

(1985) 02 GUJ CK 0023
In the Gujarat High Court

Saudagarsing Chhajusing and Others	APPELLANT
Vs	
Jashodaben and Another and Ranjitsingh Valusing Jadeja	RESPONDENT

Date of Decision : 25-02-1985

Acts Referred:

Motor Vehicles Act, 1988 — Section 81, 81

Citation : (1985) 2 ACC 243 : (1986) ACJ 1070 : (1986) ACJ 107

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

Bench : Division Bench

Judgement

M.B. Shah, J.—Being aggrieved and dissatisfied by the judgment and award dated October 29, 1977, passed by the Motor Accident

Claims Tribunal, Narol in M.A.C. Application No. 199 of 1976 and M.A.C. Application No. 214 of 1976, the original opponents have preferred

the present two appeals.

2. The accident occurred between Aslali and Ahmedabad near village Lambha on August 11, 1976 about 4.15 A.M. on National Highway No. 8.

Deceased Gemalsing Velubha and other claimant Ranjitsingh Velubha were going on a motor cycle bearing No. GJM 1039 from Aslali to

Ahmedabad railway station as Ranjitsinh wanted to return to his native place in Kutch by train. Deceased Gemalsing was driving the motor cycle

and Ranjitsinh was sitting on the pillion. Near Lambha one Truck was coming from the opposite direction with head lights fully on. At that place

one ONGC truck with trailer was parked on the road. The truck was bearing No. 9148 and the trailer was bearing No. 7663. The width of the

truck and the trailer was 8.1/2 feet and total length was 72 1/2 feet. Because of the glare, deceased Gemalsing was not in a position to see the

parked ONGC truck and trailer. It is also stated that in the trailer there were girders and about two feet of each girder remained projecting beyond

the body of the trailer at its rear. The motor cyclist, because of the glare, could not see the stationary vehicle and dashed with the trailer. He died

on the spot and Ranjitsinh, the pillion rider sustained injuries.

3. The widow and minor son of deceased Gemalsing filed M A.C. Application No. 199 of 1976 praying for total compensation of Rs. 72,000/-.

The Tribunal, after taking into consideration all the facts, awarded in all Rs. 52,000/- with 6% interest p.a. from the date of the application till

realisation. The tribunal held that the deceased would have contributed at least Rs. 270/- per month to his family members taking into consideration

his earning of Rs. 450/-per month. The Tribunal applied multiplier of 15 years and awarded Rs.48,600/- for the loss of dependency benefits and

Rs. 3,000/- for loss of expectation of life, that is, in all Rs. 51,600/-which figure was rounded up to Rs. 52,000/-. Against the said judgment and

award, First Appeal No. 258 of 1978 is filed by the driver, ONGC and the Insurance Company.

4. Injured Ranjitsing had filed M.A.C. Application No. 214 of 1976. Tribunal awarded only Rs. 4,400/- that is Rs. 1,000/- for treatment

expenses, Rs. 900/- for loss of earning and Rs. 2,500/- for pain, shock and suffering. Against the said judgment and award First Appeal No. 259

of 1978 is filed.

5. Both the appeals arise out of the same judgment and common incident and, therefore, both are heard and disposed of by this common

Judgment.

6. Mr. Mehta, learned Advocate for the appellants vehemently contended that there was contributory negligence on the part of the driver of the

motor cycle, that is, deceased Gemalsing in driving his motor cycle rashly and negligently without looking at the stationary vehicle. Mr. Mehta has

fairly raised no contention against the quantum of compensation awarded by the Tribunal.

7. With regard to the first submission, in our opinion, the learned Tribunal has discussed this aspect in detail. He has taken into consideration 2. the

Panchnama, exh. 28. The Panchnama clearly shows that there was no reflector or any device at the back of the trailer which would make the

existence of the parked trailer on the road visible to the driver of any vehicle arriving from the southern side in the darkness of early morning. Only

one red cloth was kept tied to a rod in the right back of the trailer. The truck trailer which was parked on the road was a huge vehicle of width of

8.1/2 feet and length of 72.1/2 feet. The battery wires of the truck were hanging loose which would mean that the lights of the vehicle could not

have been kept on. It is also an admitted fact that the right front tyre of the truck was in burst condition. Considering the panchnama the tribunal

arrived at the conclusion that some portion of the trailer of the truck must be on the Kachcha road and some portion must be on the tar road. The

Tribunal also appreciated the evidence of Ranjitsinh and Arvindbhai in detail. It is an undisputed fact that Ranjitsinh was travelling as a pillion rider

on the motor cycle. It is his say that the motor cycle was driven at a low speed and when they reached near the place of incident, one truck was

seen arriving from Ahmedabad side in the left half portion of the road and the head lights of that on coming truck were fully on with the result that

he and Gemalsing were dazzled by the lights and the motor cycle dashed with the stationary truck trailer. On the trailer there were iron girders fixed

which were projecting beyond the body of trailer. Ranjitsingh was hit on his forehead by the body of the trailer and fell down and he sustained

serious injury. Ranjitsinh's evidence is corroborated by the evidence of Arvindbhai who is an independent person. His field is just near the place of

incident. He is resident of village Aslali and his evidence is not at all shaken in the cross examination. He fully corroborates the version of injured

Ranjitsinh.

8. The learned Tribunal has also considered the evidence of opponent No. 1 Sodargarsing, driver of the vehicle of ONGC and Osmanbhai, who

was the cleaner of that vehicle. It was their say that one lantern was fixed on the back portion of the trailer. Now as per Panchnama, no such

lantern was found. Their evidence is falsified by the Panchnama as well as the aforesaid two witnesses. In our opinion, the Tribunal has rightly not

relied upon the said version of opponent No. 1 Sodagarsing and the cleaner Osmanbhai by giving reasons in detail in paragraphs 23, 24 and 25 of

its judgment. We are not repeating the said reasons in view of the telltale circumstance that in the panchnama no such lantern was found. In this

view of the matter, the learned Tribunal rightly held that there was no reason to disbelieve the evidence of injured witness Ranjitsinh that parked

vehicle was not visible. We entirely agree with the reasons given by the learned Tribunal and hence we are not repeating.

9. From the above discussion it is proved that at dark night time on a national highway where there was no other light and which was open to fast

moving traffic the truck and trailer of 72.1/2 feet length and 8.1/2 feet width was parked without any parking light and with no reflectors and the to

that the accident had occurred. Even assuming that the motor-cyclist was driving his vehicle slightly fast, yet it cannot be said that there was

contributory negligence on his part because on a national highway and that too at night time it cannot be expected that the vehicle should be driven

at a slow speed. Further it cannot be expected that the driver of a vehicle should visualize that there might be some stationary vehicle which could

not be seen from a distance of few paces and therefore he should drive the vehicle slowly. u/s 81 of the Motor Vehicles Act is provided that no

person in charge of a motor vehicle shall cause or allow the vehicle or any trailer to remain at rest on any road in such a position or in such a

condition or in such circumstances as to cause or to be likely to cause danger, obstruction or undue inconvenience to other users of the road. In the

present case the vehicle was parked on a national highway as stated above without any signal to indicate the presence of vehicles. Therefore, in our

opinion, parking of such vehicle on a dark night without light in rear or reflectors and without putting any signal to indicate presence of the parked

vehicle, is the sole cause of the accident. Hence the view of the Tribunal that the accident occurred as a result of the sole negligence on the part of

opponent No. 1 is just and legal.

10. With regard to the quantum, the award passed by the Tribunal is reasonable and moderate and hence the learned advocate for the appellants

has rightly not pressed it.

11. In the result, both the appeals are dismissed. There shall be no order as to costs as nobody has appeared on behalf of the respondents.