(2025) 12 GUJ CK 1912

In the Gujarat High Court

Case No : R/First Appeal No. 1359 Of 2022

Reliance General Insurance Co Ltd APPELLANT

Vs

Kiranben Pravinchandra Gaudana & Ors RESPONDENT

Date of Decision : 17-12-2025

Acts Referred:
Motor Vehicles Act, 1988 — Section 66

Citation : (2025) 12 GUJ CK 1912

Hon'ble Judges : Hasmukh D. Suthar, J

Bench : Single Bench

Advocate : Rathin P Raval, Dharmesh V Shah, Drashti D Shah, Nishit A Bhalodi

Final Decision : Partly Allowed

Judgement

Hasmukh D. Suthar, J

1. This appeal has been preferred by the appellant-Insurance Company against the judgment and award dated 07.01.2022 passed by the Motor Accident Claims Tribunal (Auxi.) Ahmedabad (Rural) at Mirzapur in Motor Accident Claim Petition No.782 of 2009.

2. Heard Mr. Ratin P Raval, learned advocate for the appellant, Mr. Dharmesh Shah, learned advocate with Ms. Drashti Shah, learned advocate for respondent Nos.1 to 3 and Mr. Nishit Bhalodi, learned advocate fort respondent No.4.

3. The brief facts of the case are that on 22.11.2008, the deceased was travelling as a passenger in a rickshaw. When the rickshaw reached the place of the accident, its driver drove the vehicle in a rash and negligent manner and suddenly applied brakes, resulting in loss of control. Consequently, the rickshaw collided with the divider, causing the accident, in which the deceased sustained fatal injuries and succumbed thereto.

4. The learned advocate for the appellant has submitted that the learned Tribunal has committed an error in not considering the evidence produced on record. It is

contended that the appellant-Insurance Company had no liability, as the rickshaw did not possess a valid permit and was being plied without a permit. In this regard, the RTO Officer was examined at Exhibit-

35 and the defence was duly proved; however, the learned Tribunal committed an error in ignoring the same and in not considering the provisions of Section 66 of the Motor Vehicles Act. It was further submitted that future pay revision could not have been taken into consideration, as the same occurred in the year 2019, whereas the accident had taken place in the year 2008. Despite this, the learned Tribunal awarded compensation on that basis. It was also submitted that the learned Tribunal committed an error in awarding compensation under the heads of loss of estate, consortium, and funeral expenses. Hence, the learned advocate for the appellant has prayed that the present appeal be allowed.

5. On the other hand, the learned advocates appearing for the respondents have strongly opposed the appeal and submitted that the learned Tribunal has rightly awarded just and proper compensation in view of the evidence available on record. Therefore, this Court should not interfere with the award passed by the learned Tribunal. It is further submitted that the learned Tribunal has passed the impugned judgment and award after taking into consideration the entire material on record and hence, no interference is called for at the hands of this Court and the present appeal may be dismissed.

6. Having heard the learned advocates for the respective parties and upon perusal of the documents on record, it appears that the affidavit of examination-in-chief and the cross-examination of applicant No.1 were tendered at Exhibit-23. To prove the income of the deceased, a witness, namely Shri Sunil Kumar V. Desai, who was serving as a Clerk in the office of the Taluka Panchayat, Sanand, was examined at Exhibit-48. The complaint was produced at Exhibit-32, the post-mortem report at Exhibit-28, and the insurance policy at Exhibit-53. The salary certificate was produced at Exhibit-35, the resolution of the 6th Pay Commission at Exhibit-36, and the revised pay scale issued pursuant thereto was produced at Exhibit-38, which was approved by the Local Fund Office, Ahmedabad. The last pay certificate was produced at Exhibit-39.

7. Upon perusal of the evidence produced on record and considering the cognate matters being MACP No.2008 of 2009 and MACP No.561 of 2009, the learned Tribunal came to the conclusion that the driver of the auto-rickshaw was solely negligent in causing the accident in question, and accordingly fixed the negligence upon the driver of the offending vehicle. Since the finding with regard to negligence is not in dispute and only the quantum of compensation is challenged, this Court has considered the submissions advanced by the learned advocate for the appellant.

8. The learned advocate for the appellant mainly submitted that, at the time of the accident, the deceased was aged about 53 years and was serving as a Talati-cum-Mantri in the Taluka Panchayat, Sanand, and was drawing a salary of

Rs.12,036/-per month. It was contended that the learned Tribunal committed an error in considering the revised salary certificate produced at Exhibit-39 and in fixing the monthly income of the deceased at Rs.15,460/-, and therefore prayed that the appeal be allowed.

9. In order to examine the aforesaid contention, this Court has considered the law laid down by the Hon'ble Apex Court in Sarla Verma v. Delhi Transport Corporation, (2009) 6 SCC 121. It is an undisputed fact that, at the relevant point of time, the deceased was working as a Talati-cum-Mantri in the Taluka Panchayat, Sanand, and was holding a permanent Government post. The salary certificate was produced at Exhibit-39. To prove the income of the deceased, a witness, namely Shri Sunilkumar Desai, was examined at Exhibit-48. He produced the salary slip of December 2008 at Exhibit-38, the last pay certificate of the deceased at Exhibit-39, and the revised pay scale granted to the deceased pursuant to the 6th Pay Commission, which was approved by the Local Fund Office, Ahmedabad.

10. The main contention of the learned advocate for the appellant was that the benefit of the 6th Pay Commission was extended subsequent to the date of the accident and, therefore, could not have been taken into consideration. It was submitted that the last salary of the deceased paid up to 23rd November 2008 was Rs.12,036/- per month, as reflected in Exhibit-39. However, it has emerged from the record that the 6th Pay Commission was implemented with retrospective effect. Pursuant thereto, the revised salary of the deceased was initially fixed at Rs.15,460/- per month and thereafter revised to Rs.17,050/- per month, which was duly approved by the Local Fund Office. The arrears were also paid.

11. The learned Tribunal, therefore, rightly held that since the benefit of the 6th Pay Commission was given with retrospective effect, the revised salary was required to be considered for the purpose of awarding just compensation. Consequently, the contention raised by the learned advocate for the appellant that the revised salary could not be taken into consideration is not acceptable. The learned Tribunal has not committed any error in considering the monthly income of the deceased at Rs.17,050/-.

12. So far as the defence regarding the permit is concerned, the claimant is a third party. Moreover, it has not been proved that, on the date of the accident, the vehicle was not covered under a valid insurance policy. The existence and coverage of the insurance policy are not in dispute. Hence, the argument canvassed by the learned advocate for the appellant seeking exoneration of the Insurance Company is not acceptable.

13. Considering the aforesaid facts, the learned Tribunal assessed the annual income of the deceased at Rs.2,04,600/-and added 15% towards future prospects, as the deceased was aged 53 years, in consonance with the law laid down by the Hon'ble Supreme Court in Sarla Verma (supra) and National

Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680. Thus, the prospective annual income of the deceased was rightly determined at Rs.2,35,290/-. The deduction of one-third towards personal and living expenses is also just and proper and does not call for any interference. Accordingly, the argument canvassed by the learned advocate for the appellant on the issue of quantum is not accepted.

14. In view of the above, the learned advocate for the appellant rightly submitted that, although the learned Tribunal awarded compensation under the heads of loss of dependency, loss of estate, consortium, and funeral expenses in accordance with Pranay Sethi (supra), it further awarded an additional amount of Rs.1,00,000/- under the head of "loss of love and affection". As per law laid down by the Hon'ble Supreme Court in Sarla Verma (supra) and Pranay Sethi (supra), awarding compensation under the additional head of loss of love and affection is impermissible. Therefore, to the aforesaid extent, the learned Tribunal has committed an error. Consequently, the appeal partly succeeds and is accordingly partly allowed by setting aside the award of Rs.1,00,000/- granted under the head of loss of love and affection.

15. For the reasons recorded above, the present appeal is hereby partly allowed. The impugned judgment and award passed by the learned Tribunal is hereby reduced and modified from Rs.19,23,460/- to Rs.18,23,460/-. Now the claimant is entitled to get compensation of Rs.18,23,460/-. The learned Tribunal is directed to refund the difference amount i.e. Rs.1,00,000/- to the appellant-insurance company. The learned Tribunal thereafter shall disburse the reassessed compensation in favour of the original claimants through RTGS, after proper verification. The bank account details shall be furnished by the learned advocate for the claimants to the Nazir Department of the learned Tribunal concerned. The Court fees, if any, payable by the claimants on compensation be deducted from the said amount and the remaining amount of compensation be disbursed in favour of the claimants on due verification within a period of two weeks thereafter. Record and proceedings, if any, be sent back to the concerned Tribunal forthwith. Pending civil applications, if any, also shall stand disposed of accordingly.