

(2019) 07 GUJ CK 0081
In the Gujarat High Court
Case No : R/First Appeal No. 1608 Of 2019

Savitaben Khodabhai Salat	Vs	APPELLANT
Baldevsinh Jasvantsinh Jadav		RESPONDENT

Date of Decision : 03-07-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2019) 07 GUJ CK 0081

Hon'ble Judges : Bhargav D. Karia, J

Bench : Single Bench

Advocate : Nishit A Bhalodi, Hs Munshaw

Final Decision : Dismissed

Judgement

1. The appellants & claimants have preferred this appeal under section 173 of the Motor Vehicles Act, 1988 (the Act for short) challenging the judgment and award dated 8th February, 2018 rendered in MACP No.1694/2004 passed by Motor Accident Claims Tribunal (Aux), 13th Additional District Judge, Vadodara (the Tribunal for short).
2. Having regard to the controversy involved in the present case which lies in a very narrow compass, with the consent of the learned advocates for the respective parties, the matter is taken up for final hearing.
3. Brief facts of the case Deceased Khodabhai Jijubhai Jeep No.GJ.06.W.2033 from are that on 24.09.2004, Salat was driving the Bodeli to Bakrol. The Driver& respondent no.1 of the ST bus bearing Registration NO.GJ.1.Z.4392 came in very rash and negligent manner and dashed the bus with the tempo and caused the accident. Due to this accident, the deceased Khodabhai Jijubhai Salat sustained grievous injuries and succumbed to the same at

the hospital. That appellant's claimant no.1 is the widow, appellant nos. 2 and 3 are the children and appellant nos. 5 to 6 are the parents of the deceased. Respondent no.1 is the driver and respondent no.2 is the owner of ST Bus involved in the accident. The deceased was a jeep driver and was earning the salary of Rs.4000/- per month. The deceased was aged about 29 years old at the time of accident. Thus, the appellants' original claimants claimed Rs.15,00,000/- by way of compensation from the respondents under various heads.

4. On service of summons, respondents no.1's driver has chosen not to appear before the Tribunal, whereas respondent no.2's Corporation appeared and filed its written statement at Exh.12 denying the factum of name, age, occupation, income, nature of injuries and time, date and place of alleged accident, involvement of bus averred in the claim petition.

5. The Tribunal, after framing the issues, considered the evidence of appellant no.1's Savitaben Wd/o. Khodabhai Jijubhai Salat produced at Exh.26 as well as well as documents vide Exhs.21 to 25, 27 to 31, 47 to 50 and came to the conclusion that deceased's Khodabhai Jijubhai Salat as well as respondent no.1's driver of the S.T.Bus were jointly liable. Late Khodabhai Jijubhai Salat had sustained injuries and succumbed to the same due to equal contributory negligence of the respondent no.1's driver of the S.T.Bus. The Tribunal held that the FIR, complaint, panchnama, inquest panchnama and post-mortem report produced at Exhs.21 to 25 clearly reflects that the deceased himself was driving the jeep and as per panchanama, the ST Bus was found on the left side of the road; whereas, the jeep was found 12' away from the bus in crossed direction headed towards bus. It is also not in dispute that both the vehicles were crossing each other from the opposite side and the road was straight and having width of 20'. The Tribunal further found from the panchnama that driver side front tyre of the bus was found airless. The bus was damaged from the driver side and the frontal driver side of jeep was seriously damaged and front driver's side tyre of the jeep was burst. The Tribunal, therefore, considering the damaged parts of both the vehicles and the front driver side tyre having burst of both the vehicles came to the conclusion that the accident could have taken place only if front driver sides of both the vehicles would have dashed from the opposite side. It was further found that there was

sufficient and comfortable crossing of two heavy vehicles on the road of total width of 20' i.e. up to 10' up and 10' down. It was also not the case of

either side that either of the vehicle was overtaking the third vehicle and while such overtaking, the opposite vehicle was driven on the wrong side and

accident took place. The Tribunal, therefore, found that the accident took place only because of the fact that both the drivers of the vehicles in

question were driving their vehicles by keeping their driver's side touching the middle of the road. It was, therefore, presumed that both the drivers of

the vehicles were not ready and willing to backdown their respective vehicles on their left side to avoid the accident.

6. The Tribunal, thereafter, referred to deposition of respondent no.1 - Driver of the Bus to rebut the evidences of the claimants. It was deposed by

him that he was driving bus slowly on his correct side. The bus was stopped on the left side of the road to outboard the passengers at the time of

accident and the deceased came in rash and negligently and dashed the jeep with the bus on his wrong side. However, it is an admitted fact that such

fact was revealed for the first time by the respondent no.1 in his deposition, but he did not state the said story before the police and in his written

statement. Moreover, there is no such defense raised by the respondent no.2 - AST Corporation in the written statement at Exh.12. Even the respondent

no.2 has not raised any such defense during the cross-examination of PW.1 examined at Exh.26. The Tribunal, therefore, came to the conclusion that

on the basis of panchnama that the bus was damaged from the driver side and the frontal driver side of jeep was seriously damaged and front

driver's side tyre of the jeep was burst. Considering the damage part of both the vehicles, the involvement of both the vehicles were equally found to

be contributory negligent for the occurrence of the accident.

7. With regard to just and fair compensation to be awarded by the Tribunal, the income of the deceased Khodabhai was considered at Rs.3200/- per

month as against the claim of Rs.4000/- per month. In absence of reliable proof of income in present case, the income of the deceased was estimated

on the notional basis after considering the settled law in case of Kishan Gopal and Another Vs. Lala & Others [2013 ACJ 2594]. The Tribunal

Considered the age of deceased - Khodabhai to be about 28 years as per driving license produced at Exh.47. The Tribunal, thereafter, granted benefit

Rs.3,77,720/Â?

8. Heard learned advocate Mr. Nishit Bhalodi for the appellants and learned advocate Mr. H.S.Munshaw for respondent no.2.

9. Learned advocate for the appellants submitted that the Tribunal has committed an error by coming to the conclusion that the deceased was equally

negligent for the accident. He submitted that the Tribunal ought to have considered that the FIR and charge sheet is against the respondent no.1 after thorough investigation by the police as he was found sole negligent for the accident.

10. Learned advocate for the appellants submitted that the bigger vehicle owe responsibility towards the smaller vehicles, and therefore, the

respondent no.1 ought to have taken utmost care in driving the S.T.Bus.

11. Learned advocate for the appellants submitted that the respondents have not produced any evidence before the Tribunal to confirm that the

respondent no.1 made any efforts to avoid accident. Therefore, the Tribunal ought to have considered sole negligence of the respondent no.1 and

ought to have held the respondents liable to pay 100% compensation to the appellants.

12. Learned advocate for the appellants submitted that the evidence led by the respondents is not considered by the Tribunal, as the story narrated on

oath was an afterthought by the respondents to save the liability of the respondents. Therefore, the Tribunal ought to have considered the respondents

100% liable to pay the compensation.

13. The Tribunal, on the basis of FIR, Panchnama and P.M.Report of the deceased produced at Exh.21 to 25, has arrived at finding of fact that the

deceased himself was driving in the Jeep involved in the accident. On perusal of the panchnama at Exh.23, the Tribunal found that the ST Bus was

found on the left side of the road; whereas Jeep was found 12' away from the bus in the crossed direction headed towards bus. Thus, both the

vehicles were crossing each other from the opposite side and the road was straight and having width of 20'.

14. On perusal of the panchnama at Exh.23, it also found by the Tribunal that the driver side front tyre of the bus was found airless and the bus was

damaged from the driver side, whereas front driver side part of the Jeep was seriously damaged and front driver side tyre of the Jeep was burst.

Therefore, considering the damaged part of both the vehicles and the front driver side tyre being burst of both the vehicles, the Tribunal concluded that

the accident occurred due to collusion of both the vehicles by front driver side. The Tribunal has also considered panchnama, wherein it is mentioned

that road was having the total width of 20' i.e. 10' up and 10' down. Therefore, it was more than sufficient for comfortable crossing of two heavy vehicles.

15. It is not in dispute that neither of the vehicle was overtaking third vehicle and while such overtaking, the opposite vehicle was driven on the wrong

side and accident had occurred. The Tribunal, therefore, rightly concluded that the accident would only be possible if both the drivers of the vehicles in

question were driving their vehicles by keeping their driver side touching the middle of the road and both the drivers of the vehicles were not ready and

willing to down track their respective vehicles on their left side to avoid the accident, and therefore, the Tribunal has rightly held that the drivers of the

vehicles were equally negligent in driving their vehicles at the time of accident.

16. In view of the aforesaid finding, it cannot be said that the Tribunal has committed any error in arriving at the aforesaid conclusion in view of the

admitted facts emerging from the panchanama and other oral and documentary evidence on record.

17. With regard to just and fair compensation awarded by the Tribunal is concerned, the Tribunal has considered the income of the deceased at

Rs.3200/Â per month in absence of reliable proof of income on notional basis as per the existing minimum wages at the time of accident in the year

2004. The Tribunal, thereafter, by applying ratio of decision of Sarla Verma (supra) and Pranay Shetty (supra), rightly calculated the net amount of

compensation and awarded Rs.3,77,720/Â? to the claimants. Therefore, no interference is required to be made in the impugned judgment and award.

18. In view of the aforesaid facts, there is no infirmity in the impugned judgment and award passed by the Tribunal. The appeal therefore, being

devoid of any merit is dismissed. No order as to cost.`