

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 3477 of 1998

With

FIRST APPEAL No. 3478 of 1998

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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HARSHAD SUNDARLAL SHAH & 4 - Appellant(s)

Versus

NARESHKUMAR RAGHUVIRCHAND & 2 - Defendant(s)

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Appearance :

MR JA ADESHRA for Appellant(s) : 1 - 5.

NOTICE SERVED for Defendant(s) : 1,

MS MEGHA JANI for Defendant(s) : 2,

DELETED for Defendant(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 31/01/2012

ORAL JUDGMENT

1. Heard learned advocates for respective parties and

perused the papers on record.

2. Both the appeals are filed for enhancement of the compensation amount awarded vide award dated 20.03.1998 passed by the Motor Accident Claims Tribunal, Kheda at Nadiad in Motor Accident Claims Petition No. 803 & 804 of 1989 so far as the Tribunal awarded Rs. 1,22,000/- & Rs. 30000/- respectively as compensation.

3. It is the case of the appellants that on 29.1.1989 while the father of the original claimants of Motor Accident Claims Petition No. 803 of 1989 and the original claimant of Motor Accident Claims Petition No. 804 of 1989 were travelling in a Car bearing registration no. GCB 2626, a truck bearing registration no. HRX 5955 being driven by the original opponent no. 1 in a rash and negligent manner, dashed with the car as a result of which the father of the original claimants of Motor Accident Claims Petition No. 803 of 1989 died and other claimant sustained injuries on various parts of the body. The claimants therefore filed claim petitions seeking compensation. The Tribunal after hearing the parties passed the aforesaid award.

4. Mr. Adeshara, learned advocate appearing for the appellants submitted that the Tribunal failed to take into consideration the entire facts of the case and evidence on record and thereby erred in awarding adequate amount under various heads. He submitted that as far as Motor Accident Claims Petition No. 803 of 1989 is concerned, the Tribunal ought to have deducted 1/3 towards personal expenses and after deducting the same from the income of Rs. 5000/-,

balance amount of Rs. 3333/- ought to have been considered under the head of loss of dependency. He submitted that infact the Tribunal has considered Rs. 1700/- towards loss of dependency per month. He submitted that the Tribunal has not granted any amount under the head of funeral expenses.

4.1 Mr. Adeshara further submitted that as far as Motor Accident Claims Petition No. 804 of 1989 is concerned, the Tribunal has not applied any rationale basis for awarding the amount of compensation as no calculations are shown by the Tribunal for arriving at a figure of Rs. 30000/-. He submitted that no amount of interest and cost is awarded to the appellant and therefore the Tribunal has committed an error.

5. Ms. Megha Jani, learned advocate appearing for the respondent has supported the awards passed by the Tribunal. She submitted that in the case of Motor Accident Claims Petition No. 803 of 1989, the Tribunal has rightly arrived at a figure of loss of dependency and no interference is called for in that regard. She submitted that in fact the Tribunal has awarded Rs. 20000/- under the head of loss of expectation life which is more by Rs. 5000/-. She submitted that the Tribunal ought to have awarded only Rs. 15000/- under the said head.

5.1 Ms. Jani further submitted that in the case of Motor Accident Claims Petition No. 804 of 1989 the appellant has not proved his case by way of any medical receipts and even if the income of Rs. 900/- is doubled and average is taken it comes to Rs. 1350/-. Considering the disability of 10% and the multiplier of 16 the future loss of income shall come to Rs. 25920/-. An amount of Rs. 5000/- can be considered for pain

shock and suffering and thereby the Tribunal has awarded Rs. 30000/-.

6. As a result of hearing and perusal of records, this court is of the view that considering the evidence on record and the facts and circumstances of the case, the Tribunal came to the conclusion that the appellants died/sustained injuries as a result of the rash and negligent driving of the original opponent no. 1.

7. As far as First Appeal No. 3477 of 1998 (Motor Accident Claims Petition No. 803 of 1989) is concerned, the Tribunal has rightly arrived at the compensation amount. The same if divided by 2 gives a figure of Rs. 2250/-. Nothing is pointed out before this Court to take a contrary view. In fact I agree with the submission of learned advocate for the respondent that the amount of compensation awarded under the head of loss of expectation of life is on higher side. But the same is not disturbed in the appeal filed by the claimants. The Tribunal has quantified the amount of compensation at Rs. 1,22,000/-. Therefore the amount awarded by the Tribunal is just and proper and no marginal difference is seen. This court is in complete agreement with the reasonings adopted and findings arrived at by the Tribunal and therefore do not see any reason for causing interference in appeal no. 3477 of 1998.

7.1 As far as First Appeal No. 3478 of 1998 (Motor Accident Claims Petition No. 804 of 1989) is concerned, the Tribunal has not awarded any interest and cost and the same is required to be awarded. As far as the amount of

compensation is concerned, the Tribunal has awarded Rs. 30000/- which is just and proper considering the income of the appellant and paucity of sufficient documentary evidence.

8. In the premises aforesaid, First Appeal No. 3477 of 1998 is dismissed. First Appeal No. 3478 of 1998 is partly allowed. The original claimants shall be entitled to received interest at the rate of 7.5% on the entire principal amount of Rs. 30000/- from the original respondents from the date of filing of main claim petition till realisation. The award of the Tribunal is modified accordingly.

(K.S. JHAVERI, J.)

Divya//