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**(1993) 09 GUJ CK 0018**  
**In the Gujarat High Court**  
**Case No : F.A. No. 1287 of 1983**

Revaben and Others

APPELLANT

Vs

Kantibhai Narottambhai Gohil and Another

RESPONDENT

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**Date of Decision :** 23-09-1993

**Acts Referred:**

**Citation :** (1995) ACJ 548 : (1994) 2 GLR 782

**Hon'ble Judges :** Y.B. Bhatt, J;C.K. Thakker, J

**Bench :** Division Bench

**Advocate :** N.D. Nanavati, for the Appellant; Mayaben Desai, for M.D. Pandya, for the Respondent

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## **Judgement**

Y.B. Bhatt, J.—The present appeal has been filed by the original claimants of Motor Accident Claim Petition No. 3691 of 1981, challenging the judgment and award passed therein by the Motor Accidents Claims Tribunal, Bharuch, dated 7.10.1982. The first opponent herein is driver of the bus involved in the accident and the second respondent, Gujarat State Road Transport Corporation, is the owner of the said bus. Certain basic facts are required to be narrated first.

2. The accident occurred on 3.8.1981, late at night between 11.45 p.m. and midnight on a State highway, near Ankleshwar. There is no serious dispute that in the accident, the bus driven by the first respondent hit the deceased, on the right hand front portion of the bus and thereby caused the death of the deceased. The deceased was walking along the said road, coming from the opposite direction of the bus and was walking on his own right hand side of the road, i.e., on the left hand side of the road as seen from the driver's side.

3. The claim of the petitioners, as set out in the claim petition, was as under:

Rs. 75,000/- by way of economic loss, Rs. 25,000/- towards loss of expectation of life, Rs. 15,000/- for pain, suffering and loss of enjoyment of life and Rs. 10,000/- for funeral expenses. Thus, in all the claimants claimed compensation in the sum of Rs. 1,25,000/-.

4. As against this, the Tribunal awarded Rs. 12,000/- by way of economic loss, Rs. 2,000/- by way of funeral expenses and Rs. 5,000/- for loss of expectancy of life, rounding off the aggregate to Rs. 20,000/-. However, the Tribunal also held, on the aspect of contributory negligence, that both the driver and the deceased were equally responsible for the accident, i.e., each was negligent to the extent of 50 per cent. Thus, the amount awarded by the Tribunal by way of compensation to the claimants stood reduced to Rs. 10,000/-. The Tribunal also awarded interest at the rate of 6 per cent per annum on the aforesaid amount.

5. We shall first take up for consideration the quantum of compensation awardable to the claimants under different heads.

5.1. Learned counsel for the appellants-claimants has taken serious exception to the entire approach adopted by the Tribunal in calculating the economic loss. The Tribunal has first determined the income of the deceased who was a salaried employee and has thereafter made certain additions as also subtractions from the figure of the salary so determined. The Tribunal has also thereafter estimated the life expectancy of the deceased and on the basis of such life expectancy, determined what the deceased would have earned after his age of retirement. The learned Counsel for the appellants has seriously objected to the deductions made on account of various factors and in particular, the deduction of the family pension which would be available to the claimants as the dependants of the deceased; On the other hand, learned Counsel for the respondents also objected to certain additions made by the Tribunal on account of the factors which are not sustainable. In short, the learned Counsel for both the parties have joined issue as to the correct approach and determination of what can be awarded under the head of economic loss.

5.2. Having considered the submissions made by both the counsel and having perused with care the approach of the Tribunal in this regard, the only conclusion we can draw is that the entire approach is based on certain surmises and inferences which are not justified. Moreover, on a question of principle itself, no deduction could have been made from the damages awardable under this head, on account of the family pension which would be available to the claimants on account of the death of the deceased. We have no doubt that no such deduction was permissible. The basic principle underlying the inadmissibility of such deductions is that the damages for the tortious act which are awardable to the claimants are on the basis that the tortfeasor has committed the acts in question for which he is liable to pay damages. Obviously, the tortfeasor cannot be permitted to take advantage of his own wrong. If in fact, deductions were made on account of certain benefits which may accrue to the claimants on account of the death of the deceased and if a set-off is given in respect of these amounts against the damages awardable, it would amount to conferring an advantage upon the tortfeasor. Even on basic principles, no such deduction can be made inasmuch as the benefits which would accrue to the dependants of the deceased are benefits which would even otherwise have accrued to the claimants on the

death of the deceased, irrespective of how he had died. These principles are by now well settled and do not merit a lengthy discussion. Suffice it to say that these principles have been settled by a Division Bench of this Court in the case of *Prataprai Arjandas Dhameja v. Bhupatsing Gagji* 1982 ACJ 316 (Gujarat) and also in the case of *Arunaben v. Mehmoodhhai Imamali Kaji* 1983 ACJ 409(Gujarat).

5.3. Under the circumstances it would only be proper for us to reappraise the evidence on the correct principles.

5.4. The salary of the deceased at the time of his death together with allowances has been established by the evidence of *Kabhai Parsottam Patel*, Exh. 27. This witness is a junior clerk in the concerned department of the employer of the deceased. From his deposition, the salary together with allowances comes to Rs. 449.60, which can be conveniently rounded off to Rs. 450/- per month.

5.5. Now the original claimant Nos. 4, 5 and 6 are the major sons of the deceased and as per the deposition of the widow of the deceased, *Revaben*, at Exh. 28, these sons are living separately. Similarly, original claimant Nos. 7, 8 and 9 are married daughters of the deceased who are living separately with their respective husbands and in-laws. Thus, the only claimants who would be entitled to compensation would be the widow *Revaben* and two minor children. Thus, the deceased together with his widow and the two minor children would have constituted the family unit. Therefore, the personal expenses of the deceased would be required to be deducted from the aforesaid salary figure to the extent of 1/3rd. This position is not disputed by the learned Counsel for the appellants. Thus, the dependency benefit to the claimants would be Rs. 450/- less Rs. 150/- which would be Rs. 300/- per month. This would amount to Rs. 3,600/- per annum. Now we are required to consider various factors which can be regarded to be imponderables. It is admitted that the deceased was aged 55 at the time of his death and the age of retirement will be 60 years. Thus, under normal circumstances he would have had five years of service available to him. However, the chance cannot be ruled out that he might not have survived till the age of superannuation. This chance is not a remote chance, but something more than that inasmuch as the evidence of the widow *Revaben* at Exh. 28 indicates, as rightly found by the Tribunal, that each of the parents of the deceased had died between the age of 40 and 45 years. Thus, we cannot say with any measure of certainty or even as a measure of probability, that the deceased would have attained the age of superannuation. However, on the other hand, neither can we say that he would not have survived beyond the age of 60 years. Had he survived beyond the age of 60, it is equally probable that he could have earned something even after retirement. Thus, we are required to determine the appropriate multiplier having regard to these facts. The learned Tribunal has taken into consideration the generally accepted view that an average citizen of India under the present circumstances enjoys a life expectancy of 70 years. However, on the facts of the case, we do not feel it prudent to assume that the

average life expectancy would also apply to the deceased, inasmuch as each of his parents had expired between the age of 40 and 45 years. Taking into consideration the various aspects of the matter, we are of the opinion that a multiplier of 7 would be appropriate. Thus, the figure of dependency benefit, viz., Rs. 3,600/- per annum when multiplied by 7 would amount to Rs. 25,200. This would be the correct amount awardable under the head of dependency benefits or economic loss.

6. Although the claimants have claimed Rs. 10,000/- as funeral expenses, etc., the Tribunal has rightly refused to accept this figure as appropriate, particularly since there is no documentary evidence on record whatsoever except the bare word of the widow. The Tribunal has thought it fit to award Rs. 2,000/- by way of funeral expenses. In our opinion, this figure is both just and reasonable and does not require to be interfered with.

7. This takes us to the surviving claims as made out in the claim petition, viz., claim for Rs. 25,000/- for loss of expectation of life and Rs. 15,000/- for pain, suffering and loss of enjoyment of life. In this context we can only observe that these claims as set out in the claim petition and as sought to be substantiated before us by the learned Counsel for the appellants are to some extent overlapping.

7.1. The correct principles governing the various heads of claims under which claims for damages can be made and the principles governing the assessment under such heads are well discussed and by now well settled by two decisions of this Court, viz., *Chaturji Amarji v. Ahmad Rahimbux* 1980 ACJ 368 (Gujarat) and *Rqfia Sultan v. Oil & Natural Gas Commission* 1986 ACJ 616 (Gujarat). We do not propose to go into a lengthy discussion of the principles laid down by these decisions. Suffice it to say that various courts in India including this Court have used the term "conventional amount" and "global amount" as synonymous terms. Furthermore, the "conventional amount" which is award-able covers various sub-heads of claim and such sub-heads would include claims on account of pain, shock and suffering, loss of expectation of life or loss of amenities of life and would also include loss to the estate. In other words, the claim made by the claimants in the claim petition of Rs. 25,000/- for loss of expectation of life, together with Rs. 15,000/- for pain, shock and loss of enjoyment of life would all be covered under the head of "conventional amount". As against this total claim of Rs. 40,000/-, the Tribunal has awarded only Rs. 5,000/- under the head of loss of expectation of life. The learned Counsel for the appellants contended that this figure is extremely low. In our opinion, it is certainly on the lower side and requires to be raised.

7.2. It is no doubt true that by various decisions of this Court the amount awardable as "conventional amount" has been raised from time to time. These periodical raises under this head are on the basis of various factors which would include factors such as inflation, increase in cost of living, fall in the purchasing power of rupee, etc. The learned Counsel for the appellants has sought to rely on

a decision of this Court in the case of Bhanuben P. Joshi and Others Vs. Kantilal B. Parmar and Another, , where a sum of Rs. 20,000/- was awarded by way of loss of expectancy of life. Similarly, in another decision in the case of Rafia Sultan v. Oil & Natural Gas Commission 1986 ACJ 616 (Gujarat), this Court had raised the figure of conventional amount from Rs. 5,000/- to Rs. 10,000/-. However, what is required to be noted by us is not merely the fact that periodic increments have been given under various decisions of the court, but also the extent of quantum of such increments. We also cannot ignore one relevant fact that in each of such decisions, the quantum fixed by this Court had a co-relation with the date of accident. Thus, we cannot accept the submission of the learned Counsel for the appellants that the compensation awardable under the head of conventional amount must be determined with reference to the prevailing cost of living or the prevailing purchasing power of the rupee, with reference to today. In fact, the accident in question occurred on 3.8.1981. Thus, the conventional amount must relate to that date. Having regard to all the facts and circumstances of the case and also taking into consideration that the accident took place on 3.8.1981, we are of the opinion that it would be just and proper to award an amount of Rs. 15,000/- by way of conventional amount, which would cover the composite claim made by the claimants in the claim petition (of Rs. 40,000/-) under different heads.

8. To summarise, the claimants would be entitled to Rs. 25,200/- by way of economic loss, Rs. 2,000/- by way of funeral expenses and Rs. 15,000/- by way of conventional amount, bringing the aggregate figure of Rs. 42,200/-.

9. However, one of the major points of controversy both before the Tribunal as also before us is the question of contributory negligence. The Tribunal has found the driver of the bus to be negligent only to the extent of 50 per cent. This finding is seriously challenged by the learned Counsel for the appellants.

9.1. In this regard the first contention of the learned Counsel for the appellants is that since the Tribunal has failed to raise a specific issue on the question of contributory negligence, the Tribunal could not have entered into the question at all and could not, therefore, have determined the aspect of contributory negligence by necessary implication. The learned Counsel for the appellants submits that even this Court cannot do so and can only remand the matter directing the court to raise the specific issue. This submission of the learned Counsel for the appellants -cannot be accepted for a number of reasons.

9.2. First, the opponents had, in their written statements at Exhs. 14 and 15, specifically contended at considerable length that the deceased was, at the relevant point of time, drunk and under the influence of alcohol; that he was habituated to drinking and would, therefore, have had less than normal life expectancy and that at the relevant point of time when he was approaching the bus, he was staggering and walking with an unsteady gait since he was under the influence of alcohol, and for this reason the deceased was solely and entirely responsible for the accident. On a plain reading of the written statement it is

obvious that the contention of the opponents was that for the reasons stated, the deceased was 100 per cent negligent and that the driver of the bus, under the circumstances, could not have been said to be negligent to any extent whatsoever. Thus, the question of contributory negligence in this assertive form has been specifically raised by the opponents-respondents in their written statement. The claimants were well aware of these contentions. The claimants have joined issue on these contentions. Wherever during the course of evidence, the opponents had tried to substantiate the contentions raised in the written statement, the claimants have joined issue and have seriously cross-examined the witness of the opponents on this issue. Thus, it cannot be said by any stretch of imagination that the claimants were unaware of the controversy or were unaware of where the burden of proof lay.

9.3. Even otherwise, on the basic principles of raising the proper issues in a claim petition under the Motor Vehicles Act, it is by now a well-settled principle that the Tribunal need not necessarily frame a specific issue on the aspect of contributory negligence, inasmuch as there is almost always wider and larger issue which covers this specific issue, when the Tribunal considers the question of what amount is required to be awarded to the claimants on the facts and circumstances of the case. This aspect, on a question of principle, has been dealt with by a decision of the Delhi High Court in the case of Krishna Goods Carriers (P) Ltd. v. Union of India 1980 ACJ 172 (Delhi). In our opinion, this principle is so well settled that we need not discuss the same in any detail. This contention of the learned Counsel for the appellants is, therefore, rejected.

9.4. Now we shall consider the question of contributory negligence on merits. We have already discussed hereinabove the specific contentions taken by the opponents in the written submissions at Exhs. 14 and 15. In the context of these contentions we have examined the relevant evidence on record.

9.5. One witness by the name of Laganmaktu has been examined by the claimants at Exh. 29. He was a passenger travelling in the bus when it met with the accident. There is no dispute that he is a disinterested witness, unrelated to any of the parties and that, therefore, his deposition can be accepted without any reservation. However, we find that this witness does not throw much light on the aspect of contributory negligence. All that he states is that he was a passenger in the bus at the relevant time; that it was late at night, and that it was raining. He then states that the bus collided with an electric pole and then toppled over. He was injured on his forehead and became unconscious. It was only very much later that he came to know that one man had died in the accident. Even in his cross-examination he was unable to state as to how and why the bus left the road and went to its left hand side and as to how and why it collided with the electric pole.

9.6. The only important witness on the aspect of contributory negligence is the driver himself, viz., Kantilal Patel at Exh. 31. His deposition requires to be examined with care. In his examination-in-chief the driver states, on the relevant

aspect, that at that point of time it was raining heavily and, therefore, he was driving the bus at a slow speed. When this statement is compared with the evidence of Laganmaktu, Exh. 29, we observe that the latter had stated that at the relevant point of time the speed of the bus was neither less nor more and that it was moderate. The driver then continues with the statement in the examination-in-chief to the effect that "he saw a man on the road who was drunk and was staggering and walking with unsteady gait." The driver then states that on seeing this person he applied the brakes due to which the bus skidded on the road and went to the left hand side. He further states that the man on the road had hit the bus, but he does not know precisely on what part of the bus. He then goes on to state that "I and the passengers of the bus got down from the bus and ascertained by smelling the mouth of the person that he was drunk, since the smell of alcohol was emanating from the mouth." In another portion of his examination-in-chief he asserts that he was not responsible for the accident, that he was not driving fast, that the accident did not occur on account of his negligence but occurred because "the person was drunk". As against this, the cross-examination of the driver reveals not only the contradictions, but also admissions made by the driver. First, the driver has stated in his cross-examination that the person approaching the bus was on the left hand side of the road as seen from the bus. In order to avoid a collision with such a person approaching in that manner, he would be required to take the bus to the right hand side. It is submitted in this context that had he taken the bus to the right hand side the collision would not have occurred at all. This submission has considerable force, since in fact, it is seen from both the panchnama and the cross-examination of the driver that the pedestrian was hit by the right hand side of the bus or rather front right corner of the bus. It is, therefore, obvious that the driver had taken the bus to the left hand side of the road. This aspect is equally obvious also from another fact that the electric post which was hit by the bus was on the left hand side of the road after a portion of about 2V2 feet of kacha road. Another aspect brought out from the cross-examination of the driver is to the effect that "I did not get down from the bus and approach the deceased. I do not know whether he died on the spot or he was alive at that point of time." Thus, when we compare the statements made by the driver in his examination-in-chief with the relevant portions of his cross-examination, it becomes clear that the driver had not smelt the mouth of the deceased, nor had any passenger of the bus. Therefore, when he initially stated that he saw the person staggering on the road and approaching with an unsteady gait, we can only assume that he made this statement (which was not true) only with a view to substantiate the contention taken in the written statement. Once we come to the conclusion that the driver of the bus is not believable on this very material aspect we must also consider that every part of his testimony must also be viewed with caution. We cannot, therefore, accept, without reservation, the categorical assertion of the driver that the bus skidded on the road, since he applied brakes suddenly with a view to avoid the accident. Looking at the overall circumstances as apparent from the evidence, it is equally probable that the driver had either not seen the

approaching person at all, or that he had seen the person when he was too close to the bus to take any evasive action. In either of these two possibilities, we must hold the driver of the bus to be responsible for the accident, at least to a very substantial extent. It is equally probable, in our opinion, that the driver of the bus first hit the approaching person and on account of this shock, lost control of the bus and, therefore, hit the electric pole.

9.7. On the other hand, even after disbelieving the version put forward by the driver that the approaching person was drunk and, therefore, staggering on the road, we cannot overlook the fact that even under the reduced conditions of visibility then prevailing, the approaching person would certainly have seen the oncoming bus (which had its headlights on) at a far greater distance than the driver could possibly have seen the approaching person. Without specifically invoking the doctrine of last opportunity, which ought to be invoked as suggested by the learned Counsel for the respondents, we can certainly come to the conclusion that there was a possibility, if not a probability, that the accident could have been avoided, had the deceased merely taken a few steps to his own right hand side and stepped off the road. However, at the same time, we are not in a position, on the facts and circumstances of the case, to assert that the deceased should have done so and since he had failed to do so he was substantially responsible for the accident. The evasive action available to the oncoming pedestrian is not necessarily a matter of routine prudence, but it may be that a person who was extremely careful and cautious, and also conscious of the low visibility conditions then prevailing, might have done so.

9.8. Thus, on a totality of the facts and circumstances of the case, we are of the opinion that the deceased cannot be held to be contributory to the accident to the extent of 50 per cent as found by the Tribunal. However, in our opinion, the deceased can be held responsible to the extent of 10 per cent. Thus, the amount found by us to be awardable to the claimants, viz., Rs. 42,200 as discussed hereinabove would stand reduced by Rs. 4,220/- leaving a net amount of Rs. 37,980/- as due to the claimants.

10. The next question of controversy is as regards the interest payable on the compensation amount. The learned Counsel for the appellants submits that 6 per cent interest awarded by the Tribunal is inadequate and that the same ought to be at least 15 per cent. This submission is vehemently resisted by the learned Counsel for the respondents.

10.1. The question of interest which ought to be awarded to the claimants of accident cases, by way of compensation for tortious acts, has been a question considered by various courts at various points of time. Both the learned Counsel for the parties in the present matter have placed reliance on a number of decisions which, in our opinion, need not be considered individually. The decision which we consider to be of considerable importance and which has taken into consideration all the relevant factors pertaining to the award of interest is a decision of Division Bench of the Karnataka High Court in the case of Managing

Director, Karnataka Power Corporation Ltd. v. Geettia 1988 ACJ 251 (Karnataka). The judgment was delivered by M.N. Venkatachaliah, J. (as he then was). This decision has considered in great detail a number of English decisions dealing with the fundamentals of damages for torts and has also considered two relevant decisions of the Supreme Court. We, therefore, do not propose to enter into a discussion of all those decisions.

10.2. After taking into consideration all the relevant factors involved on this aspect, the ultimate conclusion drawn from the Karnataka decision (*supra*) is best stated by quoting therefrom:

This, if we may say so with respect, represents the proper view, there cannot be any general rule valid for all cases. The only general rule, perhaps, is that there is and ought to be no such general rule. In the present case, the Tribunal has given no reasons at all as to why it considered award of interest at 12 per cent justified.

10.3. Thus, after observing that there is no such thing as a general rule as regards the grant of interest or as regards the rate of interest, the decision further goes on to observe that:

Generally speaking, a composite rate of 6 per cent should be considered satisfactory without any specific itemisation because the component of compensation in the "interest pool" is comparatively smaller and the sizable component is the amount awarded for the loss of future dependency. We, however, hasten to add that the Tribunals have an undoubted discretion to award higher rates of interest, if, in their opinion, the circumstances of the particular case justify such higher rates.

10.4. Thus, in principle, we find that the rate of 6 per cent would normally and generally be considered satisfactory. However, this does not affect either the discretion of the Tribunal or the discretion of this Court in varying this rate of interest depending upon the facts and circumstances of each case. The learned Counsel for the appellants has placed reliance upon a number of decisions of this Court where higher rates of interest have been awarded including some decisions where the rate is as high as 15 per cent. We, however, do not propose to discuss those decisions for the simple reason that in none of these decisions the rate of interest was being awarded solely on a question of principle, but has been awarded in each case on the facts and circumstances of that case.

10.5. Having given an anxious consideration to all the relevant facts and circumstances of the present case, we are of the opinion that interest at the rate of 12 per cent per annum would be just and proper and would serve the ends of justice. We, accordingly, allow interest at the rate of 12 per cent per annum on the amount of compensation determined by us herein from the date of claim petition till realisation.

11. Thus, appellant-claimant Nos. 1, 2 and 3 shall be entitled to an additional

compensation of Rs. 37,980/- (Sic. Rs. 27,980) as directed hereinabove, together with interest at the rate of 12 per cent per annum from the date of the claim petition till realisation. On the facts and circumstances of the case we direct that the appellant Nos. 1, 2 and 3 shall be entitled to proportionate costs throughout.

12. We further direct that the difference of compensation due and payable to the claimant Nos. 1, 2 and 3 by virtue of this decision together with interest and proportionate costs shall now be distributed equally amongst these three claimants.

13. We further direct the difference of compensation which would be payable to appellant-claimant Nos. 1,2 and 3 by virtue of this judgment, together with interest and proportionate costs as directed herein, shall be deposited by the respondents before the Tribunal on or before 31.12.1993. If, however, the respondents fail to make the deposit as directed, such amount shall bear interest at the rate of 15 per cent per annum with effect from 1.1.1994 up to the date of deposit or the date of intimation to the appellants, whichever is later.

14. This appeal is, therefore, partly allowed. Decree to be drawn accordingly.