
(2019) 07 GUJ CK 0093
In the Gujarat High Court
Case No : R/First Appeal No. 4219 Of 2007

A.M.T.S

APPELLANT

Vs

Jayshreeben Wd/O Niranjan Shantilal Shah And 8 Other(S)

RESPONDENT

Date of Decision : 10-07-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2019) 07 GUJ CK 0093

Hon'ble Judges : R.M.Chhaya, J;B.N. Karia, J

Bench : Division Bench

Advocate : Hs Munshaw, Adil R Mirza, Kv Shelat

Final Decision : Partly Allowed

Judgement

1. Feeling aggrieved and dissatisfied by the judgment and award passed by the Motor Accident Claims Tribunal, Court No. 9, Ahmedabad dated

19.12.2006 passed in MACP No. 817 of 1997, the appellant Ahmedabad Municipal Transport Service has preferred this appeal under section 173 of

the Motor Vehicles Act, 1988 (hereinafter referred to as the "Act" for the sake of brevity).

2. The facts which can be culled out from the record of the appeal are as under

2.1 That the deceased was on his Kinetic Honda scooter in stationary position waiting for clearance of the traffic at Naranpura cross roads in

Ahmedabad City at about 8.30 AM on 27.04.2007. At that juncture, a Maruti Car being driven in full speed and in rash and negligent manner dashed

with the Kinetic Honda of the deceased Niranjanbhai from behind because of which Niranjanbhai flung away on the road and at that juncture, the bus

of the appellant of route no. 67, which was going from Naranpura village towards

Naranpura railway crossing, which also was being driven in excessive speed and the deceased Niranjanbhai came beneath the wheel of the bus of the AMTS.

2.2 The claim petition was preferred by the original claimants under section 166 of the Act and claimed compensation of Rs.70 lakhs. The claimants

relied upon documentary evidence such as panchnama at exhibit 73, Post Mortem Note at exhibit 95, statement of one of the eye witness Subodbhai

Chandulal, rickshaw driver at exhibit 105, one of the claimant Jeninben was examined at exhibit 129 and the Tribunal after considering the evidence

adduced by the claimants and also considering the evidence of the income at exhibit 117, determined the income of the deceased at Rs. 2,00,000/Â per

year and after deducting 1/3rd and by applying multiplier of 15, awarded a sum of Rs. 20,00,000/Â as compensation under the head of loss of

dependency, Rs. 1,00,000/Â as loss of income of wife of the deceased and Rs. 35,000/Â under conventional head including funeral expenses and thus

awarded total compensation of Rs.21,35,000/Â with 9% interest from the date of filing of the claim petition till its realisation. The Tribunal however

considering the evidence in form of panchnama, FIR and deposition of eye witness Subodbhai at exhibit 105, came to the conclusion that the driver

of the Maruti car was negligent to the extent of 60% and driver of the appellant AMTS bus was negligent to the extent of 40%. Being aggrieved by

the same, the present appeal is filed by AMTS under section 173 as aforesaid.

3. Heard Mr.Mr. Hemant Munshaw, learned advocate with Mr. R.M. Chauhan, learned advocate for the appellant, Mr. K.V. Shelat, learned

advocate for the original claimants and Mr.Adil Mirza, learned advocate for respondent no.9 insurance company and also perused the original Record

and Proceedings.

4. Mr. Munshaw, learned advocate appearing for the appellant has raised the singular contention to the effect that the Tribunal has committed error in

considering the negligence of the driver of the AMTS bus to the extent of 40%. Mr. Munshaw, relying upon the panchnama at exhibit 73 and so also

oral deposition of Subodbhai at exhibit 105, vehemently contended that the accident has occurred only because of the sole negligence of the driver of

the Maruti car. Mr. Munshaw further contended that as per the sequence of accident, it is proved beyond doubt that the kinetic was almost in

stationary position and the deceased was waiting for traffic clearance and the same was hit by Maruti car which was coming from the side of Lakhudi

Talav. Mr. Munshaw contended that because of the impact of the same, the deceased flung away from Kinetic Honda and came beneath the tyre of

the bus of the appellant, which was being driven at moderate speed. Mr. Munshaw also relied upon the deposition of the driver of the bus and

contended that he has categorically stated in his deposition that bus of route no.67 was being driven by him from Naranpura village towards

Naranpura railway crossing. Mr. Munshaw submitted that the accident has occurred at 8.30 AM and there was no such traffic, still however, because

of the fact that the Maruti car was being driven at very excessive speed, because of which, the deceased flung away from his Kinetic Honda scooter

and for no fault on the part of the driver of the appellant, the accident has occurred and the Tribunal has however, without appreciating the evidence,

more particularly the manner in which the accident has occurred, has wrongly come to the conclusion that the driver of the appellant is negligent to the

extent of 40%. It was therefore contended that the appeal be allowed and the the impugned judgment and award be modified accordingly.

5. Per contra, Mr. Adil Mirza has supported the impugned award. Mr. Mirza contended that the Tribunal has rightly appreciated the evidence on

record and contended that the deceased died only because of the bus of the AMTS and therefore, the Tribunal has committed no error in coming to

the conclusion that the driver of the appellant was negligent to the extent of 40% and driver of the Maruti car was negligent to the extent of 60% and

therefore it was contended by Mr. Mirza that the impugned judgment and award is proper and the same does not require any modification and the

appeal being meritless, deserves to be dismissed.

6. Mr. K.V. Shelat, learned advocate appearing for the original claimants has stated that the Tribunal has rightly awarded the compensation and

therefore, no interference is called for.

7. No other or further submissions have been made by the learned advocates appearing for the respective parties.

8. Before reverting to the submissions made, the only question which requires consideration by this Court is whether the Tribunal has rightly come to

the conclusion that the driver of the appellant was negligent to the accident to

the extent of 40% or not.

9. In order to appreciate the same, it would be appropriate to refer to the panchnama at exhibit 73. The panchnama shows that the Kinetic Honda scooter driven by the deceased was almost in stationary condition and the Maruti car dashed with it from behind at such an excessive speed that the deceased was flung almost in air and he fell on the road and came beneath the tyre of the bus of the appellant. It is no doubt true that first impact was because of the driver of the Maruti car, however, considering the evidence as a whole, more particularly the panchnama at exhibit 73, the deposition of the eye witness Subodhbhai at exhibit 105, the same shows that the bus was being driven at an excessive speed. From the panchnama, it also appears that the driver of the bus had already reached the cross roads and therefore, he was expected to be very vigilant while going forward. There is no evidence that the cross road was controlled by any traffic signal or that regularised by any traffic police. The accident has occurred at 8.30 AM when the traffic was in flow from all the four roads and therefore, the driver of the bus should have been very careful in driving the vehicle, which is a huge vehicle. Upon reÂappreciating the evidence on record therefore, it cannot be said that the driver of the Maruti car alone was solely negligent. It is no doubt true that the genesis of the accident is because of the fact that the Maruti car was being driven in excessive speed and it dashed with the Kinetic Honda scooter of the deceased, however, at the same time, the bus was also driven in such a manner that the driver could not even notice that the deceased had come beneath the tyre of the bus, i.e., from the driver side, as can be seen from the evidence on record. However, upon reÂ appreciation of the evidence on record, though we agree with the finding given by the Tribunal that the driver of both the vehicles, i.e., Maruti car and AMTS bus were negligent, we deem it proper to hold that the driver of the Maruti car was more negligent than the driver of the appellant and therefore, we come to the conclusion that the driver of the Maruti car was negligent to the extent of 80%, whereas, the driver of the AMTS bus was negligent to the extent of 20%.

10. The appeal is thus partly allowed. The impugned judgment and award stands modified only to the aforesaid extent. Rest of the award remains unaltered. However, there shall be no order as to costs in the appeal. If the

appellant has deposited the amount as awarded by the Tribunal, the refund, if any, be granted to the appellant in view of the fact that the award impugned is modified by this Court.

Record and proceedings be transmitted back to the Tribunal forthwith.