(2025) 11 GUJ CK 1878

In the Gujarat High Court

Case No : R/First Appeal No. 1195 Of 2014

Jashiben Chandubhai Solanki & Ors — APPELLANT

Vs

Gopalbhai Jivabhai Kaliya & Ors. — RESPONDENT

Date of Decision : 14-11-2025

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2025) 11 GUJ CK 1878

Hon'ble Judges : Mool Chand Tyagi, J

Bench : Single Bench

Advocate : Mohsin M Hakim, VC Thomas, Jay M Thakkar

Final Decision : Allowed

Judgement

Mool Chand Tyagi, J

1. The captioned appeal is filed against the impugned judgment and award dated 30.12.2013 passed by the learned Motor Accident Claims Tribunal (Auxiliary), Kheda at Nadiad in MACP No.897/2012, whereby the learned Tribunal has partly allowed the claim petition and awarded a sum of Rs.7,73,000/- as a compensation along with interest at the rate of 9% per annum from the date of filing of claim petition till its realization.

2. The succinct facts leading to file the present appeal are that on 19.06.2012 at about 5:00 in the evening, deceased Chandubhai Solanki was going by driving his auto rickshaw bearing registration No.GJ.7.VW.5410 and when he reached near the place of accident at Kheda-Dholka Highway, near Rampur Patiya, in the meantime, the tanker bearing registration No.GJ.13.V.6289 came in full speed, in rash and negligent manner and hit the rickshaw from the behind. At the time of accident, the said tanker was being driven by respondent no.1 herein. In the said accident, Chandubhai Solanki sustained serious injuries and subsequently, succumbed to the injuries. It is also the case of the original claimants/appellants herein that at the time of accident, the deceased was earning Rs.1,00,000/- from

doing the farming work, animal husbandry and renting his rickshaw. It is also the case of the appellants/claimants that at the time of accident, the deceased was aged about 39 years, therefore, they claim the compensation of Rs.15,00,000/- under Section 166 of the MV Act.

3. Having been served with the notices of the claim petition, the respondent no.3/ insurance company had filed the written statement at Exh.21 wherein, the factum of accident, compensation, liability and age of the deceased etc. were denied and prayed for dismissal of the claim petition.

4. Having considered the pleadings of the parties, the learned Tribunal framed the following issues:-

(1) Whether the applicant prove that the deceased died due to use of the vehicle involved in the accident as contended?

(2) Whether the applicants are entitled to get compensation ? If yes, what amount and from whom.

(3) What award and order?

5. In order to prove the claim petition, the original claimants/appellants herein have led the following oral as well as documentary evidences:-

Sr. No.

Evidences

Exhibit No.

1.

Affidavit of Jashiben Chandubhai Solanki

25

2.

Copy of Complaint

33

3.

Copy of Panchnama

34

4.

P.M. Report

35

5.

Extract of Village form No.7/12 of land bearing survey no.341 situated at village Hariyala

36

6.

Extract of Village form No.7/12 of land bearing survey no.143 situated at village Hariyala

37

7.

Extract of Village form No.7/12 of land bearing survey no.374/2 situated at village Napa Talpad

38

8.

Extract of Village form No.8-A of land bearing survey no.166 situated at village Napa Talpad

9.

Copy of R.C. Book of vehicle bearing registration No.GJ.23.W.3962

40

10.

Copy of charge-sheet

45

6. The insurance company had not led any oral as well as documentary evidences before the learned Tribunal.

7. Having considered the evidences on record, the learned Tribunal has awarded a sum of Rs.7,73,000/- as a compensation along with interest at the rate of 9% per annum.

8. Being aggrieved and dissatisfied with the impugned judgment and award, the original claimants/appellants herein preferred the captioned appeal.

Mr. Mohsin M. Hakim, learned counsel appearing on behalf of the original claimants/appellants submitted that the appellants herein are challenging the impugned judgment and award on the ground of quantum. He submitted that though the appellants have proved on record that the deceased was having two source of income i.e. the income by driving the auto rickshaw and agricultural income and in the claim petition, they have pleaded that the annual income of the deceased was Rs.1,00,000/-. He further submitted that the learned Tribunal has considered the monthly income of the deceased as Rs.3,000/-, which is lower than the minimum income prevalent at the relevant point of time. He further submitted that the monthly income from the both sources could have determined as Rs.10,000/- per month. He further submitted that the learned Tribunal has awarded the meagre amount under the conventional head. He further submitted that the learned Tribunal has not awarded any compensation under the head of loss of estate. He further submitted that the impugned judgment is liable to be modified to the above extent.

9. On the other hand, Mr. M.R. Prajapat, learned counsel appearing on behalf of Mr. V.C. Thomas, learned counsel for the respondent no.3/insurance company, submitted that at the relevant point of time, the minimum wages for skilled worker was Rs.4,900/-. Therefore, the income at the most can be determined as Rs.5,000/- per month from both the sources. He further submitted that the learned Tribunal has committed the gross illegality in applying the multiplier of 16 in place of 15. He further submitted that at the time of accident, the deceased was aged about 39 years but however, the learned Tribunal has added the future prospective income at 50% in place of 40%. He further submitted that the impugned judgment is required to be modified to that extent.

10. Having considered the submission of the learned counsels for the parties and having regard to the facts and circumstances, it is to be noted that there is no dispute regarding the negligence. The learned counsel for the appellant has raised the grievance in respect of determination of income of the deceased. It is on record that the deceased was having two source of income, one is from the rental income of his auto rickshaw and another is by doing agricultural work and animal husbandry work. The learned Tribunal has determined the income as Rs.3,000/- per month; however, it was pleaded before the learned Tribunal that the annual income of the deceased was Rs.1,00,000/-. It is not in dispute that at the relevant point of time, the minimum wages for the skilled worker was Rs.4,900/- per month. Considering the facts and circumstances, the deceased was having two source of income, therefore, in my considered view, it would be just and fair, if the income of the deceased is determined as Rs.7,000/- per month. It is not in dispute that at the time of accident, the deceased was aged about 39 years, therefore, in view of the ratio of judgment of the Hon’ble Apex Court rendered in the case of National Insurance Company Ltd. Vs. Pranay Sethi, reported in 2017 (16) SCC 680, 40% increase is to be made to the monthly income on account of the future prospective income of the deceased. The learned Tribunal has added 50% as a prospective income, which in my considered view, is not in accordance to the ratio laid down in the case of Pranay Sethi (supra), therefore, the 40% of the monthly income is to be added on account of prospective income of the deceased to the notional income. Therefore, the monthly income after adding 40% on account of future prospective income of the deceased, the notional income would come to Rs.9,800/-i.e. (7,000+ 7,000X40%) per month. It is on record that the deceased left behind by his four legal representatives, therefore, 1/4th of the monthly income is required to be deducted on account of personal expenses of the deceased in accordance to the

ratio of the judgment of Hon’ble Apex Court rendered in the case of Sarla Verma Vs. Delhi Transport Corporation and Anr., reported in AIR (2009) 6 SC 3104. Thus, after deducting 1/4th of the monthly income on account of personal expenses, the net income for calculating the loss of dependency would come to Rs.7,350/-. Therefore, the annual loss of dependency would come to Rs.88,200 i.e. (7,350X12).

11. At the time of accident, the deceased was aged about 39 years, therefore, in view of the ratio of Sarla Verma (supra), a multiplier of 15 is required to be applied; however, the learned Tribunal has applied the wrong multiplier of 16. Thus, applying the multiplier of 15, the total loss of dependency would come to Rs.13,23,000/- i.e. (88,200X15). The learned Tribunal has awarded a sum of Rs.1,00,000/- under the head of loss of consortium; however, the deceased left behind by his widow, 2 sons and one daughter. All four legal representatives are entitled for the compensation under the head of loss of consortium in view of the judgment of Pranay Sethi (supra) and Magma General Insurance Company Limited Vs. Nanu Ram @ Chuhru Ram and Ors., reported in 2018 (18) SCC 130. Therefore, all the legal representatives shall be entitled for a compensation under the head of loss of consortium and accordingly, a sum of Rs.1,93,600/- i.e. (48400X4) is awarded under the head of loss of consortium. The learned Tribunal has also awarded a sum of Rs.25,000/- under the head of funeral expenses, which is required to be reduced in accordance to the ratio of judgment of Pranay Sethi (supra) to Rs.18,150/-. It is to be noted that the learned Tribunal has not awarded any amount under the head of loss of estate. Therefore, a sum of Rs.18,150/- is awarded under the head of loss of estate. In view of the above discussions, the appellant shall be entitled for the following compensation:-

Sr. No.

Particular

Amount

1.

Loss of dependency

13,23,000/-

2.

Loss of consortium to all 4 legal representatives

1,93,600/-

3.

Loss of estate

18,150/-

4.

Funeral Expenses

18,150/-

Total

15,52,900/-

12. The learned Tribunal has awarded a sum of Rs.7,73,000/- as a compensation along with interest at the rate of 9% per annum from the date of filing of claim petition till its realization, therefore, the appellant shall be entitled for additional amount of compensation of Rs.7,79,900/-i.e. (15,52,900-7,73,000). The learned Tribunal has awarded the interest at the rate of 9% per annum, therefore, the appellant shall be entitled for interest at the rate of 9% per annum on additional amount of compensation.

13. In view of the above discussions, the present appeal stands allowed. The respondent no.3/insurance company shall deposit the additional amount of compensation along with interest within a period of 6 weeks from today. Upon depositing of the said amount of compensation, the learned Tribunal shall disburse the entire amount of compensation along with interest to the original claimants/appellants herein after due verification. The statutory amount, if any, lying deposited with the registry of this Court, the same shall be transmitted to the learned Tribunal concerned. No order as to costs.

14. Record & Proceedings, if any, be sent back to the learned Tribunal concerned.