(2025) 12 GUJ CK 1904

In the Gujarat High Court

Case No : R/First Appeal No. 2420 Of 2022

Thakor Rathod Nensingh Amarsinh & Anr APPELLANT

Vs

Gujarat State Road Transport Corporation RESPONDENT

Date of Decision : 19-12-2025

Acts Referred:
Motor Vehicles Act, 1988 — Section 173

Citation : (2025) 12 GUJ CK 1904

Hon'ble Judges : Hasmukh D. Suthar, J

Bench : Single Bench

Advocate : Yogendra Thakore, Rushabh H Munshaw

Final Decision : Allowed

Judgement

Hasmukh D. Suthar, J

1) Feeling aggrieved and dissatisfied with the judgment and award dated 02.04.2019 passed by learned Motor Accident Claims Tribunal (Auxi.), Mahesana at Visnagar (which shall hereinafter be referred to as "the Tribunal" for short), in Motor Accident Claim Petition No.1564 of 2012 (Old MAC Petition No.220 of 2012), the appellants – original claimants have preferred the present appeal under Section 173 of the Motor Vehicles Act, 1988 (which shall hereinafter be referred to as "the Act" for short).

2) Heard Mr. Yogendra Thakore, learned Advocate for the appellants – original Claimants. Though the matter is called out twice but learned Advocate for respondent – Gujarat State Road Transport Corporation remained absent. Perused the original record and proceedings.

3) It is the case of the appellants that on 13.02.2012, when the deceased Kalusinh (who shall hereinafter be referred to as “deceased”) and his mother were passing on a motorcycle from Village Bhandu to Village Valam, which was driven by the deceased Kalusinh, at that time one ST Bus bearing Reg. No.GJ-18-Y-4980 came in full speed on wrong side of the road and dashed with the

motorcycle, due to which the deceased sustained fatal injuries and later on succumbed to the same. The said accident was occurred due to sole negligence of driver of the ST Bus. Therefore, the appellants had filed MAC Petition seeking compensation, wherein, the learned Tribunal after appreciating the evidence produced on record has partly allowed the claim petition.

4) Learned Advocate for the appellants has submitted that the learned Tribunal has committed error in appreciating the evidence as the income of the deceased was Rs.10,000/- per month but the Tribunal has considered only Rs.2,500/- which is on lower side and further without any evidence the Tribunal has considered 20% negligence on the part of the deceased despite charge-sheet was filed against the driver of ST Bus and he did not step into the witness box to rebut the evidence tendered by the claimants. He has further submitted that the Tribunal has also committed error in awarding compensation towards loss of estate and consortium. Hence, he has requested to allow the present appeal.

5) A perusal of record and proceeding reveals that the learned Tribunal has taken into consideration the examination-in-chief of the claimant no.1 at Exhibit 15, complaint at Exhibit 19, panchnama at Exhibit 20, PM note at Exhibit 22, charge-sheet at Exhibit 23. The claimants in affidavit clearly stated that the drive of offending vehicle came from wrong side and due to full speed he lost control and dashed with the motorcycle while the deceased was going to Valam Village in moderate speed at that time the accident was occurred. Said version is also mentioned in the claim petition and affidavit on record and the Corporation has not challenged the said evidence. Not only that the driver of offending vehicle was also not examined to rebut the evidence of the claimants. The charge-sheet is filed against the driver of ST Bus and merely the deceased was not having Driving License is not a specific defence or said defence is also not true and relying only on one line that at the time of accident the deceased was not having licence, 20% negligence of the deceased has been considered by the Tribunal. Even for the sake of arguments we accept the said contention then how the deceased contributed the accident is not proved on record. The assessment of contributory negligence cannot be presumed without any direct or corroborative evidence and contributory negligence must be established through direct or corroborative evidence. In absence of any finding to consider 20% negligence of the deceased is not permissible in view of the judgment in the case of Prabhavati Vs. The Managing Director, Bangalore Metropolitan Transport Corporation, Neutral Citation – 2025 INSC 293. Further, the contributory negligence cannot be presumed and collision on the road did not inherently indicate the negligence by the driver but negligence must be proved by the evidence with preponderance of probabilities as standard, in this regard reference is required to be drawn in the case of Shrikrishna Kanta Singh Vs. The Oriental Insurance Company Ltd., and Ors., Neutral Citation – 2025 INSC 394. Therefore, this Court is of the view that in absence of any material and even in absence of any contention the learned Tribunal has committed error in fastening 20% contributory negligence of the deceased. Accordingly, the liability is required to be increased and fastened upon

the driver of ST Bus to the extent of 100% i.e. sole negligence of the driver of the ST Bus.

6) Now coming to the quantum part, as per the law laid down by the Hon'ble Supreme Court in the case of Govind Yadav Vs. National Insurance Co. Ltd., reported in 2012(1) TAC 1 (SC), that if no proof of income is produced on the record then Tribunal has to consider prevailing rate of minimum wages in absence of evidence of monthly income of the deceased. In the present case the accident occurred on 13.02.2012 and the income of deceased is required to be considered as per the rates of minimum wages, whereas, the Tribunal has assessed the income of the deceased as Rs.2,500/- per month which is required to be enhanced and hence, the income of the deceased is reassessed as Rs.4,700/- per month. Further, the learned Tribunal has considered the age of the deceased as 22 years at the time of accident and on the basis of the age added 40% towards future prospective and also considered multiplier of 18, which are as just and propery as per the judgment of the Apex Court in the case of Sarla Verma (Smt) & Ors. Vs. Delhi Transport Corporation & Anr. [2009 (6) SCC 121] and National Insurance Company Ltd. Vs. Pranay Sethi, reported in 2017 ACJ 2700. However, the Tribunal has committed error in considering deduction, as the deceased was bachelor ½ deduction as personal expenditure and living of the deceased is required to be considered.

7) Therefore, calculating the income of the deceased as Rs.4,700/-and future prospect of 40% = Rs.1,880/- which comes to to Rs.6,580/- and 1/2 amount is required to be deducted as personal expenditure and living of the deceased which comes to Rs.3,290/-and the net amount comes to Rs.3,290/-. In view of above the amount towards loss of dependency is required to be reassessed as Rs.3,290/- x 12 x 18 = Rs.7,10,640/-. Therefore, the appellants are entitled to get additional amount of Rs.2,06,640/- towards loss of dependency.

8) Further, the learned Tribunal by relying on the judgment of National Insurance Company Ltd. Vs. Pranay Sethi, reported in 2017 ACJ 2700, has awarded total Rs.70,000/- under the three conventional heads, however, this Court is of the view that amount is required to be reassessed as Rs.18,150/- towards loss of estate, Rs.18,150/- towards funeral expenses. Therefore, the appellants – original claimants are entitled for additional amount of Rs.6,300/-(i.e. Rs.18,150/- - Rs.15,000/- = Rs.3,150/- towards loss of estate and Rs.18,150/- - Rs.15,000/- = Rs.3,150/- towards funeral expenses).

9) Further, in view of ratio laid down by the Hon'ble Supreme Court in the case of Magma General Insurance Co. Ltd., Vs. Nanu Ram, reported in (2018) 18 SCC 130 and Janabai Wd/o Dinkarrao Ghorpade & Ors., Vs M/s ICICI Lambord Insurance Company Ltd., reported in 2022 LiveLaw (SC) 666, the learned Tribunal has committed error in awarding only Rs.40,000/- towards loss of consortium, however, in view of above judgments the appellants – original claimants being parents of the deceased they are entitled for Rs.48,400/- each as filial consortium under the head of loss of consortium. Therefore, the amount

towards loss of consortium is reassessed as Rs.96,800/- (i.e. Rs.48,400/- X 2). Therefore, the appellants are entitled for additional amount of Rs.56,800/- towards loss of consortium.

10) As discussed above, the appellants – original claimants are entitled to get compensation computed as under:

Heads

Awarded by

Tribunal

Reassessed by this Court

Loss of dependency

Rs.5,04,000/-

Rs.7,10,640/-

including additional amount of Rs.2,06,640/-

Loss of estate

Rs.15,000/-

Rs.18,150/-

including additional amount of Rs.3,150/-

Funeral expenses

Rs.15,000/-

Rs.18,150/-

including additional amount of Rs.3,150/-

Loss of consortium

Rs.40,000/-

Rs.96,800/-

including additional amount of Rs.56,800/- (Rs.48,400/- X 2)

Total compensation

Rs.5,74,000/-

Rs.8,43,740/-

including total additional amount of Rs.2,69,740/-

Final amount

Rs.4,59,200/-

(after deducting 20% contributory negligence of the deceased)

NIL

(as this Court has considered 100% negligence of the driver of offending ST Bus)

Total final amount of compensation

Rs.8,43,740/-

11) In view of above, as the Tribunal has awarded final compensation of Rs.4,59,200/- (after deducting 20% own negligence), however, as discussed above the appellants are entitled to get additional amount of Rs.3,84,540/- (Rs.8,43,740/- - Rs.4,59,200/-) (including additional amount of Rs.2,69,740/- plus Rs.1,14,800/- amount deducted for 20% negligence of the deceased which is set aside by this Court), with proportionate costs and interest as awarded by the learned Tribunal.

12) Hence, present appeal is allowed. The judgment and award dated 02.04.2019 passed by learned Motor Accident Claims Tribunal (Aux.), Mahesana at Visnagar, in MAC Petition No.1564 of 2012 (Old MAC Petition No.220 of 2012) stands modified to the aforesaid extent. Rest of the judgment and award remains unaltered. The respondent – Corporation shall deposit the said additional amount of Rs.3,84,540/- along with interest as awarded by the Tribunal, before the Tribunal within a period of four weeks from the date of receipt of this order. Record and proceedings be remitted back to the concerned Tribunal forthwith.

13) The learned Tribunal is directed to recover or deduct the deficit court fees on enhanced amount and thereafter disburse the amount accordingly.

14) Award to be drawn accordingly.

