

**(1981) 06 GUJ CK 0013**  
**In the Gujarat High Court**  
**Case No : First Appeal No. 1103 of 1977**

|                                          |    |            |
|------------------------------------------|----|------------|
| Dhaneauriben and Others                  | Vs | APPELLANT  |
| M. Mulchandbhai Nagarji Sheth and Others |    | RESPONDENT |

**Date of Decision :** 30-06-1981

**Acts Referred:**

Motor Vehicles Act, 1939 — Section 110A

**Citation :** (1982) ACJ 224 : AIR 1981 Guj 264 : (1981) GLR 1156

**Hon'ble Judges :** S.L. Talati, J;D.H. Shukla, J

**Bench :** Division Bench

**Advocate :** G.P. Vyas, for the Appellant; B.K. Amin, for K. F. Dalal, G.C. Patel and Jagadish M. Panchlal, for the Respondent

## Judgement

Shukla, J.—The applicants in Motor Accident Claim Petition No. 38 of 1976 filed before the Motor Accident Claims Tribunal at Surat are the widow minor sons and minor daughters of the deceased, Vanmalibhai Ratani Chauhan, who met with a fatal motor accident at about 3-30 o. m. on 14th December. 1975 near Dholikui, Varachha Road, Surat

2. Deceased Vanmalibhai started on his scooter with his son, Manoikumar, on pillion, from his residence. On crossing the gate of his residence, he approached the main road and had turned a little left to Proceed further when opponent No. 1, Ismailbhai Gulambhai, as a result of driving the Ambassador car bearing No. GJC 5628, in a rash and negligent manner, collided with the scooter. The impact, caused damage to the car itself and a heavv damage to the scooter and further caused serious iniuries to Vanmalibhai. who succumbed "to his iniuries on the verv dav at the Civil Hospital, Surat at about 5-00 p.m. The applicants alleged that the accidnt was caused solelv due to the negligence of opponent No. 1 and consequentlv opponent No. 2, Mulchandbhai Nagarji Sheth and/or opponent No. 3. Narendra Shantilal Patel, are liable vicariouslylv. and further opponent No. 4, the United India Fire and General Insurance Co.. is also liable as the insurer of the car Opponent No. 5. Ruxmaniben. later on applied to be ioined as a Partv to

the petition claiming that being the mother of the deceased. she is also entitled to receive her share of compensation. The applicants claimed a total compensation of Rs. 2 lacs for the death of the deceased on the basis th.V. the deceased was a proprietor of three concerns, a Partner in three concerns and a director in one concern as well as on the further basis that he was running a Nurserv known as: Nandanvan. It was their case that the deceased was a talent person and by burning a huge amount, he constructed vast properties and by his untimely death, the applicants are left destitutes. It was their further case that had the deceased not met with the same fatal accident, he could have lived at least for 35 to 40 years more.

3.- 4. x x x

5. The Tribunal framed issues at Exh. 38. For the reasons stated in his judgment, the Tribunal came to the conclusion that the accident occurred solely due to the negligence of Vanmalidas himself. Consequently, he missed the petition with no order for costs, by the judgment and order dated 30th July, 1977. The applicants have filed the present appeal, having been aggrieved by the same judgment and order.

6.- 8. x x x x

9. The Tribunal has discussed the contents of the panchamma (Exh. 62) in great details. The details of the panchamma have been rightly recorded by him, but he has erred while he drew inferences from the admitted positions. The Tribunal appears to have relied up on the three factors in coming to the conclusion that the accident occurred to the negligence of the deceased. The first position which he noted was that the accident occurred as soon as the scoter emerged from the gate of the residence. The second position which he noted was that the opponent No. 1 drove his car on the left hand side which was the correct side for him to drive. The third position which he noted was that the speed of 70 to 75 kms is a reasonable speed and therefore the driver could not be blamed if the deceased did not take sufficient care before putting the scooter on the road.

10. We have considered the oral testimony of the witnesses and the contents of the Panchnama carefullv. It appears to us that the Tribunal has grosslv erred in drawing an inference that the opponent No. I was not negligent for causing the accident. The Tribunal has failed to consider the fact that the gate of the residence was situated at a distance between 20 to 28 feet from the edge of the road and therefore the driver of the oncoming Ambassador ,car had an opportunity to observe the scooter when it came out from the gate. The accident occurred on the asphalt road itself and the scooter must have travelled a distance of about, 25 feet. It cannot therefore be stated that emergence of the scooter was all too sudden. It was 3-30 D. m. and there was no obstruction to the visibility of opponent NoL 1, driver of the car. It has been emphasised on numerous occasions by this High Court that the driver m us, so drive the vehicle as to be able to bring it to a halt immediately on noticing a danger.

11. It is true that the driver was driving his vehicle on the left hand side of the road, but that circumstance alone is not sufficient to exonerate him from the charge of negligence. He was driving at a speed of 70 to 75 kms per hour and we do not agree with the Tribunal that such a fast speed can be said to be a reasonable speed, particularly when the vehicle was being driven within the short distance of the city of Surat. It is also to be noted that opponent No. 1, driver applied the brakes only after the accident. The impact was so forceful that the scooter was thrown off a considerable distance and Manoj fell down in a ditch. Again, examining the damage which was done to both the vehicles, it transpires that the left front of the Ambassador car had dashed against the scooter. It was not as if the scooter had collided with the rear of the car which would in its turn create different considerations. The Tribunal commented that the opponent No. 1 driver could not have expected the emergence of the scooter all of sudden from the compound of the bungalow, but that inference, with respect, is not correct. The driver of a vehicle must always take care for such emergent situations beforehand so as to be able to control the vehicle in time to avert the accident.

12. For the reasons aforesaid, we do not uphold the finding of the Tribunal on the question of negligence. We set it aside and our finding on the question is that it was opponent No. 1 who was liable for the occurrence of the accident.

13. The Tribunal having held that opponent No. 1 was not guilty of negligence, further held that other issues did not survive. It did not give its findings on the rest of the issues. It has been times out of number pointed out that this is an incorrect approach. The Tribunal must give its findings on all the issues involved in the matter. We are required to give findings on other issues on the basis of the evidence, that is before us; without the assistance of the opinion of the Tribunal.

14. to 18. x x x x

19. The last question which we must now consider is that of the quantum which we must be awarded to the applicants and opponent No. 5.

20. Dhangauriben, widow of the deceased, does not know about the yearly income of her husband. " She has only stated that her husband was engaged in the business of manufacturing and selling wooden frames which was used for the purpose of wrapping clothes. The deceased was doing that business for about 10 years prior to the accident. The deceased was also raising bananas in the land and had a small Nursery.

21. On behalf of the applicants, there is no other oral evidence led to prove the income of the deceased, but they have produced documentary evidence consisting of the Income Tax assessment orders of 1970-71, 1971-72, 1972-73 and 1973-74 (Exhs. 52 to 55, respectively). On the close scrutiny of these assessment orders, "it appears that the income of the deceased was reduced from year to year from about Rs. 20,000/- or Rupees 21,000/- per year to about Rupees 11,000/- per year. No assessment orders are produced for the subsequent year, but from the evidence of the widow it appears that he had

Started running his business in a loss. She has admitted that her husband was running his business in clothes since last two to three years." She has also admitted that during that period the income of the family was only the rental income which, as further admitted by her continued after his death. It is difficult to make any sure inference about the business skill or ability of the, deceased since for the last about five, years or so his income had started to be on the decline. But it is a common experience that a person suffers ups and downs in the business and it cannot be said that the deceased would not, have earned in future at all. It is possible that he could have again come up and could have flourished, but we would not make any estimate on such a bare possibility. It could not be gainsaid that the deceased had an experience of business of at least ten Years Prior to the accident and that it has to be taken into account when we try to assess his economic utility to the family. He would not have been on streets had he gone to the market for service closing his business. We must also take into account that the deceased had only passed vernacular final examination and knew little English. When he died he was about 45 years of age and that would also be one of the factors to be taken into account. Mr. Dalai, the learned advocate for the Insurance Co., wanted us to remand the matter. but we do not think it is at all necessary since we have all the evidence before us which the parties desired to lead before the Tribunal. The Tribunal had not fettered leading of the evidence, but where it erred was that it decided only the question of negligence and did not decide other issues.

22. Under the circumstances which we have discussed above. we feel justified in assessing the monthly income of the deceased in future years at Rupees 500/- per month, from which it would be legitimate to deduct Rs. 100/- as the approximate personal expenses of the deceased. The net balance would be Rs. 400/- per month, that is to say Rs. 4800/- annually. To round up, we take it at Rs. 5,000/- a year and choosing the multiple of 15. the total comes to Rs. 75,000/- Considering the age of the deceased as well as the circumstances of his life and the fact that he was primarily a businessman in good state of health with a settled family life, the multiplier of 15 is just and proper. We have taken into account the fact that the life of the deceased was not hazardous and that he was not suffering from any disease or vice or addiction. Therefore. even though he was aged 45 at the time of his death, we have thought it Proper to adopt the multiplier of 15. To this must be added the conventional sum of Rs. 5000/- for the shortened expectation of life. The total comes to Rs. 80,000/- which we award as the global compensation to the applicants and opponent NO. 5, Incidentally, the learned advocate Mr. G. P. Vyas, sought our Permission to reduce the claim of the applicants to the extent of Rupees 80,000/- which Permission we have granted.

23. Before we start with the matter, we might note that the Insurance company has filed Cross objections contending that the finding of the Tribunal on the point of negligence is a correct finding and in the alternative. it is sought that the matter may be remanded to the Tribunal for the decision of the question as to

who was driving the car and who was the owner of the car at the time of the accident and whether responder t No. 4. that is to say the Insurance Company was at the risk at the time of the accident. As pointed out above, we have held opponent No. I guilty of negligence, setting aside the finding of the Tribunal on that point, We have also noted above that there is no necessity to remand the matter as the parties have led all the evidence they wanted to before the Tribunal and it is Possible for us to decide the issues on the basis of the evidence which is already before us. The Cross objections, therefore, have no merit and we dismiss them with costs.

24. to 27. x x x

28. Appeal allowed.