

(2000) 10 GUJ CK 0084
In the Gujarat High Court

Case No : First Appeal No. 2351 of 2000 and Civil Application No. 9376 of 2000

GSRTC

APPELLANT

Vs

Jenabai Dadamiyan Saiyed

RESPONDENT

Date of Decision : 09-10-2000

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2000) 10 GUJ CK 0084

Hon'ble Judges : K.M. Mehta, J;J.N. Bhatt, J

Bench : Division Bench

Advocate : Roopal R. Patel, for the Appellant; Suresh M. Shah, for the Respondent

Final Decision : Dismissed

Judgement

J.N. BHATT, J.—In this appeal u/s 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the new Act'), the appellant original opponent No. 2, Gujarat State Road Transport Corporation, has challenged legality and validity of the judgement and award dated, 12.6.2000 in MACP No. 472 of 1992, by the Motor Accident Claims Tribunal, (Auxi. I), Kachchh at Bhuj, whereby, the original claimants came to be awarded an amount of Rs. 3,16,600/with interest at the rate of 12% from the date of petition till payment, holding that the S.T. Bus was solely, responsible for the accident in question.

2. On unfortunate day, two persons were proceeding on scooter bearing registration No. GAH 1854. It was driven by Mr. Jusabsa Abdulsai Saiyed and the deceased was on the pillion. The accident occurred on 11.6.1992. When the said scooter reached near the outskirt of village Mota Asambia, 10 kms. away from Mandvi on Bhuj-Mandvi road at 2.00 p.m at that time one S.T. Bus bearing registration No. G.J-1-Z-873 driven by respondent No. 4-original opponent No. 1, driver, came with excessive speed and dashed against the scooter. As a result of which the scooterist and the pillion rider were thrown off the scooter. They had sustained serious injuries. One of them, the pillion rider succumbed to the

injuries whereas the scooterist sustained permanent partial disablement. Therefore, two claim petitions came to be filed. M.A.C.P. No. 472 of 1992 came to be filed by the heirs and legal representatives of the deceased Dadamiyan Saiyed, in charge of the scooter at the relevant time, whereas, M.A.C.P. No. 471 of 1992 came to be filed by the injured person Shri Jusabsa Abdulsa Saiyed.

3. Original opponents appeared and resisted the claim petitions, inter alia, contending that the scooterist was on the wrong side and he was responsible for the accident as the driver of the S.T. bus was driving on the correct side with moderate speed and therefore, he cannot be held liable. The driver of the S.T. bus was not examined but reliance was placed on the conductor of the bus. The injured claimant Jusabsa Abdulsa Saiyed also relied on his evidence and the documentary evidence.

4. After evaluation of the evidence on record the Tribunal reached the conclusion that the original claimants have, successfully, established that the deceased Dadamiyan Saiyed died and the injured claimant Jusabsa Abdulsa Saiyed sustained injuries on account of rash and negligent driving of the driver of the S.T. bus original opponent No. 1 in course of his employment with original opponent No. 2, appellant before us.

5. After having considered the facts and circumstances and evidence, we find that the conclusion reached by the Tribunal is quite justified. No reasonable explanation is given as to why the driver of the S.T. bus has been withheld. There is also no reason why the injured witness Jusabsa Abdulsa Saiyed should not be believed. This evidence is supported by documentary evidence produced on record. The manner and the mode in which the accident occurred leaves no doubt that the evidence supported by documentary evidence is believable and reliable. Therefore, the conclusion of the Trial court that the entire responsibility was on the part of the driver of the S.T. bus is required to be affirmed. Therefore, we reject the first contention raised before us at the time of admission.

6. We may, now, consider as to whether the amount of compensation awarded is just and reasonable or not. At the admission stage, at the very outset, the learned advocate appearing for the appellant placed on record copies of the evidence relied on by the parties and also by the Tribunal which we have, unquestionably, examined. We have also heard the learned advocate appearing for the appellant. We have, dispassionately, gone through the impugned common judgement and award. After having taken into consideration the overall picture emerging from the record of the case, we find that the amount of compensation awarded to the heirs and legal representatives of the deceased Dadamiyan Saiyed, on account of his, untimely, and premature, demise as his life came to be cut short at the cruel hands of the providence, is justified. The deceased was, hardly, 42 years and he was working as mechanic. The Tribunal has taken loss of dependency value per year to the extent of Rs. 26,400/- and it is multiplied by 16 multipliers. It is, therefore, very clear that instead of adopting the income of Rs. 3000/- as deposed by the claimants, monthly income of the deceased was

taken at Rs. 1500/and considering the prospective income the amount of Rs. 2200/- was adopted. The Tribunal has considered Rs. Rs. 4,22,400/- (Rs. 26,400 x 16) by way of total loss of dependency value and after deducting 1/3rd amount being the expenditure of the deceased, the Tribunal has assessed net contribution of the deceased to the common family fund at Rs. 2,81,600/- out of the amount of award to the extent of Rs. 3,16,600/-. In our opinion, the assessment of compensation, also, cannot be said to be excessive or exorbitant. The second contention is, therefore, merit less. Both the contentions are merit less and not acceptable. The appeal is, therefore, required to be dismissed at the threshold. Accordingly, it is dismissed with no order as to costs.

In view of the order in the main matter, no orders are passed on the Civil Application.