

## IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## FIRST APPEAL No. 674 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE ANANT S. DAVE

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BHIKHUVAN HARJIVAN GOSWAMI - Appellant(s)

Versus

TRIKAMBHAI JIVABHAI VASTA & 1 - Defendant(s)

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Appearance :

MR SATYEN B RAWAL for Appellant(s) : 1, 1.2.1,1.2.2

NOTICE SERVED for Defendant(s) : 1,

MR MEHUL SHARAD SHAH for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE ANANT S. DAVE

Date : 29/06/2012

ORAL JUDGMENT

1. This Appeal under section 173 of the Motor Vehicles Act, 1988 (for short "the Act") arises out of judgment and award dated 21.07.2000 passed in M.A.C.P. No.38 of 1994 by the Claims Tribunal - Main, Surendranagar, awarding Rs.72,000/- at the rate of 12% interest per annum from the date of filing of the claim petition till its realisation.

2. Short facts for which the claim petition was filed are as under:-

On the day of the accident, the deceased was travelling in a truck, bearing registration No.GJ 12 T 6832 as a cleaner and the said truck was loaded with lignite at Pandro and was coming via Anjar. When the said truck reached near bridge at Sitapur village at about 5 a.m., due to rash and negligent driving by the driver of the truck, it jumped from the bridge and fell into the river. As a result of which Chanduvan died instantaneously on the spot. FIR in respect of this accident was lodged with Dhrangadhra Taluka Police Station vide C.R. No.246/ 1993. At the time of the accident, the offending truck was owned by opponent No.1 and insured with opponent No.2- Insurance Company and, therefore, the present claim petition for claiming compensation of Rs.2,00,000/- from the opponents jointly and severally, is filed by the claimants.

3. After considering the rival submissions and in the context of nature of accident vis-a-vis quantum aspect in the backdrop of the then prevailing law of awarding compensation in claim petition, the Tribunal

in paras 16 and 17 held as under:-

"16. As discussed hereinabove, prospective income of the deceased would be Rs.1,000/- per month and annually it would come to Rs.12,000/-. If multiplier of 15 is applied to this annual income, it would come to Rs.1,80,000/-. As discussed hereinabove, the deceased would have spent  $1/3^{\text{rd}}$  amount for the claimants and rest of  $2/3^{\text{rd}}$  amount, he would have spent for himself and for raising his family. So, the  $1/3^{\text{rd}}$  share of Rs.1,80,000/- would come to Rs.60,000/-, and as such, the claimants are entitled to Rs.60,000/- by way of future dependency income. Moreover, the claimants are entitled to conventional amount of Rs.10,000/- for the loss of estate, in view of the reported judgment of Hon'ble Supreme Court in the case of ***U.P. STATE ROAD TRANSPORT CORPORATION AND OTHERS V. TRILOK CHANDRA AND OTHERS***, reported in ***1996 ACJ 831***; and further amount of Rs.2,000/- towards funeral expenses.

17. Under these circumstances, the claimants are entitled to following amount of compensation,

under different heads, with running interest at the rate of 12% per annum from the date of petition from both the opponents, jointly and severally;

Rs.60,000/- towards future dependency income.

Rs.10,000/- towards loss of estate

Rs.2,000/- towards funeral expenses

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Rs.72,000/-  
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4. Though the deceased was unmarried, deduction towards expenses was considered to be 2/3<sup>rd</sup> and, therefore, in this appeal, the learned advocate for the appellant has mainly raised two grounds that the prospective income was not considered and applicability of multiplier in view of decision rendered in ***Sarla Verma (Smt) and others Vs. Delhi Transport Corporation and another*** reported in (2009) 6 ***Supreme Court Cases 121***. The deceased bachelor could have spent ½ of his income towards personal expenses and if the above criteria would apply, the judgment and award passed by the Tribunal deserves to be modified and the amount of compensation be enhanced

accordingly.

5. Shri Mehul Shah, learned counsel for the Insurance Company, however, would submit that the determination of the quantum based on monthly income of the deceased and considering the prospective income accordingly with applicability of multiplier was on the contrary on higher side and the rate of interest awarded by the Tribunal is at 12% per annum would require no interference by this Court.

6. Upon consideration of the rival submission, perusal of the record and the findings based on the reasoning of awarding compensation under different heads by the Tribunal, I am of the opinion that the deceased was a cleaner and necessary material was brought on the record with regard to his income and determination and assessment of income deserves to be enhanced, so far as income concerned and to be calculated as under:-

1200 x 12 x 14	Rs.2,01,600/-
Deduction 50%	Rs.1,00,800/-
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Prospective Income	Rs.1,00,800/-
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7. Since the deceased was a bachelor and  $\frac{1}{2}$  of the share could have been deducted towards personal expenses of the deceased, revised and enhanced calculation reads as under:-

Prospective Income	Rs.1,00,800/-
- Tribunal Awarded	Rs. 60,000/-
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	Rs. 40,800/-
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8. Thus, the difference of Rs.40,800/- at the rate of 7% interest per annum from the date of filing of the claim petition till its realisation, in addition to the amount awarded by the Tribunal be deposited by Respondent No.2 with Claims Tribunal.

The appeal is partly allowed accordingly.

**(Anant S. Dave, J.)**

PIYUSH