Pramodkumar Rasikbhai Jhaveri vs Karmasey Kunvargi Tak & Ors on 5 August, 2002

Equivalent citations: AIR 2002 SUPREME COURT 2864, 2002 (6) SCC 455, 2002 AIR SCW 3257, 2002 (3) BLJR 2451, (2002) 4 ALLMR 260 (SC), (2002) 3 JCR 83 (SC), 2002 (8) SRJ 121, 2002 (5) SCALE 493, 2002 (3) LRI 769, 2002 SCC(CRI) 1355, 2002 (4) ALL MR 260, (2002) 6 JT 380 (SC), 2002 (2) UJ (SC) 1148, 2002 (4) SLT 644, 2002 BLJR 3 2451, (2002) 3 ACC 66, (2002) 3 GUJ LR 2763, (2002) 3 MAD LJ 180, (2002) 4 PAT LJR 30, (2002) 3 PUN LR 467, (2002) 4 RAJ LW 580, (2002) 3 TAC 1, (2002) 5 SUPREME 198, (2002) 3 RECCIVR 688, (2002) 5 SCALE 493, (2002) WLC(SC)CVL 756, (2002) 2 UC 565, (2002) 3 JLJR 95, (2003) 1 GCD 2 (SC), (2002) 3 ACJ 1720, (2002) 49 ALL LR 210, (2002) 4 ALL WC 3251, (2002) 4 CAL HN 33, (2002) 4 CIVLJ 615, (2002) 3 CURCC 210

Author: K.G. Balakrishnan

Bench: U.C. Banerjee, K.G. Balakrishnan

CASE NO.:
Appeal (civil) 5436 of 1994

PETITIONER:
PRAMODKUMAR RASIKBHAI JHAVERI

Vs.

RESPONDENT:
KARMASEY KUNVARGI TAK & ORS.

DATE OF JUDGMENT: 05/08/2002

BENCH:
U.C. Banerjee & K.G. Balakrishnan.

JUDGMENT:

K.G. Balakrishnan, J.

The claimant in a motor accident claim case is the appellant before us. The appellant was driving a Fiat car through National Highway No. 8 on 7th February, 1976, on his way to Surat from

Ahmedabad and when the car reached near Ankleshwar, a truck bearing registration no. GTC 4735 came from the opposite side at excessive speed and the car driven by the appellant hit the right side of the said truck and collided with the rear right-side wheels of the truck. The truck, which was loaded with goods, toppled over to its right side and came to a halt at a distance of about 20 feet. As a result, the appellant, his wife and another friend, who were occupants of the car, sustained injuries. They preferred claim petitions before the Motor Accidents Claims Tribunal. The three claim petitions were tried jointly and the claims preferred were allowed. In this appeal, we are only concerned with the claim petition preferred by the appellant. The appellant had claimed a total compensation of Rs. 9,98,500 and the entire claim was allowed. Against that award, the respondent Insurance Company filed an appeal before the High Court of Gujarat at Ahmedabad and in the appeal, it was held that the appellant was entitled to get compensation to the extent of Rs. 4,72,600. However, the High Court held that there was contributory negligence on the part of the appellant to the extent of 30% and proportionate deduction was made from the total compensation. Aggrieved by the same, the present appeal is filed.

We heard Mr. Sunil Dogra, learned Counsel on behalf of the appellant and Mr. K.L. Nandwani, learned Counsel on behalf of the respondents.

As regards the amount of compensation due to the appellant, the High Court held that the Tribunal had seriously erred in fixing the total compensation. The High court held that the award of Rs. 2,36,099 towards the actual loss of income and another sum of Rs. 4,71,510 towards the loss of future income and Rs. 2,32,381 towards loss of expectancy of profit were on the higher side and that the appellant was entitled to Rs. 20,500 for actual amount of loss of income and another Rs. 3,93,600 towards loss of future income. The learned Counsel for the appellant strenuously urged before us that the calculation made by the High Court is incorrect and the compensation amount should not have been reduced by the Impugned Judgment whereas the learned Counsel appearing on behalf of the Insurance Company supported the Judgment and contended that the award of a sum of Rs. 3,93,600 towards the loss of future income is not actually due to the appellant as there was only a partial disability suffered by him and the appellant has been continuing with his business and there was no loss of future earning on this account.

The High Court elaborately considered the matter and noticed that the appellant was under treatment for a period of 5 months and thereafter he started attending his business and had also gone abroad for business purposes. The appellant was doing the business of a commission agent. The Tribunal had earlier held that there was a loss of income for a period of 34 months and the monthly income was fixed at Rs. 9000 p.m. The High Court on the basis of average post-accident monthly income, fixed the income at Rs. 4,100 p.m. and held that the appellant was entitled to Rs. 20,500 as actual loss of earning for a period of 5 months.

As regards the future loss of income, the Tribunal had made an award of Rs. 4,71,520, whereas the High Court fixed the future loss at Rs. 3,93,600. The High Court has given valid reasons for reduction of the amount. The High Court held that the monthly income of the appellant would have been Rs. 4,100 p.m. and by applying the multiplier of 8 years, the claim should be Rs.3,93,600 towards the future loss of income. We do not think that the multiplier adopted by the High Court is

wrong or the amount of compensation granted for the future loss of income is inadequate. We also do not think that the High Court erred in fixing the quantum of compensation.

The next question that arises for consideration is whether the High Court was justified in holding that there was contributory negligence on the part of the appellant. The Tribunal found that the accident happened due to the negligence of the truck driver but the High Court, by the impugned Judgment held that the appellant was also partly negligent and thus, there was contributory negligence on his part and the total compensation payable to the appellant was reduced.

The High Court found that there was contributory negligence on the part of the appellant for two reasons. Firstly, the appellant who was driving the car did not slow down his vehicle when he saw that the truck coming at a high speed from the opposite direction was trying to overtake another car ahead of the truck and, secondly, the High Court found that there was a three feet width of the road on the left side of the car of the appellant and on seeing the oncoming truck, the appellant could have swerved his vehicle to the left side.

We do not think that these two reasons given by the High Court fully justify the accepted principles of contributory negligence. The question of contributory negligence arises when there has been some act or omission on the claimant's part, which has materially contributed to the damage caused, and is of such a nature that it may properly be described as 'negligence.' Negligence ordinarily means breach of a legal duty to care, but when used in the expression "contributory negligence" it does not mean breach of any duty. It only means the failure by a person to use reasonable care for the safety of either himself or his property, so that he becomes blameworthy in part as an "author of his own wrong."

Subject to non-requirement of the existence of duty, the question of contributory negligence is to be decided on the same principle on which the question of defendant's negligence is decided. The standard of reasonable man is as relevant in the case of plaintiff's contributory negligence as in the case of defendant's negligence. But the degree of want of care which will constitute contributory negligence, varies with the circumstances and the factual situation of the case. The following observation of the High Court of Australia in Astley Vs. Austrust Ltd. (1999) 73 ALJR 403 is worthy of quoting:

> "A finding of contributory negligence turns on a factual investigation whether the plaintiff contributed to his or her own loss by failing to take reasonable care of his or her person or property. What is reasonable care depends on the circumstances of the case. In many cases, it may be proper for a plaintiff to rely on the defendant to perform its duty. But there is no absolute rule. The duties and responsibilities of the defendant are a variable factor in determining whether contributory negligence exists and, if so, to what degree. In some cases, the nature of the duty owed may exculpate the plaintiff from a claim of contributory negligence; in other cases, the nature of the duty may reduce the plaintiff's share of responsibility for the damage suffered; and in yet other cases the nature of the duty may not prevent a finding that the plaintiff failed to take reasonable care for the safety of his or her person or property.

> Contributory negligence focuses on the conduct of the plaintiff. The duty owed by the defendant, although relevant, is one only of many factors that must be weighed in determining whether the plaintiff has so conducted itself that it failed to take reasonable care for the safety of its person or property."

It has been accepted as a valid principle by various judicial authorities that where, by his negligence, if one party places another in a situation of danger, which compels that other to act quickly in order to extricate himself, it does not amount to contributory negligence if that other acts in a way, which, with the benefit of hindsight, is shown not to have been the best way out of the difficulty. In Swadling Vs. Cooper [1931] A.C. 1 at page 9, Lord Hailsham said:

> "Mere failure to avoid the collision by taking some extraordinary precaution does not in itself constitute negligence: the plaintiff has no right to complain if in the agony of the collision the defendant fails to take some step which might have prevented a collision unless that step is one which a reasonably careful man would fairly be expected to take in the circumstances."

It is important to note that the respondents did not contend before the Tribunal that there was contributory negligence on the part of the appellant, the driver of the car. There was not even an allegation in the written statement filed by the respondents that the car driver was negligent and the accident occurred as result of partial negligence of the car driver. During the trial of the case, there was an attempt on the part of the respondents to contend that the driver of the car was trying to overtake a truck which was going ahead of the car. The appellant-car driver had also pleaded that the truck driven by the second respondent was trying to overtake another car, which was going ahead of the truck. But these circumstances are not proved by satisfactory evidence. One expert had also given evidence in this case but he had not seen the accident spot. His opinion was based on the observation of the damaged parts of the two vehicles. The total width of the tarred portion of the road was 22 feet and there were mud shoulders on either side having a width of three feet. It is proved by satisfactory evidence that the offending truck had come to the central portion of the road and there was only a three feet width of the road on the left side of the car driven by the appellant. In this factual situation, the High Court was not justified in holding that there was contributory negligence on the part of the appellant. It would, if at all, only prove that the appellant had not shown extraordinary precaution. The truck driven by the second respondent almost came to the center of the road and the appellant must have been put in a dilemma and in the agony of that moment, the appellant's failure to swerve to the extreme left of the road did not amount to negligence. Thus, there was no contributory negligence on his part especially when the second respondent, the truck driver had no case that the appellant was negligent.

Therefore, we are of the view that the factual situation proved in this case does not show that the appellant was contributorily negligent in causing the accident. In the result, we allow the appeal partly and hold that the appellant is entitled to get the full amount, namely, Rs. 4,72,600, fixed by the High Court as total compensation payable to the appellant. There will be no order as to costs.