

(1996) 07 GUJ CK 0007
In the Gujarat High Court
Case No : F.A. No. 3024 of 1996

Gujarat State Road Trans. Corpn.

APPELLANT

Vs

Mer Ranmal Bhima (deceased) through heirs

RESPONDENT

Date of Decision : 05-07-1996

Acts Referred:

Citation : (1997) 1 GLR 325

Hon'ble Judges : R.A. Mehta, J; M.S. Shah, J

Bench : Division Bench

Advocate : Pranav G. Desai, for the Appellant;

Final Decision : Dismissed

Judgement

R.A. Mehta, J.—This appeal is directed against the judgment and award dated 30.1.1992, passed by the Motor Accidents Claims Tribunal (Aux.) Junagadh, in M.A.C. Petition No. 220 of 1985, which was filed by the heirs of the driver of a Jeep who died in an accident involving the Jeep and a bus of the appellant Corporation.

2. Learned counsel for the appellant submits that the Tribunal has erred in holding that the appellant's driver was negligent to the extent of 2/3rd and the Jeep driver was negligent to the extent of 1/3rd only. According to the appellant the Jeep driver was fully and solely negligent.

3. The Tribunal has considered the F.I.R., the panchnama and the surrounding circumstances and the S.T. driver though available had nothing to contribute much while he was the best person to depose. Having regard to the circumstances and viewing from the panchnama including the distance covered by the bus even after the accident which was about 60 ft. whereas the brake marks were only 7 ft. the ratio of negligence as fixed by the Tribunal is just and hence it does not require any interference. Mr. Desai's argument that the bus was found on the correct side of the road cannot make any dent to that finding because the bus had already covered 60 ft. after the impact.

4. As regards the quantum of income, the Tribunal has assessed the business income of the deceased at Rs. 30,000/- per year on the basis of documentary evidence of the assessment orders and the accounts of partnership firm of which the deceased was a partner. The loss of agricultural income was arrived at Rs. 10,000/-. Rs. 30,000/- was determined as the value of personal supervision of the deceased. The total loss of income was determined by the Tribunal to be Rs. 40,000/- per annum. An amount of 1/3rd was deducted towards personal expenses of the deceased in a family consisting of six members, which is also on the higher side. No consideration is given to the prospects of future increase.

5. Mr. Desai, however, strenuously contended that even if the Tribunal was right in assessing the loss of income of the deceased at Rs. 40,000/- the Tribunal grossly erred in applying the multiplier of 18 and that the same could not have been more than 15 as the deceased was aged 32 years at the time of the accident. It is true that the Tribunal after determining the datum figure at Rs. 40,000/- per year has applied the multiplier of 18 making it an aggregate amount of Rs. 7,20,000/-, out of which the Tribunal deducted 1/3rd amount for personal expenses of the deceased making it Rs. 4,80,000/- and has further reduced the amount to Rs. 3,20,000/- by deducting 1/3rd amount on account of negligence of the deceased having been assessed at 1/3rd. Thus, the Tribunal awarded the amount of Rs. 3,20,000/- under the head of loss of dependency benefit and thereafter added a further amount of Rs. 10,000/- as damages for loss to the estate, Rs. 15,000/- towards compensation for loss of consortium and also Rs. 5,000/- towards funeral expenses.

6. Even though Mr. Desai appears to be right in urging the above contention regarding multiplier in view of the two decisions of the Supreme Court rendered after the Tribunal made the award in the instant case, viz., General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, and in the case of Smt. Sarla Dixit and another Vs. Balwant Yadav and others, acceptance of the said contention will not make any difference to the final amount arrived at by the Tribunal in the facts and circumstances of the present case. As stated above the annual loss is assessed at Rs. 40,000/- without taking into consideration future increase and further prospects of the deceased. Adopting the usual multiplier of 15, as the deceased was aged 32, the total amount would be Rs. 6,00,000/-, from which an amount of Rs. 1,00,000/- can be deducted towards the personal expenses of the deceased as the family consisted of six persons including the deceased. We would like to add here that when one member of the family departs from this world, the other members in a middle class family would have to spend almost the same amount on overheads like rent and taxes for the house or taxes and other expenses on the house when owned by the family. Looking to the amount which is ordinarily required to be spent on education and upbringing of minor children these days, it cannot now be said that only one unit should be taken for a minor child as against two units for an adult. Since there were six members in the family (including two minor children) only 1/6th of the amount can be deducted from the aforesaid amount

of Rs. 6,00,000/-. Although such deduction is usually to be made at the stage of determining the amount of loss of monthly dependency benefit, we apply this deduction at this stage only for the sake of arithmetical convenience.

Since the deceased was a driver of the Jeep and his negligence was assessed at V3rd by the Tribunal and as confirmed by this Court, as stated above, out of the aforesaid amount of Rs. 5,00,000/- 1/3rd amount would have to be deducted. That would leave the amount of Rs. 3,50,000/- under the head of loss of dependency benefit. The award passed by the Tribunal for a total amount of Rs. 3,50,000/- including the damages under the head of loss of dependency benefit, loss to the estate, etc. cannot, therefore, be said to be on the higher side.

7. Mr. P.G. Desai submitted that the deduction for personal expenses of the deceased ought to be 1/3rd in view of the above two decisions of the Supreme Court. We do not think that the above two decisions lay down any hard and fast rule. In the facts and circumstances of those cases, the Supreme Court had deducted 1/3rd amount as the personal expenses of the deceased. In any view of the matter, acceptance of the said contention would not make any difference to the final amount in the facts and circumstances of the present case. As stated above, the Tribunal did not take into account the prospects of increase in the future income of the deceased, had he survived. At the time of the accident, the deceased was a young man aged 32. He was engaged in business as well as in agriculture. He had proved his organizational ability as he had become an elected member of the district panchayat, Junagadh. Under the circumstances, even at a conservative estimate, for the purpose of working out loss of dependency benefit in future, the annual income of the deceased could have been safely assessed at Rs. 50,000/- per year. Applying the multiplier of 15 years purchase factor, the total loss of earning of the deceased would be Rs. 7,50,000/-. Deducting 1/3rd amount for the personal expenses of the deceased as done by the Tribunal and as contended by Mr. Desai, the amount of loss of dependency benefit would be Rs. 5,00,000/-. Deducting 1/3rd amount on account of the negligence on the part of the deceased, as found by the Tribunal and confirmed by us in this appeal, the net amount under the head of loss of dependency would be Rs. 3,34,000. Adding further amounts towards damages for loss to the estate, for the loss of consortium and funeral expenses, etc., the amount of compensation would not be less than Rs. 3,50,000/-.

8. In view of the above discussion, the award for Rs. 3,50,000/- plus costs and interest, made by the Tribunal is fully justified and there is no cause for interference by this Court.

9. Before parting with the matter, it is necessary to mention at this stage that the directions given by the Tribunal under the award required to be modified in view of the decision of the supreme court in the case of Lilaben Udesing Gohel, Shyamala Shashidharan Nayyar and Others, Pramila Narendra Bhai Patel and Others, Ramabhai Shankarbhai Chavda, Lilaben and Others, Kantaben Anil Kumar Patel and Others, Motor Vahan Durghatna Sanghathan, Nadiad and Others

and Shardaben Chandubhai Patel and Others Vs. Oriental Insurance Company Ltd. and Others, Hemraj Loduram Rajpur and Another, Nandubhai Ambalal Thakkar and Others, Ganibhai Ambabhai Vora and Another, Kaji Gulam Nabi Sheikh and Others, Gujarat State Road Transport Corpn. and Others, State of Gujarat and Others and Bachusha Dadusha and Others, Paras 8 and 17 of the aforesaid decision approve and lay down the guidelines for proper safeguards in the matter of protection of the interests of the claimants in motors accident cases

10. If the appellant Corporation has not deposited the award amount so far, the same shall be deposited within two months from today .After deposit of the amount the Tribunal shall give appropriate directions regarding investment and disbursement after hearing the concerned parties .

11. Subject to the aforesaid directions, the appeal is dismissed.