
(2014) 06 GUJ CK 0058
In the Gujarat High Court
Case No : First Appeal No. 4659 of 1996

GSRTC

APPELLANT

Vs

Dilavarkhan Huseinkhan Pathan

RESPONDENT

Date of Decision : 24-06-2014

Acts Referred:

Citation : (2014) 06 GUJ CK 0058

Hon'ble Judges : R.R. Tripathi, J

Bench : Single Bench

Advocate : Vasavdatta Bhatt, Advocate for the Appellant; Hetaben H. Shah, Advocate for the Respondent

Final Decision : Dismissed

Judgement

R.R. Tripathi, J.—Gujarat State Road Transport Corporation (hereinafter referred to as, "GSRTC") has filed the present First Appeal being aggrieved by judgment and award dated 20.05.1996 passed by the Motor Accident Claims Tribunal (Main), Bhavnagar. The heirs and legal representatives of deceased Mohmadhusain Dilavarkhan Pathan, who succumbed to the injuries sustained in an accident on 03.11.1994 at about 10 am at Sihor S.T. Bus Stand, filed MACP No. 481 of 1994 claiming compensation of Rs. 4 lacs. The Hon'ble Tribunal awarded Rs. 3,56,000/- with interest at the rate of 15% per annum from the date of the petition till realization from the opponents jointly and severally with proportionate costs. The Hon'ble Tribunal did observe that, "..... However, the opponents are at liberty to deposit interest @ of 12% per annum, if the amount is deposited within a period of five months from the date of this order..... "

(emphasis supplied)

1.1. The First Appeal is filed for an amount of Rs. 1,56,000/-, whereas the claim for jurisdiction is fixed at Rs. 4 lacs.

2. Heard learned Advocate for the appellant-GSRTC, who invited attention of the Court to the memo of the First Appeal, wherein Ground Nos. C and D are the

main Grounds, which read as under:-

(C) The Hon''ble Tribunal erred in holding that the accident occurred on account of negligent driving of the driver of the appellant corporation and it ought to have held that the accident occurred because of contributory negligence of the deceased.

D) The Hon''ble Tribunal erred in holding the driver of the appellant corporation was negligent and not the deceased. The Hon''ble Tribunal erred in satisfying the some of the eyewitnesses of the accident has been examined.

2.1. The appeal memo also contains other Grounds, of which Ground Nos. G, H and K read as under:-

(D) The Tribunal erred in assessing the income of the deceased Rs. 3,500/- though the no evidence was produced showing income of Rs. 3,000/- per month.

E) The Tribunal erred in law in allowing the interest of 15% from the date of application which is against the recent judgments of this Hon''ble High Court. Though the claimant has claimed 12% in the petition.

K) The Tribunal erred in awarding Rs. 20,000/- by way of head of loss of estate.

2.2. The Hon''ble Tribunal has set out the facts of both the claim petitions in para-4. In the very same accident, one Javalben Babulal Parmar had also sustained serious injuries and had filed MACP No. 171 of 1995. As both these MACPs were arising from the same accident, they were heard together. So far as MACP No. 171 of 1995 is concerned, the appellant-GSRTC has not filed any appeal. For ready perusal, the facts as narrated by the Hon''ble Tribunal are as under:-.... On the day of incident i.e. on 03.11.1994 at about 10.00 A.M. deceased was present in his Cabin. At that time, injured petitioner Javalben had come there to purchase biscuits for her grand son. At that time, one S.T. Bus Number G.J. 1 Z 734 was coming in a reverse condition. According to the petitioners, there was no conductor attending the Bus while taking it in reverse. Moreover, the driver was rash and negligent and he did not give any signal while taking his Bus in reverse. The cabin is situated just near the roof of S.T. Bus stand. Due to rash and negligent driving, the driver dashed his Bus with the Cabin, in which deceased Mohmadhusein was working. As a result thereof, Javalben sustained serious injuries while deceased sustained serious injuries and he was transferred to C.H.C. At Sihor, where he succumbed to the injuries during treatment.

2.3. The Hon''ble Tribunal has set out the evidence which is taken into consideration by the Hon''ble Tribunal in both the MACPs. The details of the evidence taken into consideration are set out in para-7, which are as under:-

7. Thereafter oral evidence of Petitioner Faridaben Husein Pathan of M.A.C. Petition No. 481/94 is recorded at Exh. 40 while injured Petitioner Javalben was examined at Exh. 42. The following documentary evidence has been adduced in

both the claim petitions:-

M.A.C. Petition No. 481/94:-

2.4. The Hon"ble Tribunal considered the evidence led before it and decided issue No. 3, i.e. "Whether the claimants are entitled to any compensation? If yes, to what extent?", in para-10. Before that, the Hon"ble Tribunal has discussed issue Nos. 1 and 2 in para-9 which pertains to rash and negligent driving on the part of opponent NO. 1-driver of ST Bus. The Hon"ble Tribunal has recorded a finding that,..... Therefore, it appears that without observing the rules and regulations of the traffic, the S.T. driver was driving his Bus and he dashed his Bus with the Cabin. Therefore, I come to the conclusion that this incident has happened due to rash and negligent driving of opponent No. 1 and hence I answer Issues Nos. 1 and 2 in the affirmative."

2.5. Coming to the quantum, the Hon"ble Tribunal has considered the evidence on record and recorded thus in para-10:-

10. ISSUE NO. 23

Deceased Mohmadhusein Pathan was aged about 27 years at the relevant time. According to them, deceased Mohmadhusein was earning Rs. 3,000/- per moth. The say of the petitioner cannot be accepted as 100% gospel truth. In my opinion, prospective income of the deceased can be assessed at Rs. 3,500/- per month. He was an young man. He was working in the Cabin as well as he was selling hosiery articles and biscuits, etc. Therefore, his income per month, which comes to Rs. 42,000/- per year and, therefore, the dependency of the petitioners can be assessed at Rs. 28,000/- per year. The Petitioners are entitled to multiplier of 12 years. Therefore, the petitioners are entitled to Rs. 3,36,000/- towards the head of loss of future income and compensation of Rs. 20,000/- towards the head of loss of estate, in all Rs. 3,56,000/- together with costs and interest.

3. Learned Advocate for the appellant-GSRTC vehemently tried to assail the judgment and award passed by the Hon"ble Tribunal on various grounds which are set out in the memo of appeal, but to no avail. Learned Advocate for the appellant could not dislodge the finding recorded by the Hon"ble Tribunal that it was a sheer act of negligence on the part of the driver, who reversed the ST bus without taking assistance of ST Conductor. What could be more negligent act on the part of a ST bus driver, who dashes his bus with a stationery cabin which is situated at an appropriate place and not in the middle of the road and causes death of the opponent. Not only that, he had caused injuries to customer - claimant of MACP No. 171 of 1995, who had come to purchase biscuits for her grand-son.

4. On careful consideration of the judgment and award of the Hon"ble Tribunal and on careful consideration of the oral as well as documentary evidence led before the Hon"ble Tribunal, this Court is of the opinion that the First Appeal is

without any merit. Hence, the same is dismissed.