

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**FIRST APPEAL No. 4508 of 2001****For Approval and Signature:****HONOURABLE MR.JUSTICE A.L.DAVE****HONOURABLE MR.JUSTICE SHARAD D.DAVE**

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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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AHMEDABAD MUNICIPAL TRANSPORT SERVICE - Appellant(s)**Versus****KANAIYALAL BABULAL NAYAK HUSBAND OF DECD.KUNJLATABEN K &
5 - Defendant(s)**

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Appearance :

MR HS MUNSHAW for Appellant(s) : 1,

MS MITA S PANCHAL for Defendant(s) : 1 - 2,4 - 5.

DELETED for Defendant(s) : 3,

NOTICE SERVED BY DS for Defendant(s) : 6,

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE**and****HONOURABLE MR.JUSTICE SHARAD D.DAVE****Date : 31/01/2008**

ORAL JUDGMENT**(Per : HONOURABLE MR.JUSTICE SHARAD D.DAVE)**

1. This is an appeal filed by the original opponent no.2 - Ahmedabad Municipal Transport Service against the judgment and award dated 27.3.2001 passed by the Motor Accident Claims Tribunal (Aux.) at Ahmedabad in Motor Accident Claim Petition No.392 of 1999 whereby the Tribunal has awarded the compensation of Rs.5,00,000/- to the original claimants with interest @ 10% p.a., from the date of the application till realization with proportionate costs.

2. The said Motor Accident Claim Petition was preferred by the heirs and legal representatives of the deceased Kunjlataben Kanaiyalal Nayak who died in the vehicular accident that occurred on 5.3.1999. On that fateful day, when claimant no.1 husband of the deceased went to drop the deceased at Income Tax Bus-stand to catch the bus on his scooter No.G.J.F.8855 and when they reached the income tax circle, because of the traffic signal, they had to stop there and at that point of time, one A.M.T.S.Bus bearing No.GJ-1-T-7686 came from behind and stood along with them. When the traffic signal was on, the A.M.T.S. Bus all of a sudden dashed the claimant which resulted into grievous injuries to the victim Kunjlataben and she succumbed to the injuries. Therefore, the claimants filed the claim petition claiming compensation of Rs.12,00,000/-.

3. Deceased Kunjlataben was serving as a

teacher in the Panchayat and getting Rs.9,000/- per month as salary and had she not met with vehicular accident, she would have served upto the year 2006 and she would have earned more than Rs.10,000/- per month.

4. The Tribunal, after considering the evidence on record, held the ratio of negligence at 90% - 10% between the bus-driver and the claimants.

5. The Tribunal also held that the income of the deceased was Rs.5,500/- per month and considering the age of the victim as of 48 years at the time of death, adopted the multiplier of 8 and came to the conclusion that the dependency of the legal heirs would be Rs.5,28,000/-. An amount of Rs.2,000/- for expenses, Rs.15,000/- for loss of estate and Rs.10,000/- for the loss of consortium was added to the said amount which came to Rs.5,55,000/-. However, as the claimants were held liable for 10% negligence, the amount was deducted from the said total amount awarded and therefore finally the round figure of Rs.5,00,000/- was awarded to the original claimants with interest and proportionate costs.

6. Aggrieved by the judgment and award under challenge, the appellant - Ahmedabad Municipal Transport Service has filed this appeal. We may record here that the claimants have not filed any appeal either challenging the negligence or quantum part.

7. Heard learned advocate Mr.Munshaw for the

appellant and learned advocate Ms.Mita Panchal for the opponent Nos.1,2,4 and 5, opponent No.3 was deleted before the Tribunal and opponent No.6 has chosen not to appear even though served by direct service.

8. Learned advocate Mr.Munshaw submitted that learned Tribunal has erred in considering contributory negligence of both the parties at 90% - 10% whereas it should be 50%-50%. Learned Tribunal has also erred in considering the income of the deceased at a lumpsum figure of Rs.5,500/- instead of deducting 1/3rd from the salary and then considering the same as dependency. He also submitted that considering the age of the deceased at the time of accident, multiplier of 5 should have been adopted instead of 8 as adopted by the Tribunal. Mr.Munshaw further submitted that the amount of compensation awarded is on the higher side and, therefore this appeal may be allowed by decreasing the amount of dependency and multiplier.

9. As against these submissions, learned advocate Ms.Mita Panchal submitted that negligence attributed is proper and if the income of the deceased at the time of the death was considered and the principle of doubling and then deducting 1/3rd, then the amount of compensation would be more than what is awarded by the Tribunal. However, as no appeal is preferred by the original claimants, the award may not be interfered with and this appeal may be dismissed.

10. So far as the point of negligence is concerned, if we see the evidence in the form of depositions of the driver of the scooter, driver of the bus and the panchanama of scene of offence at the time of accident, the scooterist - petitioner no.1 stopped at the traffic signal and when the traffic signal was on, the driver of the bus which was behind the scooter ran the bus over the victim causing injuries to which she succumbed. On the other hand, the driver of bus has come with a story that the scooterist lost balance and fell down and that there was no collision between the bus and the scooter. This is a theory which does not sound to be true if panchanama is seen. It is also worth to note that the bus driver was prosecuted for the accident. In our view, Bus is the larger vehicle and greater care is expected of a driver of a larger vehicle. However, the scooterist also ought to have taken care in driving the vehicle on such a busy road. Therefore, the Tribunal was justified in attributing negligence to both the parties i.e. driver of the bus and claimant no.1 - the scooterist at 90% - 10%.

11. If the evidence of Mr.Kanaiyalal Nayak who is the husband of the deceased is considered, he has stated that the salary of his wife - deceased was about Rs.7,600/- at the time of death. Looking to the government circulars granting Dearness Allowance and the growth in her pay for the last several years as per the document produced by the original claimants before the Tribunal, she would have earned Rs.10,000/- at the time of her retirement. Therefore, by adding both these figures (Rs.8,000 + Rs.10,000)

and dividing it by two, the same would come to Rs.9,000/- which is the prospective income of the deceased. Now, deducting $1/3^{\text{rd}}$ towards her personal expenses, the net dependency income would be $2/3^{\text{rd}}$ of the same which comes to Rs.6,000/- per month ($\text{Rs.9,000} \times 1/3$) and it comes to Rs.72,000/- per annum. Considering the age of the deceased at the time of accident, and in view of the principle laid down by the Hon'ble Apex Court in various cases, in our view the multiplier of 8 is properly adopted by the Tribunal and considering the same, the total dependency loss comes to Rs.5,76,000/- ($\text{Rs.72,000} \times 8$). On the other heads, learned Tribunal has awarded Rs.27,000/- which is just and proper and therefore, the total amount of compensation comes to Rs.6,03,000/-. Now deducting 10% liability awarded by the Tribunal on the petitioners which is not challenged by way of appeal and, therefore, attained finality, the amount of compensation comes to Rs.5,42,7000/- which is more than what is awarded by the Tribunal.

12. In view of the aforesaid discussion, no interference is called for in the judgment and award of learned Tribunal as this appeal is filed by the appellant for reduction of the compensation but according to the calculation made above, the Tribunal has already awarded less amount which cannot be further reduced. As the claimants have not filed any appeal for enhancement, the awarded amount of the Tribunal becomes final.

13. The appeal, therefore, stands dismissed.

There shall be no order as to costs.

(A.L.DAVE, J)

(SHARAD D DAVE, J)

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