

(2013) 10 GUJ CK 0173
In the Gujarat High Court

Case No : First Appeal No's. 1863 and 1864 of 2005

Suniben and Others

APPELLANT

Vs

Akhamabhai Ratabhai Khant and Others

RESPONDENT

Date of Decision : 18-10-2013

Acts Referred:

Citation : (2013) 10 GUJ CK 0173

Hon'ble Judges : M.D. Shah, J

Bench : Single Bench

Advocate : Msshailiakapadia, No. 1-7, for the Appellant; Sandip C. Shah, Advocate for the Defendant No. 5, Rule Served for the Defendant No. 1-2, Rule Unserved for the Defendant No. 3 and Unserved-Refused (R) for the Defendant No. 4, for the Respondent

Final Decision : Partly Allowed

Judgement

M.D. Shah, J.—By this first appeals, the appellant herein-original claimants have challenged the judgment and award dated 07.05.2005 passed by the learned M.A.C.T. (Auxi.), FTC No. 8, Panchmahals at Godhra in M.A.C.P. No. 1432 of 1998 and M.A.C.P. No. 1433 of 1998. Claim petition was filed by the claimants on account of accident which took place on 11.06.1998. It is the case of the original claimants that deceased Kalpesh and his father deceased Rameshbhai were traveling in ST Bus from Surat going to Chakalia as a bona fide passenger. S.T. Bus was driven by original opponent No. 1 in excessive speed. When the bus was passing village Bedia at about 8.30 early morning at that time, original opponent No. 3 came from opposite side driving his motor truck No. RJ 27 G 2466 in rash and negligent manner. Original opponent Nos. 1 and 3 could not control over their vehicles due to speed and both the vehicles dashed each other. As a result, deceased Kalpesh and his father Rameshbhai sustained injuries and both the them died. After recording evidence, learned Tribunal by judgment dated 07.05.2005 partly allowed the claim petitions and awarded compensation of Rs. 4,00,000/- in favour of the original claimant of M.A.C.P. No. 1432 of 2005 and

Rs. 1,20,000/- in favour of the original claimant of M.A.C.P. No. 1433 of 2005. Against the said award, original claimants have preferred this appeals for enhancement of compensation.

2. It is submitted by learned advocate for the appellant herein-claimants that so far as M.A.C.P. No. 1432 of 2005 is concerned Tribunal has not properly considered and appreciated the evidence on record. It is also submitted that age of the deceased Rameshbhai was 35 years at the time of accident and claimants are entitled to get compensation by suitable multiplier of 16. But the Tribunal has applied 15 multiplier. It is also submitted that no prospective income is considered by the Tribunal and by that Tribunal has committed error. Therefore, it is requested to allow first appeal.

2.1 It is submitted by learned advocate for the appellant herein-claimants that so far as M.A.C.P. No. 1433 of 2005 is concerned Tribunal has not properly considered and appreciated the evidence on record. It is also submitted that deceased Kalpeshbhai was 11 years at the time of accident. It is also submitted that proper multiplier is not applied by the Tribunal. It is also submitted Tribunal has not properly considered monthly income of the deceased. Therefore, it is requested to allow first appeal.

3. It is submitted by learned advocate for the respondents-S.T. Corporation and Insurance company that award passed by the Tribunal is just and proper and not required to be interfered by this Court and so it is requested to dismiss the appeals.

4. This Court has gone through the judgment and award dated 07.05.2005 passed by the learned Tribunal together with oral as well as documentary evidence on record. It is held by the Tribunal that both the drivers are equally (50% - 50%) liable for the accident. S.T. Corporation and Insurance Company have not preferred any appeal.

5. Heard Ms. Kapadia, learned advocate for the appellants, Ms. Vasavdatta Bhatt, learned advocate for the respondent-S.T. Corporation and Mr. Shah, learned advocate for the respondent-Insurance Company.

6. It is not in dispute that in the accident, deceased Rameshbhai and Kalpeshbhai died. Age of the deceased Rameshbhai was 35 years and deceased Kalpeshbhai was 11 years at the time of accident. So far as M.A.C.P. No. 1432 of 1998 (First Appeal No. 1863 of 2005) is concerned deceased died. This Court has gone through the decision of Hon''ble Apex Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, Deceased Rameshbhai was 35 years at the time of accident and in opinion of this Court, suitable multiplier is 16 instead of 15 which is applied by the Tribunal. Tribunal has considered Rs. 3000/- as income of the deceased as Rs. 3000/- per month but the Tribunal has committed error in not considering prospective income of the deceased. If we consider prospective income of the deceased then it will be Rs. 4500/- per month and deducting 1/5 towards personal expenses of the deceased, then dependency

loss would be Rs. 3600/- per month. On this basis, claimants are entitled to Rs. 7,31,000/- as compensation, however, Tribunal has awarded Rs. 4,00,000/- as compensation. Therefore, in opinion of this Court, claimants are entitled to get Rs. 3,31,000/- as additional compensation.

6.1 So far as M.A.C.P. No. 1433 of 1998 (First Appeal No. 1864 of 2005) is concerned deceased died. Deceased Kalpeshbhai was 11 years at the time of accident. Considering the age of the deceased and considering the evidence on record and ratio laid down by the Hon'ble Supreme Court in the case of Sarla Verma (supra), in opinion of this Court, original claimants of M.A.C.P. No. 1433 of 1998 are entitled to get Rs. 55,000/- as additional compensation. In view of above, the first appeals are partly allowed. The original claimants of M.A.C.P. No. 1432 of 1998 (First Appeal No. 1863 of 2005) are entitled to get additional compensation of Rs. 3,31,000/- with interest @ 9% per annum on the additional compensation from the date of filing of the claim petition. The original claimants of M.A.C.P. No. 1433 of 1998 (First Appeal No. 1864 of 2005) are entitled to get additional compensation of Rs. 55,000/- with interest @ 9% per annum on the additional compensation from the date of filing of the claim petition. Judgment and award dated 07.05.2005 passed by the learned M.A.C.T. (Auxl.), FTC No. 8, Panchmahals at Godhra in M.A.C.P. No. 1432 of 1998 and M.A.C.P. No. 1433 of 1998 is modified to the aforesaid extent. The remaining part of the judgment and award would remain unaltered. Record and Proceedings, if any, be sent to the concerned Tribunal forthwith.