

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1785 of 2007
With
CIVIL APPLICATION No. 4659 of 2007

For Approval and Signature:

HONOURABLE MR. JUSTICE B.J.SHETHNA
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
CHUNILAAL KALIDAS PANCHAL & 5 - Defendant(s)

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Appearance :

MS MEGHA JANI for Appellant(s) : 1,
 None for Defendant(s) : 1 - 3, 5 - 6.
 MR MTM HAKIM for Defendant(s) : 4,

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CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA

and

HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 30/03/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE AKIL KURESHI)

- 1.The appeal is admitted. Learned advocate Mr. Hakim appearing for respondents nos. 1 to 4(original claimants), waives service of notice of appeal on behalf of the said respondents. It is not necessary to await service of notice of appeal on respondents nos. 5 and 6 who were the driver and owner of the offending truck involved in the motor vehicle accident. At the joint request of learned advocates for the parties, this appeal is taken up for final disposal straightway.
- 2.The appeal arises out of a judgement and order dated 3rd October, 2006 passed by Motor Accident Claims Tribunal(Aux.) Vadodara in MACP No.1700/1998.
- 3.One Kishorebhai was travelling on a Scooter along with one Dineshbhai at which time the Scooter met with an accident when a truck insured by the appellant insurance company collided with the Scooter. In the accident, both the persons travelling on Scooter received fatal injuries. Opponents nos. 1 to 4 who included aged parents and brother and sister of deceased therefore, filed claim petition no.1700/1998 before the Motor Accident Claims Tribunal

seeking compensation from the driver, owner and insurer of the truck involved in the accident.

4. With respect to question of negligence of the truck driver in causing the accident, on the basis of evidence on record which included eye witnesses account and Panchnama of the scene of accident, the tribunal was of the opinion that accident was caused on account of sole negligence attributable to the driver of the truck. Since the appellant insurance company has not raised any dispute about this factual finding arrived at by the Tribunal, we need not go into further details in this regard.

5. With regard to the quantum of compensation, the Tribunal found that the deceased was employed in a Photo Studio since two to three years before the accident. The claimants averred before the tribunal that the deceased used to earn monthly salary of Rs.3,000/-. In absence of any documentary evidence, the tribunal did not believe that the deceased was earning Rs.3,000/- per month. The tribunal believed that the salary of the deceased must have been Rs.1800/- per month. Taking prospect of increase in future and believing the prospective income of the deceased at Rs.2700/- per month, tribunal reduced the said sum by $\frac{1}{3}^{\text{rd}}$ for personal expenditure of the deceased. Since the deceased was aged 24 years on the date of accident, the tribunal adopted

multiplier of 15 and awarded dependency benefits of Rs.3,24,000/- (Rs.1800x12x15). The tribunal added Rs.5,000/- for funeral expenses and Rs.10,000/- for expectation of life. Thus tribunal awarded a total sum of Rs.3,39,000/- to the claimants with interest at the rate of 9% per annum.

6. Before us, the appellant insurance has challenged the award primarily on two grounds. Firstly it was contended that the quantum of compensation is on the higher side. It is contended that the deceased was an unmarried person and claimants included parents, brother and sister of the deceased. It is therefore, contended that the tribunal erred in deducting 1/3rd amount out of the income of the deceased towards his personal expenditure. It is also contended that the tribunal erred in granting interest at the rate of 9% per annum. It is contended that appropriately rate of interest ought to have been 7.5%.

7. Having heard learned advocates appearing for the parties, we find that contentions of appellant insurance company have no force.

8. Firstly, it may be noted that though it is true that the deceased was unmarried and the parents were the claimants who had filed the claim petition and that therefore, ordinarily, we

would have accepted the grievance of the appellant insurance company that instead of 1/3rd deduction, appropriate deduction of 2/3rd would be warranted from the income of the deceased, in the present case, however, we find that the tribunal estimated monthly income of the deceased at a very conservative amount of Rs. 1800/- per month. It was not disputed that the deceased was employed in a Photo Studio. He was therefore, not relying on labour work for his living. Therefore, accepting a sum of Rs. 1800/- per month as the income of the deceased was certainly an estimate on the lower side. Considering the age of deceased and considering the nature of employment, assertion of the claimants before the tribunal that deceased was earning Rs.3,000/- per month was not required to be discarded. Seen from this angle, even if 2/3rd amount from the prospective income of the deceased is to be reduced for his personal expenditure, in the ultimate analysis there would be no change in the quantum awarded by the tribunal.

9. With respect to the question of rate of interest, it cannot be disputed that recently the bank rates have been increasing steadily. Even the Apex Court in the case of **Tejinder Singh Gujral v. Inderjit Singh and anr.** reported in (2007) 1 Supreme Court Cases 508, taking note of the trend has approved 9% interest in Motor

accident cases. In that view of the matter, contention of the insurance company needs to be turned down.

10. In the result, we find no merits in the appeal and same is therefore, summarily dismissed with no order as to costs.

11. It is clarified that nothing stated in this appeal shall have any bearing on the First Appeal filed by the insurance company for the other claim arising out of the same accident.

12. In view of order passed in the First Appeal, Civil Application for stay does not survive and same accordingly stands dismissed.

13. The amount of Rs.25,000/- deposited by the appellant insurance company before this Court at the time of filing the appeal shall be transmitted to the Tribunal by the Registry within four weeks from today.

(B.J.Shethna,J.)

(Akil Kureshi,J.)

(raghu)