Rs.3000/- per month when accident took place on 23.06.1992. Claimant who has produced School leaving certificate at Exh.60 proved his age as 32 years at the time of road accident. Claimant entered into witness box at Exh.53 and on oath declared that he



was practising lawyer and earning Rs.3000/- per month. He has further stated that due to the accident he could not do work as he was doing prior to road accident and faced a lot of inconvenience due to the injury.

11. In cross-examination, claimant was asked whether he was practicing as a lawyer at the time of accident. The question is answered in affirmative. He further answered that at the relevant time he was practicing in a labour Court with Senior Advocate Mr. Lalwala. The claimant has produced Sanad issued by Bar Council of Gujarat at Exh.59 issued on 14.12.1987 under section 17 of the Advocates Act, 1961 permitting the claimant to practice as lawyer. It is in this circumstances, if we assess income of claimant, he could not be considered at par with skilled or semi-skilled worker. Learned Tribunal has taken Rs.1800/- as income of claimant double to rate of minimum wages worthy testimony, but yet looks worthy-less. Looking to profession of claimant as advocate, considering his age, and adopting simple guess work as well as relying upon his credit worthy deposition, Rs.2500/- per month was required to be considered as income of claimant and accordingly, it is considered.

12. Dr. Dayanidhi Desai assessed disability of claimant at 24% body as whole considering multiple injuries sustained by claimant. He has been examined at Exh.54. Claimant has produced disability certificate at Exh.55. The left thigh's power has been reduced and has become weak; claimant could not



raise foot finger; there was 21% mobility component. Photographs produced on record at Mark 51/1 and 51/2 prove that on back side of body, claimant has suffered multiple injuries. Further Exh.34 to 38 medical certificate indicates claimant was admitted to hospital for long time. The claimant has sustained fracture pelvis with urethral injury adding impotency to claimant. Learned Tribunal has taken 24% as functional disability relying on medical evidence, this Court approves adoption of 24% physical disability. Claimant was 32 years at the time of road accident. Looking to injuries and age, 40% is required to be added towards loss of future prospects and multiplier of 17 is required to be applied in view of judgment in case of **National Insurance Company Ltd. v/s. Pranay Sethi [2017 (16) SCC 680]**.

13. So far as assessment of compensation under pain shock and suffering is concerned, learned Tribunal awarded Rs.25,000/- and equal amount is granted under head of special diet, transportation, attendant etc. In view of aforesaid finding, there is hardly any doubt on the injury of claimant. According to the cross-examination carried out by insurance company, treatment of the claimant continued for more than one year. Doctor who entered into witness box at Exh.54 pleaded that claimant has suffered impotency. In the cross examination, he has admitted that he has not carried out any test to record loss of sexual dysfunction. He has issued certificate to that effect that claimant has suffered impotency (Exh.58). It is in this circumstances, referring to judgment of Hon'ble Supreme Court in the case of *G. Ravindranath (supra)*, when claimant has

become unfit for marital life, he should be granted compensation under loss of marital life in addition to pain, shock, and suffering. Division Bench of this Court in the case of *Sanjaykumar Jayantilal Makwana (supra)* followed judgment of *G.Ravindranath (supra)*. It is in this factual background, considering injury sustained by the claimant and not fit to perform marital life, this Court grants compensation of Rs.50,000/- towards pain, shock and suffering and Rs.1,50,000/- towards loss of martial life. Actual loss of income for one year is granted i.e. Rs.30,000/-. Compensation of Rs.25,000/- towards rich diet, transportation and attendance is maintained.

12. Therefore, total compensation would be as under, which the claimant/s is/are entitled to get.

Particulars	Amount (Rs.)
Future loss of income Rs.2500/- per month + Rs.1000/- (40% towards future prospects) = Rs.3,500/- and considering 24% functional disability, the amount would be Rs.840/- per month and applying 17 multiplier, total amount would be Rs.1,71,360/- (Rs.840/- x 12 x 17)	1,71,360/-
Medical expenses.	1,93,100/-
Pain, shock and suffering	50,000/-
Rich diet, transportation and attendance	25,000/-

Actual loss of income for one year (Rs.2500/- x 12)	30,000/-
Loss of marital life	1,50,000/-
Total...	6,19,460/-
Less : Amount which is already awarded by Tribunal	3,42,028/-
Additional amount which is awarded	2,77,432/-

13. Another issue which arise in the matter is that learned Tribunal has granted interest from 04.02.2011, the date on which owner has been served and refused to grant interest from the date of claim petition. The approach of learned Tribunal for not granting interest from date of claim petition deserves special reasons. Learned Tribunal tried to justify for non-granting the interest from the date of petition on the ground that claimant could not serve owner and the matter remained idle for more than ten years. What would be noticeable that insurance company was served at first instance. Insurance company who appeared in the matter did not raise any contention to stop granting interest on the ground that claimant is delaying proceedings of claim petition. Secondly, no issue in this regards was framed by learned Tribunal. Thirdly, owner of the truck is residing in State of Punjab. Service of process could not effected upon the owner in ordinary course and thus, claimant took up the proceedings to serve owner of truck by substitute service of publishing same in Government gazette. At first glance, the

claimant has deposited the amount for publishing of service on 12.05.2000 and thereafter, draft notice was sent to the Government Press, Punjab. Said draft notice returned back with remark to send Rs.500/- as printing charges. The claimant thereafter did not deposit the amount within time period. But as noted herein above, it was not his intention to delay the proceedings and to earn interest on delay proceedings and at that same time, insurance company did not come forward to urge learned Tribunal to stop granting interest to the claimants.

14. Learned advocate Ms.Thakkar relied on judgment in the case of *Hansaben Sureshbhai Prajapati (supra)* and submitted that claimant should not take advantage of his idleness not to deposit amount for publishing notice in government gazette. Judgment relied by learned advocate Ms.Thakkar would not be applicable to the facts of the present case, in that case, claim petition was dismissed. There was delay of 725 days in filing appeal before the High Court and delay of 3700 days in preferring restoration application before High Court. Hon'ble Supreme Court held that claimant should not be given rewarding monetarily the stance of not seeking to enforce own right but in the present case, it is procedural lapse which delayed proceedings of claim petition.

14.1. Moreover, let me observe that section 171 of Motor Vehicle Act statutorily mandates claim Tribunal to direct that interest be paid on awarded compensation. Section 168 requires "just" compensation and award. Delayed by years loses real value

unless interest is added. One cannot be oblivious that for all the years claimant has been kept out from rightful due which he was entitled on the day of filing claim petition. And above all, the MV Act is social welfare law, so it has to be read liberally in favour of victim. Thus, non grant of interest from date of claim petition requires special reason existing against claimant; lacks thereof, as in case on hand, do not justify grant of interest for limited or specific time period. This Court deplore and disapprove rigid approach of learned Tribunal for denying to grant interest from date of claim petition.

15. In view of above, I do not approve finding of learned Tribunal to stop granting interest from the date of claim petition. Said finding is modified to the extent that claimant is entitled for interest from date of filing claim petition.

16. For the reasons recorded above, the following order is passed.

16.1 The present appeal is **partly allowed**.

16.2 The Insurance Company is directed to deposit the enhanced amount Rs.2,77,432/- with interest @ 9% p.a. from the date of claim petition before the concerned Tribunal, within a period of 12 weeks from the date of receipt of this order. It is clarified that entire amount of compensation i.e. Rs.6,19,460/- shall carry interest @ 9% p.a. from the date of claim petition till realization. Rest of the direction(s) of the Tribunal remain same.



16.3 The Tribunal shall disburse the entire awarded amount lying in the FDR and/or with the Tribunal, with accrued interest thereon, if any, to the claimant, by account payee cheque / NEFT / RTGS, after proper verification and after following due procedure.

16.4 While making the payment, the Tribunal shall deduct the courts fees, if not paid, in accordance with rules/law.

16.5. Record and proceedings be sent back to the concerned Tribunal, forthwith.

SATISH

(J. C. DOSHI,J)