
(1980) 06 GUJ CK 0012
In the Gujarat High Court
Case No : First Appeal No. 528 of 1975

Bhanumati Vithaldas Gor and Others	Vs	APPELLANT
Magabhai Dhulabhai and Others		RESPONDENT

Date of Decision : 20-06-1980

Acts Referred:

Motor Vehicles Act, 1939 — Section 110

Citation : (1981) ACJ 379 : AIR 1981 Guj 182

Hon'ble Judges : V.V. Bedarkar, J; D.H. Shukla, J

Bench : Division Bench

Advocate : S.D. Shah, for the Appellant; D.K. Trivedi, for G.N. Desai, for the Respondent

Judgement

Shukla, J.—Appellant No. 1, Smt. Bhanumati Vithaldas Gor, is the mother of appellant No. 2, Pankajkumar Kirtikumar and appellant No.

3, Dipakkumar Kirtikumar, both of whom are minor sons of appellant No. 1. Appellant No. 1 is further a widow of one Kirtikumar Chinubhai

who met with a Bad fatal accident on 27-8-1972 at about 7-00 p.m. on Sevaliya Balasinor Road by the rash driving of the S. T. Bus bearing No.

GTE 4578 by its driver Magabhai Bhulabhai (respondent No. 1), who was driving the same bus during the course of his employment with Gujarat

State Road Transport Corporation (respondent No. 2). Respondents Nos. 3 and 4 were parents of deceased Kirtikumar and respondents Nos. 5

and 6 were his unmarried sisters.

2. The appellants had alleged that they are entitled to claim compensation from respondents Nos. 1 and 2 both, as the deceased had met with

death on account of a motor vehicle having been driven in a rash and negligent manner. The claim which was made by the appellants therein was to

the tune of Rs. 1,00,000/- with the incidental orders about interest and costs. The learned Tribunal accepted the plea of the appellants as

regards the question of negligence and held both respondents Nos. 1 and 2 jointly and severally liable to the extent of Rupees 26,400/- with

interest at the rate of six percent per annum from the date of the application till realisation together with proportionate costs. He, however,

dismissed the rest of the claim of the appellants.

3. Being aggrieved by the quantum of compensation awarded to them, the appellants have filed the present appeal. The respondents have not file

any cross-objections and hence we are only concerned with the question of the quantum of compensation awarded by the learned Tribunal to the

appellants.

4. The deceased Kirtikumar was aged 29 having been born on 24-3-1943 (vide Exhibit 27) and was employed as a Primary School Teacher. He

was serving as such since 1962. He had passed S. S. C. Examination and had also passed the qualifying examination for teachers. Appellant No. 1

stated in her deposition that at the time of his death, the deceased was drawing the salary of Rs. 132/- per month and in addition was getting Rs.

75/- per month as Dearness Allowance. She further claimed that the deceased was earning Rs. 150/- per month by doing private tuitions. She

further deposed that at the time when her husband was serving he was in the pay-scale of Rs. 120/- to Rs. 210/-. She further deposed that the

pay-scales of the teachers have been revised and that they were at the relevant time fixed between Rs. 135/- to Rs. 250/-.

5. In support of her say, she examined one Sushilaben Somalal (witness No. 2), who deposed that the deceased Kirtikumar was giving tuition to

her son Maheshkumar for which he was paid Rs. 30/- per month. The witness further deposed that one Mohanbhai Mangalbhai had also engaged

the deceased for giving tuition to his sons and he was paying Rs. 30/- per month for each of his sons to the deceased.

6. The appellant No.1 further examined Mohanbhai Haribhai Parmar, Inspector of Education, who stated in his evidence that at the time of the

death, the deceased was drawing a salary of Rs. 132/- per month and was also getting D. A. of Rs. 73/-. He has further deposed that at the

relevant time, the pay-scale of the primary teacher was Rupees 120-3-135-

EB-4-155-180-EB-6-210. It was further deposed that thereafter there was further improvement in the pay-scales of teachers according to which the maximum that a primary teacher would get was Rs. 250/- per month. We do not find any reasonable ground to disbelieve the evidence on this point given by Mr. Parmar, the Education Inspector. The learned Tribunal, despite this evidence having been there on record, determined the monthly income of the deceased at Rs. 205/- per month. He did not believe the claim of appellant No. 1 that deceased was earning Rs. 150/- per month by doing private tuitions and he also disbelieved the appellants' witness Sushilaben Somalal. The learned Tribunal has given reasons for not believing this claim of the appellant No. 1 primarily on the ground that nothing has been stated in the application itself about the deceased having derived any income by doing private tuition. Apart from that, it is difficult to understand how the learned Tribunal did not take into account the evidence of the Education Inspector, Mr. Parmar, which indicates the potentiality of the employment in which the deceased was engaged. The potential income and the prospects of the deceased must certainly be taken into account and the learned Tribunal has erred in not doing so. We also consider the factor, namely that the deceased could have derived income from doing private tuitions although it may be a debatable matter as to whether in fact he was doing private tuitions during his lifetime. The appellants, therefore, have indeed a force in their plea when they make a grievance about the fixation of the monthly income of the deceased at Ra. 205/-. Although the appellants, had originally claimed compensation of Rs. 1,00,000/-, they have reduced their claim to Rs. 45,000/- in appeal. In other words, they have filed their further claim only to the tune of Rs. 18,600/-. Considering the evidence on the record of the case as well as a reasonable probability that the pay-scales would still further undergo a favourable change, we consider that if the Monthly income of the deceased is fixed at Rs. 275/- per month, it is extremely reasonable. There is no quarrel raised by either of the parties before us about the deduction of Rs 75/- per month by the learned Tribunal, as the Personal expenses of the deceased. We need not therefore enter into the propriety of that part of the finding of the learned Tribunal. We, therefore, assess the net loss of benefit to the claimants at Rs. 200/- per month, which would come to Rs.

2,400/- per year. Taking into account the aforesaid factors of future change in the pay-scales, we fix the net annual loss of benefit to the claimants

at Rs. 2,500/-. The choice of the multiple of 15 appears to be quite reasonable and we confirm it. The total of loss of benefit, therefore, comes to

Rs. 37,500/-.

7. The learned Tribunal awarded Rupees 3,000/- for the shortened expectation of life, which must be increased to Rs. 5,000/- in the line of the

settled law at present. The total comes to Rs. 42,500/-. The appellants have claimed, as stated above, a total sum of Rs. 45,000/- as

compensation which is quite within the brackets and we consider it proper to round up the compensation awardable to the claimants at Rs.

45,000/-.

8. The learned Tribunal has not passed any separate order with reference to the deposit to be made out of the amount awarded as compensation

to safeguard the interests of the minors. We consider it necessary in the interest of the minors to do so.

9. In the result, the appeal is allowed. The appellants are awarded Rs. 45,000/- as compensation in place of Rs. 26,400/- awarded by the learned

Tribunal. The additional compensation of Rs. 18,600/- shall carry interest at the rate of six per cent per annum from the date of the application till

realisation and for the same additional amount, the respondents Nos. 1 and 2 shall bear the costs of the appellants and shall also bear their own.

No order for costs so far as respondents Nos. 3 to 6 are concerned.

10. It is further directed that the amount which will accrue by way of costs and interest shall be payable to appellant No. 1. So far as the principal

amount of Rs. 45,000/- is concerned, the appellant No. 1 shall be paid Rs. 20,000/-. Out of the remaining amount of Rs. 25,000/- appellants

Nos. 2 and 3 shall be paid in equal proportion, that is to say Rs. 12,500/- each. Appellant No.1 is directed to invest the amount payable to

appellants Nos. 2 and 3 in two separate Fixed Deposit Receipts in her name as the guardian of the same two minors with any of the Scheduled

Banks to enure till each of the minors attains majority. However, the appellant No. 1 shall be at liberty to withdraw the interest accruing on the

aforesaid Fixed Deposit Receipts for the costs of the maintenance of her minor sons. The minors, appellants Nos. 2 and 3, shall be entitled to

withdraw the amount of Fixed Deposit Receipts on each of them attaining majority.

11. Appeal allowed.