

URVIBEN CHIRAGHBAI SHETH

v.

VIJAYBHAI SHAMBHUBHAI JORANPUTRA & ORS.
(Civil Appeal No. 3618 of 2011)

APRIL 26, 2011

[G.S. SINGHVI AND ASOK KUMAR GANGULY, JJ.]

Motor Vehicles Act, 1988 – s. 166 – Compensation – Claim for enhancement – First respondent lost control of the car while driving and dashed the same against a milestone, resulting in serious injuries to occupants of the car – Appellant, aged 30 years and earning around Rs. 1500/- pm suffered disability and rendered bedridden as a result of the accident – Claim petition by appellant seeking Rs. 15 lakhs as compensation – Tribunal computed compensation as Rs. 6,07,000/- with interest at the rate of 9%, with the consent of the parties – Appeal filed by appellant claiming enhancement for compensation – Affidavit filed by advocate who appeared before the Tribunal contending that no such settlement was ever entered into by the consent of parties – Dismissal of the appeal by the High Court discarding the affidavit – On appeal held: High Court took a narrow view of the entire controversy – Tribunal held the amount granted by it is just proper and reasonable and also held that the same is based on the consent of the parties – High Court being the last court of fact and law did not examine whether the Tribunal's finding that the compensation granted is proper, just and reasonable in the facts of the case – Tribunal could not accept the representation lowering down the claim on the mere oral statement of counsel – It should have insisted on production of some material for the same – Also, no leave was obtained by the parties from the Tribunal to enter the said settlement – In the absence thereof, the High Court erred in discarding the affidavit filed by the advocate only on the ground that this

A was filed belatedly before the High Court and is an
afterthought – Stand taken in the affidavit of the advocate
appears probable since there is nothing on record to show
that the appellant ever filed any petition or affidavit for
settlement before the MACT – Principle of sanctity of recitals
B in Court proceedings is available to a Court of Record and
cannot be stretched to the proceedings of a Tribunal – High
Court in the process erred by equating the record of
proceedings in a Tribunal with proceedings in a court of record
– However, on basis of the materials on record, the matter
C should not be remanded back, since the accident took place
in 1990 and the appellant has suffered 100% medical
disability which is permanent in nature with no sign of
recovery – She has two children and her husband expired
D prior to the incident – Compensation should be assessed so
that the interest accruing therefrom would be sufficient for the
maintenance of the family of the victim and the concept of
compensation is wider than mere damages – Thus,
E compensation of Rs.15 lacs with interest at the rate of 8% on
the enhanced compensation from the date of filing the claim
petition before MACT till date of realization.

F Compensation – Assesment of – Held: Compensation
should be assessed so that the interest accruing therefrom
would be sufficient for the maintenance of the family of the
victim – Concept of compensation is wider than mere
damages.

G The first respondent, while driving the car owned by
the second respondent, lost control of the car and
dashed the car with full force against a milestone,
resulting in serious injuries to the occupants, appellant
and others. The appellant suffered disability and was
rendered bedridden. She filed a claim petition before the
Tribunal, claiming rupees fifteen lakhs as compensation.
At the time of the accident the appellant was 30 years old

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and she claimed that she was earning Rs.1,500/- to A
Rs.1,600/- per month. The first respondent-driver, the
second respondent-owner of the car and third
respondent-insurance company with which the car was
insured, were held jointly and severally liable to pay
compensation to the appellant. The Tribunal awarded B
compensation of Rs.6,07,000/- with interest at the rate of
9%. While computing the compensation, the MACT held
that the compensation had been computed with the
consent of the parties. The appellant filed an appeal
before the High Court for enhancement of compensation C
and the same was dismissed. Therefore, the appellant
filed the instant appeal.

Allowing the appeal, the Court

HELD: 1.1 As regards the submission that there was D
no consent before MACT and the same was wrongly
recorded by the Tribunal, no application appears to have
been made before the Tribunal to rectify the error, if there
was one. Instead, the parties filed an appeal before the
High Court being aggrieved by the compensation E
awarded by the Tribunal. In the impugned judgment, the
High Court took a narrow view of the entire controversy.
In its rather cryptic judgment, the High Court refused to
take into consideration the affidavit filed by the advocate
who appeared for the appellant before the MACT. The F
said affidavit is on record. A perusal of the said affidavit
which was filed before the High Court shows that the
advocate who appeared on behalf of the appellant before
the MACT averred that the Tribunal recorded that both the
parties agreed qua the amount that was to be paid to the
claimant. Neither any pursis in writing was passed to the
Tribunal to such effect nor while arguing any such G
consent was given. The said fact appears to have been
recorded erroneously. The High Court ignored the said
stand taken before it on the ground that such an affidavit

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A being placed before the High Court was an afterthought and no ground had been taken in the memorandum of appeal to that effect. [Paras 9, 10 and 11] [905-G-H; 906-A-D]

B 1.2 From a perusal of the judgment of the Tribunal, it does not appear that it was based solely on the consent of the parties. MACT curiously held that in the facts of the case, the amount granted by it is just proper and reasonable and also held that the same is based on the consent of the parties. The High Court, as the last court of fact and law should have examined whether the Tribunal's finding that the compensation granted is proper, just and reasonable in the facts of the case. The High Court admittedly failed to do so. [Paras 14, 16] [906-G-H; 907-B-C]

D 1.3 While acting as a Claims Tribunal, its proceedings are summary in nature but in exercising its summary jurisdiction the Tribunal must follow principles of justice, equity and good conscience and must be aware that its summary enquiry is in connection with a legislation which is meant for social welfare. Therefore, when a representation is made before the Tribunal that a claim of Rs.15 lacs by way of consent is reduced to Rs.6 lacs and odd, the Tribunal must insist on production of some material either, an affidavit of the claimant or the statement of the claimant before the MACT in support of such lowering down of claim. The MACT cannot accept the said representation on the mere oral statement of counsel since such settlement is purely a question of fact. No leave was obtained from the Tribunal to enter into a compromise between the parties in respect of the settlement. In the absence of all these materials, when an affidavit was filed by the advocate who appeared before the Tribunal, contending that no such settlement was ever entered into by the consent of parties, the High

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Court fell into an error by discarding the same only on the ground that this was filed belatedly before the High Court and is an afterthought. It may be true that in the grounds of appeal before the High Court, this should have been mentioned, but on a mere defect of pleading of the parties, justice cannot be denied if in the facts of the case, the stand taken on the affidavit of the advocate appears probable. The stand taken in the affidavit of the advocate appears probable specially when there is nothing on record to show that the appellant ever filed any petition or affidavit for settlement or compromise before the MACT. [Paras 17, 18, 19 and 20] [907-D-H; 908-A-C]

Daman Singh and Ors. etc. v. State of Punjab and Ors.
AIR 1985 SC 973 – distinguished.

1.4 The High Court relied on the principle of sanctity of a record entered by a Court and held that what is recited in the Court record is sacrosanct. The High Court, in the process, fell into an error by equating the record of proceedings in a Tribunal with proceedings in a court of record. Under the hierarchy of Courts, a High Court (under Article 215) and the Supreme Court (under Article 129) are recognized as Courts of Record. A Motor Accidents Claims Tribunal constituted under the Motor Vehicles Act, 1988 is a Civil Court of limited jurisdiction, and is certainly not a Court of Record. The infallibility of its formal record is one of the earliest marks of a Court of Record, but it has developed other characteristics too. Therefore, the principle of sanctity of recitals in Court proceedings is available to a Court of Record. This principle cannot be stretched to the proceedings of a tribunal. The High Court failed to appreciate this. [Paras 23 and 26] [908-G-H; 909-A, D]

State of Maharashtra v. Ramdas Srinivas Nayak and Anr.
AIR 1982 SC 1249 – referred to.

A *Reg v. Aaron Mellor (1858) 7 Cox's Criminal Law Cases 454* – referred to.

A History of English Law by W.S. Holdsworth, Vol 5, p. 158 – referred to.

B 1.5 Having regard to the materials on record, the matter should not be remanded, keeping in mind the period which has elapsed in between since the accident took place in 1990, and the fact that the appellant had been bedridden since then. [Para 27] [909-E]

C 1.6 Admitted evidence about the appellant's medical disabilities is that she has 100% disability which is permanent in nature with no sign of recovery. The appellant's case that she was running a beauty parlour prior to the accident could not be proved, specially her income from the said parlour was not proved. The existence of the beauty parlour is however, not in dispute. Assuming the appellant is not running the parlour, the fact remains that she has two children and her husband died prior to the incident. Therefore, the dependence of the children and the running of the family is to be shouldered by her even though she is infirm and bedridden. She also needs someone to help her in her daily life. She has to have recurring medical expenses. Just because she is a homemaker is no reason why the courts should be miserly in fixing compensation for her. [Paras 28, 29, 30 and 31] [909-F-H; 910-A-C]

Arun Kumar Agrarwal and Anr. v. National Insurance Co. Ltd. and Ors. 2010 (9) SCC 218 – referred to.

G 1.7 Compensation may be so assessed that the interest accruing therefrom would be sufficient for the maintenance of the family of the victim and the concept of compensation is wider than mere damages. Thus, the compensation of Rs.15 lacs (Rupees Fifteen Lacs) with

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interest at the rate of 8% on the enhanced compensation from the date of filing the claim petition before MACT till date of realization is granted. [Paras 32 and 33] [910-D-E]

Case Law Reference:

AIR 1985 SC 973 Referred to Para 12

AIR 1982 SC 1249 Referred to Para 25

2010 (9) SCC 218 Referred to Para 31

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3618 of 2011.

From the Judgment & Order dated 06.07.2005 of the High Court of Gujarat at Ahmedabad in First Appeal No. 4994 of 2001.

Bharat Rao for the Appellant.

Manjeet Chawla, P.K. Seth, Vijay Verma for the Respondents.

The Judgment of the Court was delivered by

GANGULY, J. 1. Delay condoned.

2. Leave granted.

3. On 18.5.1990, the appellant and others were going in a Fiat car (No. GGG 792), owned by the second respondent, from Surat to Ubhrat. The said car was driven by the first respondent, who lost control of the car and dashed the car with full force against a milestone, after which the car turned turtle thrice. As a result, the occupants of the car sustained serious injuries.

4. The appellant filed a claim petition before the Motor Accident Claims Tribunal (MACT) claiming compensation of

A Rs.15,00,000/-. At the time of the accident, she was aged 30 years and she claimed to be earning Rs.1,500/- to Rs.1,600/- per month from running a business in the name of Contessa Beauty Parlour at Ahmedabad.

B 5. Before the MACT it was established that the first respondent was absolutely liable for the accident in view of his careless, rash and negligent driving. Thus, the first respondent (driver), second respondent (owner of the car) and the third respondent (insurance company with which the car was insured) were held jointly and severally liable to pay compensation to the appellant. In the accident, the spinal cord of the appellant was damaged, as a result of which she was unable to walk and was bedridden. In computing the compensation payable to the appellant, the MACT, by order dated 23.3.2001, reached a finding that the compensation had been computed with the consent of the parties.

C 6. MACT awarded Rs.50,000/- towards pain and suffering, Rs.3,50,000/- towards treatment charges, Rs.10,000/- towards attendant charges and Rs.5,000/- towards nutritious food. The appellant had contended that she was running a beauty parlour, but no reliable evidence was produced to substantiate the same. Thus, appellant being a housewife, monthly income was assessed at Rs.1000/- and applying a multiplier of 16, the future loss of income was assessed at Rs.1,92,000/- (Rs.1000 X 12 X 16). Thus, the appellant was held entitled to total compensation of Rs.6,07,000/- with interest at the rate of 9%.

D 7. Aggrieved by the compensation awarded by the MACT, the appellant appealed to the High Court for enhancement of compensation. The High Court, vide order dated 6.7.2005, dismissed the appeal on the following ground:

E "Through these appeals judgment of the MACT Valsad at Navsari dated 23.3.2001 is assailed on the ground that proper compensation has not been awarded, therefore, it be enhanced. However, after hearing the counsel for both

the sides, it is found that the compensation has been settled as per the consent of the counsel for the parties. This fact is recorded in para 10 of the award. That being so, interference is not called for. Shri Parikh, learned counsel for the appellants want to place on record affidavit of Shri K.Z. Rifai, Advocate dated August 5, 2002 to point out that neither any pursis in writing was passed to the Claims Tribunal nor while arguing, such consent was given, fact appears to have been recorded erroneously. Placement of affidavit at this stage is after thought, therefore, declined. In such case no such agreement was there with regard to the amount of compensation as mentioned in the judgment, averment to that effect ought to have found place in the memorandum of appeal dated 20th June, 2001. Judgment record is conclusive. Neither lawyer nor litigant can claim to contradict it, except before the judge himself but nowhere else. Court is bound to accept the statement of the judge recorded in the judgment as what transpired in the court and cannot allow statement of the Judge to be contradicted by statement by affidavit and other evidence (See: *Daman Singh and others etc. v. State of Punjab and others* (AIR 1985 SC 973)). Accordingly, claim for enhancement cannot be considered in light of the agreement by counsel for parties before the Claims Tribunal.”

8. This appeal is directed against the aforesaid judgment of the High Court.

9. The appellant contends that there was no consent before the MACT, and the same was wrongly recorded by the Tribunal. However, we notice that no application appears to have been made before the Tribunal to rectify the error, if there was one. Instead, the parties filed an appeal before the High Court being aggrieved by the compensation awarded by the Tribunal.

10. This court finds that in the impugned judgment, the High

A Court has taken a rather narrow view of the entire controversy. In its rather cryptic judgment, the High Court refused to take into consideration the affidavit filed by Sri K.Z. Rifai, the learned advocate who appeared for the appellant before the MACT. The said affidavit is on record. A perusal of the said affidavit
B which was filed before the High Court shows that the advocate who appeared on behalf of the appellant before the MACT averred:

C “2).....The learned Tribunal in paragraph 10 of the judgment has recorded that both the parties agree qua the amount that was to be paid to the claimant. I say that neither any pursis in writing was passed to the Tribunal to such effect nor while arguing was any such consent given. The said fact appears to have been recorded erroneously.”

D 11. The High Court ignored the said stand taken before it on the ground that such an affidavit being placed before the High Court was an afterthought and no ground had been taken in the memorandum of appeal dated 21.6.2001 to that effect.

E 12. The other ground which weighed with the High Court is that statement recorded in the judgment of the Court cannot be contradicted by any affidavit or any other evidence and in coming to said conclusion the High Court relied on the judgment of this Court in *Daman Singh and others etc. v. State of Punjab and others*, reported in AIR 1985 SC 973.
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13. This Court fails to appreciate the aforesaid stand of the High Court for various reasons which are discussed hereunder.

G 14. From a perusal of the judgment of the Tribunal, it does not appear that it was based solely on the consent of the parties. Apart from consent, if any, of the parties, the MACT also held that the amount of compensation awarded by it “appears to be proper, just and reasonable taking into consideration the
H aforesaid evidence.”

15. In fact, the exact finding of the MACT is set out below: A

“.....With consent of both the parties, it has been decided to make payment of the under mentioned amount which appears to be proper, just and reasonable taking into consideration the aforesaid evidence.” B

16. Therefore, it appears to be a mixed bag. MACT curiously held that in the facts of the case, the amount granted by it is just proper and reasonable and also held that the same is based on the consent of the parties. The High Court, as the last court of fact and law should have examined whether the Tribunal’s finding that the compensation granted is proper, just and reasonable in the facts of the case. The High Court has admittedly failed to do so. C

17. Coming to the question of so-called consent of the parties, the approach of the High Court also cannot be appreciated. It is true that while acting as a Claims Tribunal, its proceedings are summary in nature but in exercising its summary jurisdiction the Tribunal must follow principles of justice, equity and good conscience and must be aware that its summary enquiry is in connection with a legislation which is meant for social welfare. Therefore, when a representation is made before the Tribunal that a claim of Rs.15 lacs by way of consent is reduced to Rs.6 lacs and odd, the Tribunal must insist on production of some material either, an affidavit of the claimant or the statement of the claimant before the MACT in support of such lowering down of claim. The MACT cannot accept the said representation on the mere oral statement of counsel since such settlement is purely a question of fact. In fact no leave was obtained from the Tribunal to enter into a compromise between the parties in respect of the settlement. D E F G

18. In the absence of all these materials, when an affidavit was filed by the learned advocate who appeared before the Tribunal, contending that no such settlement was ever entered into by the consent of parties, the High Court fell into an error H

A by discarding the same only on the ground that this was filed belatedly before the High Court and is an afterthought

B 19. It may be true that in the grounds of appeal before the High Court, this should have been mentioned, but on a mere defect of pleading of the parties, justice cannot be denied if in the facts of the case, the stand taken on the affidavit of the advocate appears probable.

C 20. To our mind, the stand taken in the affidavit of the advocate referred to above appears probable specially when there is nothing on record to show that the appellant ever filed any petition or affidavit for settlement or compromise before the MACT.

D 21. The reliance placed by the High Court on the judgment of this court in the case of *Daman Singh* (supra) is rather misconceived. In the said case, what this court held was when several points were raised in a writ petition before the High Court, and argument is confined to some grounds or points, as other grounds are considered by the counsel unworthy of canvassing, thereafter the counsel cannot make a grievance that other grounds were not considered by the court (see para 13).

F 22. The situation in this case is not similar to the one pointed out in *Daman Singh* (supra).

G 23. Here the High Court relied on the principle of sanctity of a record entered by a Court and held that what is recited in the Court record is sacrosanct. The High Court, in the process, fell into an error by equating the record of proceedings in a Tribunal with proceedings in a court of record. Under our hierarchy of Courts, a High Court (under Article 215) and the Supreme Court (under Article 129) are recognized as Courts of Record. A Motor Accidents Claims Tribunal constituted under the Motor Vehicles Act, 1988 is a Civil Court of limited jurisdiction, and is certainly not a Court of Record. The

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infallibility of its formal record is one of the earliest marks of a Court of Record, but it has developed other characteristics too (See A History of English Law by W.S. Holdsworth, Vol 5, p. 158). A

24. In *Reg v. Aaron Mellor*, reported in (1858) 7 Cox's Criminal Law Cases 454, it was held "We must consider the statement of the learned judge as absolute verity and we ought to take his statement precisely as a record and act on it in the same manner as on a record of Court which of itself implies an absolute verity." B

25. This has been followed by this Court in *State of Maharashtra v. Ramdas Srinivas Nayak & Anr.*, reported in AIR 1982 SC 1249. C

26. Therefore, the principle of sanctity of recitals in Court proceedings is available to a Court of Record. This principle cannot be stretched to the proceedings of a tribunal. Unfortunately the High Court failed to appreciate this. D

27. Now the question which arises is whether the matter should be remanded by this Court? Having regard to the materials on record, this Court is of the opinion that the matter should not be remanded, keeping in mind the period which has elapsed in between since the accident took place in 1990, and the fact that the appellant had been bedridden since then. E

28. Admitted evidence about her medical disabilities is that she has 100% disability which is permanent in nature with no sign of recovery. F

29. It is of course true that the appellant's case that she was running a beauty parlour prior to the accident could not be proved, specially her income from the said parlour has not been proved. The existence of the beauty parlour is however not in dispute. G

30. Assuming the appellant is not running the parlour, the H

A fact remains that she has two children and her husband died prior to the incident. Therefore, the dependence of the children and the running of the family is to be shouldered by her even though she is infirm and bedridden. She also needs someone to help her in her daily life. She has to have recurring medical expenses.

C 31. Just because she is a homemaker is no reason why the courts should be miserly in fixing compensation for her. A Bench of this Court in *Arun Kumar Agrawal & Anr. v. National Insurance Co. Ltd. & Ors.*, reported in 2010 (9) SCC 218, had occasion to consider this question and held that the work of homemakers and housewives should be properly assessed and in making assessment of compensation payable to them, they should not suffer from a gender bias.

D 32. It is an accepted principle that compensation may be so assessed that the interest accruing therefrom will be sufficient for the maintenance of the family of the victim and the concept of compensation is wider than mere damages.

E 33. Considering all this, we grant compensation of Rs.15 lacs (Rupees Fifteen Lacs) with interest at the rate of 8% on the enhanced compensation from the date of filing the claim petition before MACT till date of realization.

F 34. Compensation on the aforesaid basis must be paid to the concerned MACT by the respondents within six weeks by a demand draft. Thereupon the MACT shall forthwith deposit the same in the bank account of the appellant.

35. The appeal is thus allowed.

G 36. No order as to costs.

N.J.

Appeal allowed.