

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**FIRST APPEAL No. 4894 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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**PURIBEN RAMABHAI VALA - Appellant(s)**

**Versus**

**DRIVER OF CHHAKDO RICKSHAW NO. J 3 V 5304 & 5 -**

**Defendant(s)**

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**Appearance :**

MR TUSHAR L SHETH for Appellant(s) : 1, MR KINNAR A SHAH for

Appellant(s) : 1.2.1, 1.2.2

None for Defendant(s) : 1,

NOTICE NOT RECD BACK for Defendant(s) : 2,

MR HASMUKH THAKKER for Defendant(s) : 3 & 6

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**CORAM : HONOURABLE MR.JUSTICE M.S.SHAH**

**and**

**HONOURABLE MR.JUSTICE AKIL KURESHI**

**Date : 31/01/2007**

**ORAL JUDGMENT**

(Per : HONOURABLE MR.JUSTICE AKIL KURESHI)

In response to the notice of final disposal issued by this Court, learned advocate Shri Hasmukh Thakker appeared for respondent Nos.3 & 6.

2. We have heard the learned advocates appearing of the parties. This appeal arises out of a judgment and award dated 9<sup>th</sup> March 2006 passed by the Motor Accident Claims Tribunal (Aux.), Gondal in MACP No.1042 of 1999.

3. In a vehicular accident which took place on 6<sup>th</sup> March, 1999 involving three different vehicles, one Kishorebhai Ramabhai Vala received fatal injuries. His parents and young son aged 1½ years, therefore, filed the above mentioned claim petition seeking compensation of Rs.9 lacs from the opponents. It may be noted that though the deceased had left behind his widow on the date of the accident, she had not joined the claimants in the claim petition and was, therefore, joined as an opponent in the original claim petition. It may also be noted that during the pendency of the claim petition, widow of the deceased and his minor son expired after about 4½ years of the date of accident.

4. The Claims Tribunal had no hesitation in coming to the conclusion that the claimants were entitled to receive compensation since the deceased

received injuries in a vehicular accident caused by the negligent driving of the motor vehicles.

5. With respect to the quantum of compensation, the Tribunal did not accept the version of the claimants that the deceased as a masnor was earning Rs.5,000/- per month. The Tribunal, however, believed the income of the deceased at Rs.15,000/- per annum. One-third thereof i.e. Rs.5,000/- was deducted for personal expenses of the deceased. The Tribunal thus estimated that loss of dependency benefits for the claimants would be Rs.10,000/- per annum.

6. The Tribunal was of the opinion that father of the deceased was aged about 70 years and mother a few years younger. The Tribunal, therefore, adopted the multiplier of 8 and computed loss of dependency benefits for the claimants at Rs.80,000/-. To the said figure, the Tribunal added Rs.10,000/- under the head of loss to the estate and Rs.2,000/- for funeral expenses. The Tribunal, in all, awarded an amount of Rs.92,000/- to the Claimants. The claimants, therefore, have preferred this appeal seeking enhancement of the compensation awarded by the Tribunal.

7. With respect to the nature of accident and negligence of the drivers in causing the accident, there is no necessity to make a detailed reference since the claimants are in appeal before this Court

seeking enhancement of compensation.

8. With respect to the question of compensation awarded by the Tribunal, we find that the same is certainly on the conservative side.

9. Before the Tribunal, it had come on record through oral evidence of father of the deceased claimant no.2 that the deceased was doing masonry work. The Tribunal, therefore, ought not to have assessed the yearly income of the deceased at Rs.15,000/-. It may be recalled that the accident took place in the year 1999 and considering the nature of employment of the deceased, we may safely take his monthly income at Rs.3,000/-. One-third thereof needs to be deducted for the personal expenditure of the deceased himself leaving Rs.2,000/- for the family. The dependency benefits for the family, therefore, come to Rs.24,000/- per annum. Regarding the age of the surviving claimants there is considerable confusion on record of the claim petition. In the claim petition, the claimants Nos.1 & 2 have been described as aged 45 and 48 respectively. In the deposition before the Tribunal, father of the deceased described himself to be approximately 70 years. Since there is no documentary evidence regarding the age of the claimants, we shall have to undertake some approximation and guess work about their respective age. Learned advocate for the appellant pointed out that the deceased was born on 29<sup>th</sup> June 1967 as per

the certificate issued by the Principal of the school in which he had studied. The certificate was also produced before the Tribunal. Thus the deceased was aged about 32 years on the date of the accident. It has also come on record that the deceased had left behind a son aged approximately  $1\frac{1}{2}$  years. Considering all these aspects of the matter, age of the father of the deceased could safely be approximated at 60 years on the date of the accident. Since his wife is stated to be three years younger than him, her age would have been about 57 years on the date of the accident.

10. Considering the age of the claimants and also considering that the minor son of the deceased was alive on the date of the accident as also on the date of filing the claim petition and lived with grand-parents till he unfortunately died some  $4\frac{1}{2}$  years after the accident, in the peculiar facts of this case, we are inclined to adopt the multiplier of 10. The loss of dependency for the claimants, therefore, would be  $\text{Rs.}24000 \times 10 = \text{Rs.}2,40,000/-$ . To this amount, we will add  $\text{Rs.}25,000/-$  towards loss to estate and  $\text{Rs.}5,000/-$  for funeral expenses. Thus the total compensation for the claimants would be worked out at  $\text{Rs.}2,70,000/-$ .

11. Thus the claimants shall receive an additional compensation of  $\text{Rs.}1,72,000/-$  from the opponents. This enhanced compensation shall be paid to the claimants with 9 per cent interest from the

date of claim petition till realization. With these directions, the appeal is partially allowed and disposed of accordingly.

12. It is further directed that the opponents shall deposit the enhanced amount of compensation latest by 31<sup>st</sup> March, 2007. Considering the age of the claimants, it is directed that upon deposit of the enhanced amount of compensation, the Claims Tribunal shall invest 50 (fifty) per cent in fixed deposits with a nationalized bank near the residence of the claimants for a period of five years with usual conditions about prohibition against premature encashment of/encumbrance over the deposits, permission to the claimants to withdraw interest periodically accruing on the fixed deposits and a direction to the bank not to permit the bank account of the claimants to be operated by any power of attorney holder other than a close relative of the claimants.

Remaining amount shall be disbursed to the claimants by account payee cheques after proper verification and after informing them about the amounts being invested and disbursed and the terms and conditions of investment.

(M.S.Shah, J.)

(Akil Kureshi, J.)

(vjn)