
(1982) 01 GUJ CK 0007
In the Gujarat High Court
Case No : First Appeal No. 753 of 1978

Mangaldas Mohanlal Patel and Another	APPELLANT
Vs	
Union of India and Another	RESPONDENT

Date of Decision : 28-01-1982

Acts Referred:

Motor Vehicles Act, 1939 — Section 110B

Citation : (1982) ACJ 426 : AIR 1982 Guj 257 : (1982) GLH 467 : (1982) 2 GLR 166

Hon'ble Judges : N.H. Bhatt, J; I.C. Bhatt, J

Bench : Division Bench

Advocate : M.B. Shah, for the Appellant; Ravani, for the Respondent

Judgement

I.C. Bratt, J.—This appeal arises out of the Motor Accidents Claims Petition No. 85 of 1976 decided 13V. the Motor Accidents Claims Tribunal No. 1-A, Ahmedabad City. The application was filed u/s. 110A of the Motor Vehicles Act claiming compensation of Rs. 42,000 for the death of one Ashvinkumar Who was killed in a miffitary motor truck accident which took place on 1st April. 1976.

2. The facts of the case are that at the time of the accident, Ashvinkurnar came out from Manhar Society and was going on a public road leading to the Civil Hospital. He was on his bicycle and he was riding the cycle on the left side of the road. In the meanwhile, military motor truck bearing No. 73 D 10699 II driven by opponent No. 2 came from behind and knocked Ashvinkumar on the road. It is alleged that the truck was driven at a fast speed and negligently. The left side of the front bumper of the truck is alleged to have dashed against the cycle of Ashvinkumar. After Ashvinkumar fell down on the road, the front left wheel of the truck ran over his head and Ashvinkumar died on the spot. The applicants who are the parents of the deceased Ashvinkumar have alleged that the accident occurred on account of the negligent driving of the military motor truck by opponent No. 2 and, therefore, both the opponents are responsible for the accident and they are liable to pay the compensation. The applicants had claimed

Rs. 42,000 for the death of their son Ashvinkumar. Ashvinkumar was the only son of the appellants,

3. The Motor Accidents Claims Tribunal who heard the compensation case came to the conclusion that the injuries were received by Ashvinkumar on account of the wrongful act and neglect on the part of the opponent No. 2 and, therefore, the opponents are liable for the said act and after holding that the opponent No. 2 is negligent~ the Tribunal has awarded the compensation of Rs. 21,000 to the appellants with 6% interest from the date of the application and costs and the opponent No. 1 is directed to deposit the amount of Rs, 21,000 together with interest and costs within six weeks from the date of the order. i.e. 1st Dec.. 1977.

4. The present appeal has been filed by the appellants claiming additional amount by way of compensation. However, the appellants have restricted their claim to Rs. 10,000 in this appeal for the additional amount.

5. So far as the question of negligence is concerned, that question will not arise in the present appeal as there is no appeal or cross-objections by the respondents and, therefore that finding will have to be confirmed. So far as the negligence of opponent No. 2 is concerned, the Tribunal has also come to the conclusion that it is proved beyond doubt that the accident occurred due- to rash and negligent driving on part of the opponent No. 2 and, therefore, that finding will be confirmed in this appeal.

6. The next question that arises for our consideration is what additional amount should be awarded by way of Compensation to the applicants; the applicants are the parents of deceased Ashvinkumar. It is in evidence that Ashvinkumar was aged 13 years at the time of the accident and he was studying in 7th Standard in Shishuvihar High School, Therefore, in the present case, there cannot be any evidence as to what was his source of income and what he was earning at the time of the accident However, the Tribunal has estimated as to what should have been his income for the purpose of computing compensation and the Tribunal has estimated the income which the deceased would have earned at Rs. 300 per month and deducting Rs. 100 which he would have spent on himself, Rs. 200 per month has been taken as the dependency benefit available to the appellants and considering the age of the deceased, multiplier of 15 years has been taken.

7. Now, in such cases where a young boy who is studying in school and who is not earning anything, it is difficult to evaluate his future earning capacity and loss to the appellants. In the present case, we have to assess the damages of a chance in the sense whether deceased would have given any amount to his parents in view of the fact that the deceased was studying in school and was not earning at the time of the accident. When the Court has to assess damages, whether in personal injury claims or in claims under the Fatal Accidents Act, it often has, in effect, to value a chance. The Court has to assess the value of the lost dependency. One does not know what might have happened had he not been killed; but the value of the prospect, chance or probability or support can be

estimated by taking all significant factors into account. The Court has" to do its best to evaluate all the chance large or small favourable or unfavourable. In evaluating such change, we have to keep in mind issue or sole issue whether that chance or Probability was stantial. If it was substantial, it must be evaluated. If it was a mere probability, it must be ignored. It is true that in real life, chances rarely are, or, can be estimated on mathematical terms. When the question is, whether a certain thing is or is not true, whether a certain event did or did not happen, then, the Court must decide one way or the other. There is no question of chance or probability. But the standard of civil proof is a balance of probabilities. If the evidence shows a balance in favour of it having happened, then, it is roved that it did, in fact, happen. It will often be difficult in a particular case to decide whether the claim is merely speculative or one which is "pressed to extinction by the weight of multiplied contingencies." or is substantial. Such question must be left to the Tribunal to decide on broad lines, without regard to legal niceties, but on a consideration of all the facts in proper perspective.

8. Keeping in mind this aspect of evaluating a chance in the present case, we have to consider the evidence on record. Of course, there cannot be any evidence as to what the deceased was earning or what he would have earned in future. There cannot be any kind of such evidence when the boy is studying. We have, therefore, to assess the value of loss of dependency benefit by guessing and find out what would be the economic loss to the appellants in the present case. We have also to take into consideration the future financial support which the dependents-appellants lose. No one can know what might have happened had the deceased not met with an unfortunate accident. But the value of the prospect, chance or probability of support can be estimated by taking all significant factors into account. One has to evaluate all the chances. In the present case, it is not possible for the appellants to exactly prove as a fact as to what amount they would receive by way of dependency benefit and how long. One has always to make certain conjectures and do guess work to arrive at -a particular amount that may be available to the dependants by way of dependency benefit.

9. In the present case, however, we have got the evidence of the father of the deceased, viz. Mangalbai Mohanbai, Patel who has been examined at Ex. 25 and who is the applicant No.1. He has stated that he is doing business in cloth in the name of Navdurga Vastra Bhandar for the last seven years and he is having a shop at Prem Darwaja. Ashvinkumar who died in an accident was their only child. He has further stated that at the time of his death, Ashvinkumar was aged 13 years, He was studying in 7th Standard in Shishuvihar High School. He was very clever. His rank was third when he Passed 6th Standard Examination. His health was very sound. His ambition was to become a Doctor. He had secured 65% marks when he passed 6th Standard Examination. He has also stated in cross-examination that Ashvinkumar had appeared in Hindi examination and there are certificates showing that he had passed Hindi Examinations. He was taken a part in sports and he had once received first prize, Therefore, considering this

evidence, it can be safely presumed that the boy who was very clever and was taking part in sports and other activities would have been a successful person in life. He could have become an engineer or a doctor or he could have qualified himself in any other branch look in to his cleverness. Even according to the evidence of the applicant No. 1 Mangalbhai who was doing business, the deceased could have joined his father in the business and could have also started a shop in business and earned his livelihood. The deceased might have been a successful businessman or as suggested by his father, he would have become a doctor or an engineer or a like professional and would have been a successful man in life. Now, these assumptions could very well be made in the present case because of the positive averments made by the applicant No. 1. In such cases, one has to make conjectures and come to the conclusion one way or the other. It is not correct in such cases to say that a pessimistic view should be taken. Other side could have as well argued that a man could have been a successful businessman or not is very much a conjecture or probability without any evidence. It is certainly just and proper to have a positive approach to life and an optimistic view in such cases when the father of the deceased has given evidence on these lines that his son was very clever and his ambition was to become a doctor. And the Court should be rather very slow to reject such evidence and more so dence on record.

10. Considering all these aspects, we would come to the conclusion that the deceased would have very easily earned about Rs. 600 per month. Even if we take 50% thereof as his own expenses, the benefit that the applicants would get would be at least Rs. 300 per month. The father-applicant No. 1 is aged about 40 years only and, therefore, the Tribunal has rightly taken 15 years" multiplier in the present case. If Rs. 300 is taken as the basis for the dependency benefit to the appellants, the yearly benefit would come to Rs. 3,600 and if it is multiplied by 15 years" purchase, it would come to Rs. 54,000. Out of Rupees 54,000, Rs. 21,000 which has been awarded to the appellants by the Tribunal has to be deducted. Therefore, the balance of the amount in the present case is much more than what the appellants have claimed. However, the appellants have restricted their additional claim to Rs. 10,000 only in this appeal and we award to the appellants Rs. 10,000 by way of additional compensation with interest at the rate of 6% per annum from the date of the application till realisation with costs throughout.

11. We find from the judgment that the Tribunal has reduced the dependency benefits by 50% as, according to him, this was a case of parents. It is not possible to agree with this view of the Tribunal as it would not be correct to reduce the dependency benefit by 50%, as a general rule. Even if this basis is taken in the present case, even then the appellants" claim will have to be fully allowed. Moreover, the Tribunal has erred to awarding Rs. 3,000 on account of loss of expectancy of life to the appellants, which amount normally is Rupees 5,000. Even all these facts may not be necessary in the present case because the appellants have restricted their additional claim to Rs. 10,000 in this appeal and,

in. any event, they would be entitled to this additional amount of Rs. 10,000 by way of compensation.

12. We allow the appeal and award an additional amount of Rs. 10,000 by way of compensation to the appellants with interest at the rate of 6% per annum from the date of the application till realisation with costs throughout. The appellants shall recover the said amount from the respondents, who shall deposit the same before the Tribunal.

13. Appeal allowed.