

(2019) 06 GUJ CK 0045
In the Gujarat High Court
Case No : R/First Appeal No. 2903 Of 2010

Sarojben Wd/O Vasantbhai Shankarbhai Patel & 5 Other(s)	APPELLANT
Vs	
Jagdevsinh Khajursinh Thakor & 2 Other(s)	RESPONDENT

Date of Decision : 26-06-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2019) 06 GUJ CK 0045

Hon'ble Judges : R.M.Chhaya, J;B.N. Karia, J

Bench : Division Bench

Advocate : Jay H. Patel, Paresh M Darji, Lilu K Bhaya

Judgement

,

R.M.Chhaya, J",

1. Feeling aggrieved and dissatisfied with the judgment and award dated 25th November 2009 passed by the Motor Accident Claims Tribunal (Aux.),",

2nd Fast Track Court, Nadiad in Motor Accident Claim Petition No. 858 of 2004, the appellant-original claimants have preferred this Appeal under",

Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act" for the sake of brevity).",

2. Following facts emerge from the record of the appeal:,

2.1 It is the case of the appellants that on 20th March 2004, at about 10.30 p.m., the deceased Vasantbhai was driving his motorcycle, bearing",

registration No. GJ-7-AC-6300, on the left side of the road with care and caution and at the moderate speed with light of the motorcycle, at that time,",

a truck, bearing registration No. MP-9-KC-2864, being driven by the respondent no.1 herein, dashed from the front and because of the impact of the",

same, deceased-Vasantbhai was thrown out from the motorcycle and sustained serious injuries and succumbed to the injuries. An FIR was lodged",

with jurisdictional Police Station at Exh. 43 by the driver of truck and the appellants-original claimants, thereafter, preferred a claim petition under",

Section 166 of the Act before the Tribunal and claimed compensation of Rs. 21,00,000/=".

2.2 Relying upon FIR Exh. 43 and panchnama Exh. 44, it was the case of the appellants that the driver of truck was solely negligent for the accident.",

One of the original claimants was examined vide Ex. 36 and he contended before the Tribunal that the deceased-Vasantbhai was working as a,

Salesman in a company dealing with Tractors and was drawing salary of Rs. 2,300/- per month. It was further case of the appellants that over and",

above the salary, deceased was paid Rs. 1,000/- per tractor, as commission and it was further the case of the appellants-original claimants that the",

deceased used to sell at-least 4 to 5 tractors in a month. The appellants also relied upon salary certificate Exh. 37 and also examined one witness,

before the Tribunal, who is the brother of the deceased, vide Ex. 41. The appellants also claimed that the deceased was 50 years of the age and",

claimed for prospective income as well as appropriate multiplier.,

2.3 Upon appreciation of the record, the Tribunal determined income of the deceased at Rs. 2,000/- per month, and after giving benefit of increase in",

income; as prospective income to the tune of 50% and after deducting 1/4th towards personal expenses and applying multiplier of 11, the Tribunal",

awarded Rs. 2,97,000/- as compensation under the head of future loss of income. The Tribunal also further awarded a sum of Rs. 20,000/- as",

compensation under the head of loss of estate; Rs. 15,000/- as compensation under the head of loss of matrimonial life, and Rs. 5,000/- as",

compensation towards funeral expenses, and thus, awarded total compensation of Rs. 3,03,000/- to the original claimants with interest @ 9% per",

annum from the date of filing of claim petition till its realization, and thereby, partly allowed the claim petition. Being aggrieved by the said award, the",

present Appeal is preferred by the appellants-original claimants.,

3. Heard learned advocate Mr. Jay H. Patel for Mr. Paresh M. Darji, learned advocate for the appellants and Ms. Lilu K. Bhaya, learned advocate",

for the respondent no.3-Insurance Company.,

4. Though served, none appeared for the other respondents.",

5. Mr. Jay H. Patel, learned advocate appearing for the appellants have raised the following contentions:",

(1) That, the pay slip at Ex. 37 clearly establishes the fact that the salary of the deceased was Rs. 2300/- per month. Mr. Patel has further contended",

that this Court may consider at least Rs. 2300/- per month, as income of the deceased. Even though income of the deceased was little more by",

commission, however, no evidence could be brought on the record to show that the deceased was also getting commission on sale of tractors.",

(2) Mr. Patel further contended that the certificate issued by ITI, Dohad (Exh. 50) indicates that the date of birth of the deceased was 11th November",

1954, and therefore, the deceased was less than 50 years as on the date of accident. Mr. Patel further submitted that thus the appellants would be",

entitled to 25% as prospective income.,

(3) It was also contended by Mr. Patel that on the date of accident, age of the deceased was less than 50 years. Thus, the Tribunal has committed",

error in applying 11 multiplier, and it ought to have been enhanced to 13 multiplier, as per the judgment of Apex Court in case of Sarla Verma and",

others vs. Delhi Transport Corporation and another, reported in (2009) 6 SCC 121.",

(4) Relying upon a decision of the Apex Court in case of National Insurance Company Limited Vs. Pranay Shetty & Ors., reported in (2017) 16 SCC",

680, Mr. Patel contended that the appellants would be entitled to Rs. 70,000/- as compensation under different conventional heads and contended that",

the Tribunal has committed error in awarding Rs. 40,000/- as compensation under different conventional heads; including funeral expenses.",

(5) Relying upon FIR and panchnama, Mr. Patel contended that the Tribunal has wrongly come to a conclusion that the deceased was negligent to the",

extent of 10%. Mr. Patel further submitted that, as such, the Tribunal has not given any reason of attributing 10% negligency to the deceased, as a",

driver of motor-vehicle. According to Mr. Patel, the manner in which the accident occurred, clearly indicates that the driver of truck, which is a bigger",

vehicle, was negligent and liable for the accident.",

On the aforesaid grounds, Mr. Patel contended that the appeal deserves to be allowed and the impugned judgment and award deserves to be modified.",

6. Per contra, Ms. Lilu K. Bhaya, learned advocate for the respondent No.3- Insurance Company has supported impugned award. Ms. Bhaya",

submitted that in absence of any evidence to show that the income of the deceased was Rs. 2,000/- per month, Tribunal has committed no error in",

determining income of the deceased as Rs. 2,000/- per month.",

7. Ms. Bhaya contended that as such, the Tribunal has wrongly determined prospective income to the extent of 50%, which deserves to be slashed",

down to 25% following the judgment in case of Pranay Shetty (Supra).,

8. Ms. Bhaya contended that the Tribunal has rightly applied multiplier of 11, as there is no proof of age of the deceased, and also further submitted",

that the Tribunal has committed no error in awarding Rs. 40,000/- as compensation under the different conventional heads. Ms. Bhaya submitted that",

as such, the Tribunal has wrongly come to the conclusion that the truck was being driven on the wrong side, and as such, the deceased - a driver of",

the motorcycle was also equally liable, however, the Tribunal has come to a conclusion that the deceased, as a driver of the motorcycle, was negligent",

only to the extent of 10% is proper and does not require any modification. Ms. Bhaya submitted that as the appeal being meritless, it deserves to be",

dismissed.,

9. No other or further contentions and/or submissions are made by the learned advocates appearing for the respective parties.,

Rs. 2300/-,Income per month

+ Rs. 575/-,25% Prospective Income.

= Rs. 2875/-,Income per month

-Rs. 729/-,One fourth towards personal expenses of the deceased

= Rs.2156,Income per month

= Rs.2156,Income per month

X 12,Yearly

= Rs. 25872/-,Yearly Income

13,Multiplier

= Rs. 3,36,336",Total Compensation