

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 3309 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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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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ORIENTAL INSURANCE CO. LTD - Appellant(s)

Versus

RAVINDRABHAI BADAJI NINAMA & 3 - Defendant(s)

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Appearance :

MR MAULIK J SHELAT for Appellant(s) : 1,
MR LM CHHABLANI for Defendant(s) : 1 - 2.
NOTICE UNSERVED for Defendant(s) : 3,
SERVED BY AFFIX.(N) for Defendant(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 11/05/2012

ORAL JUDGMENT

1.0 This appeal is directed against the judgement and award dated
28.02.2005 passed by the Motor Accident Claims Tribunal (Aux.), (8th

Fast Track Court), Sabarkantha, Himmatnagar in Motor Accident Claim Petition No. 311 of 1995 whereby the learned Tribunal has awarded a sum of Rs. 287000/- as compensation along with interest @ 9% per annum from the date of claim petition till 31.12.2000 and the interest @ 6% thereafter up to deposit or realization.

2.0 On 30.03.1995 Shaileshkumar was returning towards village on his bicycle at about 4.15 p.m. At that time one Tanker No. M.H.04 P 1648 came from the rear side in excessive speed and in a rash and negligent manner dashed with the bicycle. As a result of this, Shaileshkumar sustained serious injuries and succumbed to those injuries. The claimants therefore, filed the aforesaid claim petition wherein the learned Tribunal has passed the aforesaid award which is challenged in the present appeal.

3.0 Learned advocate for the appellants contended that the claimants are the parents of the deceased and therefore, the learned Tribunal has erred in deducting 2/3rd towards personal and living expenses. He placed reliance on the decision of the Hon'ble Apex Court in case of ***Sarla Verma (Smt) and others versus Delhi Transport Corporation and another*** reported in ***(2009) 6 Supreme Court Cases 121*** wherein it is held that 50% is required to be deducted as personal and expenses, since the deceased was a bachelor and the claimants are the parents.

4.0 Learned advocate for the appellants further contended that the age of the mother was 50 years, and therefore, 13 multiplier ought to have been applied.

5.0 Learned advocate appearing for the respondent supported the judgement and award of the learned Tribunal and submitted that the appeal may be dismissed.

6.0 Heard learned advocates for the respective parties and perused the documents on record. The deceased was 15 years at the time of accident. Therefore, the learned Tribunal has taken the annual notional income of Rs. 15000/-. Considering the income of Rs. 15000/- the future income would come to Rs. 22500/-. The deceased was bachelor. The claimants are the parents of the deceased and therefore, in view of the principles laid down in case of **Sarla Verma (Smt) and others versus Delhi Transport Corporation and another** reported in **(2009) 6 Supreme Court Cases 121**, if 50% is deducted towards personal and living expenses it would come to Rs.11250/- (i.e.50% of Rs.22500/-). Hence, the amount would come to Rs. 11250/-(Rs. 22500/- - Rs. 11250/-) per year. In the case of **National Insurance Co. Ltd. vs. Shyamsing reported in AIR 2011 SC 3231**, the Apex Court has held that while considering the income of the deceased, the age of the mother is required to be considered. Accordingly, in the present case

considering the age of the mother as 50 years, the multiplier of 13 would apply. By applying multiplier of 13 years, the future loss of income would come to Rs. 146250/- (Rs. 146250/- x 13). The Tribunal has awarded Rs. 240000/-.

7.0 The claimants are entitled to Rs. 10,000/- towards loss to the estate and Rs. 5000/- towards funeral expenses as per the principles laid down in case of Sarla Verma(supra).

8.0 The amount of Rs. 20000/- towards love and affection and Rs.2000/- towards transportation awarded by the learned Tribunal are just and proper. However, the claimants are not entitled for Rs. 20000/- towards pain, shock and suffering.

9.0 Thus, the total compensation would come to Rs. 183250/- (Rs. 146250/- towards future loss of income + Rs. 10,000/- towards loss to the estate+ Rs. 5000/- towards funeral expenses + Rs. 20000/- towards love and affection + Rs.2000/- towards transportation). Accordingly it is held that the claimants are entitled to a total sum of Rs.183250/- However, the Tribunal has awarded an amount of Rs. 287000/-. Therefore an amount of Rs. 103750/- (Rs. 287000/- - Rs. 183250/-) is awarded in excess to the original claimants. Therefore, the excess amount of Rs. 103750/- shall be refunded to the appellant-Insurance Company with proportionate interest and costs. If the amount is already

withdrawn by the claimants, it will be open to the Insurance Company to recover the same from the owner of the vehicle. The award is modified accordingly. Appeal is allowed to the aforesaid extent with no order as to costs. The amount if any amount lying with the Registry of this Court, the same shall be transmitted to the concerned Tribunal forthwith.

(K.S.JHAVERI, J.)

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