

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 552 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI and
MR.JUSTICE H.R.SHELAT

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

R VISHVANATHAN

Versus

DIPAL @ DEVAL ALKESHKUMAR KANTILAL

Appearance:

MR RAJNI H MEHTA for Petitioners
MR MB PARIKH for Respondent No. 1

CORAM : MR.JUSTICE S.M.SONI and
MR.JUSTICE H.R.SHELAT

Date of decision: 28/02/97

ORAL JUDGEMENT

Learned Advocate Mr. R.H.Mehta seeks permission to delete respondent no.5. Permission is granted. Respondent no.5 stands accordingly deleted.

Appeal admitted. Learned Advocate Mr. M.B.

Parikh waives service of appeal for respondents nos.1, 2, 3 and 4. With the consent of learned Advocates, the appeal is taken up for hearing today. Heard the learned Advocates.

The appellant has challenged the award mainly on two grounds, namely, of negligence and quantum.

We have perused the judgment of the learned Tribunal. We do not find any reason to interfere on the question of negligence. We hold that the appellants and respondent no.5 were negligent for the accident which took place where father of minor respondents nos.1 and 2 and son of respondents nos.3 and 4 died. So far as the quantum is concerned, we are of the opinion that the same is on the higher side. Learned Tribunal has taken the income of the deceased on the basis of the prospective income. In view of the judgment in the case of U.P. State Road Transport Vs. Trilokchand reported in 1995(5) Judgment Today page 35 = 1996(2) G.L.R. 136 the Supreme Court has held that the income on the date of accident is required to be taken into consideration and not the prospective income. It is in evidence that deceased was drawing salary of Rs.2100/per month as a Junior Clerk. The learned Tribunal has taken the income to be Rs.5100/-. We are also of the opinion that when the deceased was in employment he must have reached some higher scale. Therefore, we fix the income for the purpose of deciding dependency benefit at Rs.1600/- after deducting amount which may be spent by deceased for himself. Considering the dependency benefit per month to be Rs.1600/-, the yearly benefit would be Rs.19,200/- and applying multiplier of 15, the amount will come to Rs.2,88,000/-. The learned Tribunal has awarded Rs.10,000/-towards conventional amount and Rs.3000/-towards funeral ceremony, transportation etc. We are not in agreement with this split up of amounts. We are of the view that Rs.20,000/- should be awarded as conventional amount which will cover all the heads of this nature. Therefore, the total amount of award would be Rs.3,08,000/-. We, therefore, modify the award of the Tribunal and hold that the respondents nos.1 to 4 are entitled to get a sum of Rs.3,08,000/-(Rupees three lacs eight thousand only) with costs and interest at the rate of 12% per annum from the date of application till realisation. We would apportion the amount as under:

While considering the apportionment we have borne in mind that respondents nos.3 and 4 have another adult son who is also responsible or liable to take care of old, aged parents. Keeping this fact in mind we direct

that on deposit of the amount within four weeks, an amount of Rs.50,000/- (Rupees fifty thousand only) be paid to respondents nos.3 and 4 i.e. the grand parents of the minors or the parents of the deceased. From the balance amount deficit Court fees, if any, be recovered and the balance amount, then, be deposited in any nationalized bank in the name of respondents nos.1 and 2 of whom the respondent no.4 will be the guardians for an initial period of ten years. The guardian of the minor will not deal with the said deposit in any manner whatsoever, namely, raising loan, pledging or creating any encumbrance thereon but will be entitled to withdraw periodical interest for the maintenance of the minors. The amount of Rs.25,000/-deposited with this appeal is ordered to be transmitted to the Tribunal and the said amount shall be given credit of in the amount of the award. The Tribunal shall disburse the amount as per the above direction. The appeal is partly allowed with proportionate costs. Order accordingly.

(S.M.Soni,J.)

(H.R.Shelet,J.)

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