

(1985) 02 GUJ CK 0017
In the Gujarat High Court

Rameshgiri Dolatgiri Vadala (Dari) and Others

APPELLANT

Vs

Ramji Nathabhai and Others

RESPONDENT

Date of Decision : 28-02-1985

Acts Referred:

Citation : (1985) 2 ACC 387

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

Bench : Division Bench

Judgement

S.A. Shah, J.—Both these appeals arise out of the same judgment of the Motor Accidents claimss Tribunal, Rajkot, in claims Case No. 90 of 1977 and claims Case No. 91 of 1977, which were the subject-matter of the same accident. They are, therefore, disposed of by this common judgment.

2. claimsants of claims Case No. 90 of 1977 are father, mother, brother and sister of deceased Mahipatsinh Ramji who died in the accident, and for that they have claimssed an amount of Rs. 40,000/- as compensation. The claimsants of claims Case No. 19 of 1977 are mother, brother and sister of deceased Batuk Banulal who also died in the same accident, and for that they have claimssed an amount of Rs. 86,000/- as compensation.

3. The Tribunal after recording the evidence and hearing the parties, awarded total amount of Rs. 40,000/-to the claimsants in each case. Being aggrieved by the said award, the driver, owner and insurer of the truck bearing No. GTY 2952 involved in the said accident have filed these appeals.

4. The accident appears to have occurred on 28-1-77 at about 8.15 p.m. near Nagrik Bank, Udyognagar Branch, on Dhebar Road due to rash and negligent driving of the said truck by appellant No. 1, thus causing the death of the aforesaid two persons. Appellant No. 2 is the owner and appellant No. 3 Insurance Company is the insurer of the said truck.

5. At the time of the accident, one Vajesinh Kalyansinh exh. 32, a rickshaw-driver, was standing at the rickshaw-stand near about the place of accident. He

saw two cyclists (deceased persons) proceeding from near by him on the left side of the road and were going towards the S.T. Stand. At the same time he also saw a public carrier (the truck in question) coming from the side of S.T. Stand in high speed. According to him, the said public carrier was proceeding on the wrong side of the road, and the humper of the said Public Carrier dashed with the cyclists who were proceeding on the left side of the road, as a result of which they were thrown off and ran-over, and one man died on the spot and another was injured. So much so, that the public carrier did not stop there, and it was only when the rickshaw-drivers who were there shouted, the same was stopped at a distance of about 120 feet from the place of accident. This witness Vajesinh thereafter took the injured person to the hospital. His complaint was recorded by the police. He has also stated the same facts in his complaint exh. 33, which was filed immediately after the accident. Batuk Babulal died immediately, whereas Mahipatsinh died in the hospital.

6. Mr. B.R. Shah, learned advocate for the appellants in both these appeals, has vehemently urged that deposition of opponent No.1 (present appellant-driver of the said truck) that the accident occurred on account of the fault of the cyclists should be believed. It should also be believed that the cyclists themselves dashed with the truck and there was no negligence on the part of appellant No. 1.

7. The Tribunal has discussed the evidence of eye-witness Vajesinh exh. 32, and the panchnama, which duly supported his say. Even the circumstances and the nature of the accident were such that they raise the only inference that the truck and the cyclists collided with each other from the opposite directions. It also appears that no brakes were applied by the truck-driver, and that it was only when the rickshaw-drivers standing there shouted, the truck was stopped at a distance of about 120 feet from the place of accident, as is evident from the panchnama.

8. The Tribunal has relied upon the evidence of eye-witness Vajesinh exh. 32 in preference to the evidence given by appellant No. 1 Driver of the truck. We see no reason to differ from the view taken by the Tribunal on consideration of the circumstances and the evidence on record. There is no doubt that the accident took place on account of the rash and negligent driving of the truck by appellant No. 1.

9. So far as income of deceased Mahipatsinh is concerned, he was doing the work of colouring the oil engines and had also a rickshaw which was let to somebody for plying it on hire. Three months prior to the date of the accident, the deceased had earned an amount of Rs. 1,590/- by doing colouring work of oil engines, i.e. Rs. 500/- per month. There is also evidence that he was earning Rs. 300/- from the rickshaw. His total income per month would, therefore, come to Rs. 800/- per month. The Tribunal has not considered his income from the rickshaw, and has arrived at the conclusion that the average income of the deceased was Rs. 500/- per month. Again, the Tribunal has not taken into consideration the future prospective income of the deceased who was a skilled

worker and was earning about Rs. 15 to 20 per day only by doing the work of colouring the engines. Taking into consideration these facts, it cannot be said that the deceased must be earning not less than Rs. 650/-per month. Even if we accept the contention of Mr. Shah that the claimsants are mother, father, brother and sister of deceased Mahipatsinh, and according to the settled legal practice they will be entitled only to one-third of the income of the deceased, the amount to which the parents would be entitled to would not be less than Rs. 220/- per month. Deceased was 22 years old and therefore, multiplier of 15 years applied by the Tribunal is quite reasonable and proper. Applying the said multiplier of 15 to the yearly income of Rs. 2,640/- of the deceased, the total amount available to the parents would be Rs. 39,600/-. Adding to this figure an amount of Rs. 3,000/- towards loss to the estate, the amount would come to Rs. 42,600/- Since the Tribunal has awarded Rs. 40,000/- and no appeal or cross objection have been filed by the claimsants against the said decision of the Tribunal, the claimsants will be entitled to the said amount of Rs. 40,000/-. In our opinion, therefore, no error has been committed by the Tribunal in awarding the said amount of Rs. 40,000/- to the parents of the deceased.

10. So far as income of deceased Batuk Babulal is concerned, he was working as a turner in lathe factory. He was getting Rs. 400/- per month as salary. He was also working for extra time and was earning Rs. 150/- per month, i.e. in all he was getting Rs. 550/- per month. The Tribunal has not considered the prospective future income of the deceased who was a skilled worker. In our opinion, he would have at least earned Rs. 650/- per month on an average. Even according to Mr. Shah, parents of the deceased would be entitled only to one-third of the income of the deceased. Therefore, taking the income of the deceased to be Rs. 650/-per month, the amount to which the parents would be entitled to would not be less than Rs. 220/- per month, i.e. Rs. 2,640/- per year. The deceased was 22 years old and therefore, the multiplier of 15 applied by the Tribunal is quite reasonable and proper. Multiplying the figure of Rs. 2,640/- by 15 the amount would come to Rs. 39,600/-. Adding to this the figure of Rs. 3,000/- towards loss to the estate, the total amount to which the parents would be entitled to comes to Rs. 42,600/- Since the Tribunal has awarded Rs. 40,000/- and no appeal or cross objections have been filed by the parents against the said decision of the Tribunal, they will be entitled to the said amount of Rs. 40,000/-. In our opinion, therefore, no error has been committed by the Tribunal in awarding the said amount of Rs. 40,000/- to the parents of deceased Batuk Babulal.

11. In the result, there is no merit in any of these appeals and therefore, they are dismissed with costs.