

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 5344 of 2006
With
CIVIL APPLICATION No. 15166 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH

HONOURABLE MR.JUSTICE AKIL KURESHI

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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UNITED INDIA INSURANCE CO. LTD. - Appellant(s)
Versus
VIRAMBHAI RANCHHODBHAI (CHAUDHARI) PATEL & 5 -
Defendant(s)

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Appearance :

MR HASMUKH THAKKER for Appellant(s) : 1,
None for Defendant(s) : 1 - 6.

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 28/12/2006

ORAL JUDGMENT**(Per : HONOURABLE MR.JUSTICE M.S.SHAH)**

This appeal under Section 173 of the Motor Vehicles Act, 1988 is directed against the judgment and award dated 19.07.2006 of the Motor Accident Claims Tribunal (Main), Sabarkantha at Himatnagar in MACP No.1477 of 1999 awarding compensation of Rs.2,95,000/- with proportionate costs and interest to the husband and minor son aged 10 years of Tulsiben Virambhai, who died at the age of 30 years in a motor vehicle accident that took place between the scooter on which the deceased was a pillion rider and the luxury bus insured by the appellant – insurance Company on June 28, 1999.

2. Mr. Hasmukh Thakker with Mr. Palak Thakker, learned advocate for the appellant – insurance Company has challenged the award only on the question of quantum of compensation. He submitted that on the basis that the deceased was doing agriculture work and cattle feeding work, the claimants had filed claim petition for compensation of Rs.4 lacs. According to claimant No.1 – husband of the deceased, the deceased was earning net income of Rs.3,000/- per month, but in absence of any documentary evidence, the Tribunal assessed the income of the deceased at Rs.1,500/- per month and the prospective income of the deceased at Rs.2,250/- per month. Deducting one-third amount therefrom as the personal expenses, the

Tribunal assessed loss of dependency at Rs.1,500/- per month i.e. Rs.18,000/- per annum. Looking to the age of the deceased (30 years), the Tribunal adopted the multiplier of 15 and computed compensation for loss of dependency benefit at Rs.2,70,000/-. Adding thereto Rs.20,000/- for loss to the estate and Rs.5,000/- for funeral expenses, the Tribunal made award for total compensation of Rs.2,95,000/-.

3. It is submitted by Mr. Thakker that when there was no documentary evidence, the Tribunal should not have awarded any compensation for loss of dependency benefit and that the Tribunal should not have taken into consideration the household services alleged to have been rendered by the deceased.

4. We would first like to set out the relevant part of the paragraph containing the reasons given by the Tribunal.

“..... It should be borne in mind that, deceased certainly must be doing the work as household wife. She must be doing all the necessary work to keep the house in order, she must have cooked food for the family, she must have looked after the upbringing of the children and also she must have taken interest in the study of the children therefore, all these services rendered by the deceased to the family shows that, we should infer that, the monthly income of the deceased was Rs.1,500/-. Keeping in mind the prospective income of the deceased, her prospective income

would be of Rs.2,250/- and if 1/3rd i.e. Rs.750/- for the personal expenses is deducted then the amount of Rs.1,500/- would be the amount of family dependency therefore, loss of yearly dependency of the family would be to the tune of Rs.18,000/-. When the accident took place, the deceased was aged 30 years which is apparent from P.M. Note Exh.48 and hence if the multiplier of 15 is applied then, the amount comes to Rs.2,70,000/- (Rs.18,000/- X 15) therefore, under the head of loss of dependency, the claimants are entitled to receive the compensation of Rs.2,70,000/-."

5. In our view, the approach of the Tribunal was quite justified and reasonable. The claimants may not have been able to adduce any evidence to show that the deceased was doing agriculture and cattle feeding work, but judicial notice can certainly be taken of the services being rendered by the housewife to the family. In a system where a judicial decision is ordinarily based on statute law or case law, it may be unusual to refer to an e-mail foreword, but one quoted hereinafter is so compellingly appropriate in the context of the present discussion that we cannot help quoting it in its entirety.

"Why Women R so Special

Mum and Dad were watching TV when Mum said, I'm tired, and it's getting late. I think I'll go to bed."

She went to the kitchen to make sandwiches for the next day's lunches. Rinsed out the

popcorn bowls, took meat out of the freezer for supper the following evening, checked the cereal box levels, filled the sugar container, put spoons and bowls on the table and started the coffee pot for brewing the next morning. She then put some wet clothes in the dryer, put a load of clothes into the washer, ironed a shirt and secured a loose button. She picked up the game pieces left on the table, put the phone back on the charger and put the telephone book in the drawer. She watered the plants, emptied a wastebasket and hung up a towel to dry. She yawned and stretched and headed for the bedroom. She stopped by the desk and wrote a note to the teacher, counted out some cash for the excursion and pulled a text book out from hiding under the chair. She signed a birthday card for a friend, addressed and stamped the envelope and wrote a quick note for the grocery store. She put both near her bag. Mum then washed her face with 3 in 1 cleanser, put on her Night Solution & age fighting moisturizer, brushed and flossed her teeth and filed her nails. Dad called out, "I thought you were going to bed." "I'm on my way," she said. She put some water into the dog's dish and put the case outside, then made sure the doors were locked and the patio light was on. She looked in on each of the kids and turned out their bedside lamps and radios, hung up a shirt, threw some dirty socks into the hamper, and had a brief conversation with the one up still doing homework. In her own room, she set the alarm; laid out clothing for the next day, straightened up the shoe rack. She added three things to her 6 most important things to do list. She said her prayers, and visualized the accomplishment of her goals.

About that time, Dad turned off the TV and announced to no one in particular. "I'm going to bed." And he did...without another thought.

The above quote is only about the services rendered by the lady as mother/wife for half an hour to one hour after dinner. The claim petition under consideration was filed for compensation for the value of the services which the lady aged 30 years – wife and mother of claimant Nos. 1 and 2 herein respectively – would have rendered for the rest of her life.

6. In *Lata Wadhwa vs. State of Bihar*, 2001 ACJ 1735, the Apex Court awarded compensation to the family members of the deceased – house wives by assessing the value of their services at Rs.3,000/- per month, albeit on a concession from the TISCO.

The Tribunal has valued the services rendered by the deceased to the family at only Rs.1,500/- per month and with fall in the value of money, such income could certainly be valued at Rs.2,250/- per month. In fact, when such services are being valued in terms of money, the question of deducting one-third amount therefrom may not arise. Hence, even if only Rs.1,500/- per month is taken as the value of such services which were being rendered by the deceased, the same can certainly be adopted as the datum figure for determining the amount of compensation payable under the head. We, therefore, find that the Tribunal has committed no error in making the award under challenge. On the contrary,

we would like to commend the Tribunal for adopting such reasonable and pragmatic approach.

7. The appeal is summarily dismissed. Since the appeal is dismissed, stay application is also dismissed.

8. The amount deposited before this Court at the time of filing the appeal shall also be transmitted to the Tribunal within one month from today.

[M.S.SHAH,J.]

[AKIL KURESHI,J.]

mrpandya*