

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**FIRST APPEAL NO. 566 of 2014****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE M.R. SHAH****and****HONOURABLE MR.JUSTICE R.P.DHOLARIA**

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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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RAMILABEN JAYANTIBHAI PATEL & 3....Appellant(s)

Versus

MUHAMMADSALIM ABDUSSATTAR TUNKA & 2....Defendant(s)

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Appearance:

MR MA KHARADI, ADVOCATE for the Appellant(s) No. 1 - 4

MR GC MAZMUDAR, ADVOCATE for the Defendant(s) No. 3

MR HG MAZMUDAR, ADVOCATE for the Defendant(s) No. 3

NOTICE NOT RECD BACK for the Defendant(s) No. 1 - 2

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CORAM: HONOURABLE MR.JUSTICE M.R. SHAH**and****HONOURABLE MR.JUSTICE R.P.DHOLARIA****Date : 29/04/2014****ORAL JUDGMENT****(PER : HONOURABLE MR.JUSTICE R.P.DHOLARIA)**

1. In the facts and circumstances of the case and as the present appeal is in a very narrow compass as observed in our earlier order dated 24.03.2014 and with the consent of the learned advocates appearing on behalf of the respective parties, present appeal is taken up for final hearing today.

2. By way of preferring present appeal, the appellants herein – original claimants seek to challenge the impugned judgment and award dated 22.08.2012 passed by the learned Motor Accident Claims Tribunal (Main), Panchmahals at Godhra (hereinafter referred to as the Tribunal) in Motor Accident Claim Petition No.1266 of 2008, by which, the learned Tribunal has awarded a total sum of Rs.21,75,000/- along with interest at the rate of 9% per annum from the date of claim petition till its realization fastening the liability upon original opponent No.3 – respondent No.3 herein.

3. The facts in nutshell are as under:-

3.1 That on 12.03.2008, the deceased Jayantibhai K. Patel was coming from Viraniya to Bhayasar at 10.30 p.m driving his motorcycle No.GJ-17-K-9512 with moderate speed on the left side of the road. At the relevant time, the opponent no.1 came by driving truck No.GJ-12-U-5316 in rash and negligent manner and dashed with the motorcycle of the deceased. In the result, the deceased sustained grievous injuries on various parts of the body and ultimately he died. The original claimants – heirs and legal representatives of the deceased have preferred captioned petition before the learned Tribunal for getting compensation for the unexpected death of the deceased. The learned Tribunal has, vide judgment and award

dated 22.08.2012, awarded the aforesaid amount of compensation to the original claimants.

4. Feeling aggrieved by and dissatisfied with the impugned judgment and award, the appellants herein – original claimants have preferred the present appeal seeking enhancement of the compensation.

5. As narrow question of quantum is involved in the present appeal, on 24.03.2014, this Court passed the following order.

*“NOTICE for final hearing only to consider the future prospectus by adding 30% of the amount of salary at the time of accident considering the decision of the Hon’ble Supreme Court in the case of **Sarla Verma (Smt.) and Others Vs. Delhi Transport Corporation and Another** reported in **(2009) 6 SCC 121**, returnable on 22nd April 2014.*

Respondents be served through RPAD/Speed Post over and above the regular service at the cost of the appellants.”

6. Mr. MA Kharadi, learned advocate appearing on behalf of the appellants – original claimants has submitted that the learned Tribunal, while assessing the amount of compensation, failed to consider the prospective income of the deceased. He has further submitted that the learned Tribunal has committed an error in applying multiplier of 13 and ought to have applied multiplier of 15 considering the age of the deceased to be 42 years. He has further submitted that the learned Tribunal has committed an error in awarding Rs.1,00,000/- towards pain, shock and suffering and

Rs.4,00,000/- towards medical bills. He has also submitted that the learned Tribunal has committed an error in fixing 10% contributory negligence of the deceased. He has submitted that thus the amount of compensation awarded is on lower side.

7. Per contra, Mr. GC Mazmudar, learned advocate appearing on behalf of respondent no.3 – insurance company has supported the judgment and award passed by the learned Tribunal. He has further submitted that the learned Tribunal has awarded just compensation and, therefore, no interference is called for by this Court. He has, therefore, urged to dismiss the present appeal.

8. Heard the learned advocates appearing on behalf of the respective parties at length. We have also gone through the impugned judgment and award as well as material made available to us during the course of hearing of present appeal.

9. So far as the point of negligence is concerned, Shri G.C.Mazmudar, learned advocate appearing on behalf of the insurance company has vehemently contended that the learned Tribunal has merely assessed 10% contributory negligence on the part of the deceased, which could have been assessed more. Whereas, Shri Kharadi, learned advocate appearing for the appellant has submitted that there is no iota of evidence led either by the driver and owner nor by the insurance company of the offending vehicle to establish the contributory negligence on the part of the deceased.

10. In order to decide the said contention raised by the

learned advocate for the insurance company, the evidence in the nature of FIR, panchnama of scene of accident as well as the charge-sheet which came to be filed after the conclusion of the investigation by the police are produced on record. The aforesaid documentary evidence on the record clearly establishes that after conclusion of investigation, the charge-sheet came to be filed against the driver of the offending truck. Despite the aforesaid evidence on the record, neither the driver and owner nor the insurance company of the offending vehicle have adduced any evidence to rebut the aforesaid evidence on record. Furthermore, on going through the judgment and order of the learned Tribunal, it is clearly revealing that in para 10, the learned Tribunal has, without assigning any reason and merely observing that the Tribunal is inclined to assess 10% contributory negligence on the part of the deceased, mechanically attributed negligence to the extent of 10% on the part of the deceased. Neither the finding of fixing 10% contributory negligence as recorded by the learned Tribunal is supported by the documentary evidence nor by any oral evidence on record. Under the circumstances, we are of the view that in absence of any evidence on the record, the learned Tribunal could not have recorded the finding of contributory negligence and therefore we hold the driver of the offending truck sole negligent.

11. We may now proceed to determine as to whether the compensation awarded by the learned Tribunal under various heads is just and fair compensation within the meaning of Section 168 of the Motor Vehicles Act, 1988 as well as the compensation is in consonance with the rule of thumb laid down by the Hon'ble Supreme Court in the decision of Sarla

Verma (Supra)? With broad consensus of the learned advocates appearing on behalf of the respective parties and as the main issue involved in the present appeal is with regard to quantum only, the only question which arises before this Court is as to whether the learned Tribunal has committed any error in determining Rs.15,000/- per month as the income of the deceased without determining prospective income and also the learned Tribunal has committed an error in deducting $1/5^{\text{th}}$ share of his income instead of $1/4^{\text{th}}$ for his personal and living expenditure and also in adopting the multiplier, considering the decision of the Hon'ble Supreme Court in the case of Sarla Verma (Supra) ?

12. The learned Tribunal, for the purpose of determining the income of the deceased, observed that the deceased was working as a helper in G.E.B. and his salary was Rs.13,987/- and therefore relying upon the salary slip of the deceased, which was placed on record vide Exh.50, the learned Tribunal assessed the monthly salary of the deceased to be Rs.15,000/- including his prospective income. The learned Tribunal, relying upon the school leaving certificate of the deceased produced at Exh.37, has determined the age of the deceased to be 48 years at the time of accident and applied the multiplier of 13. The learned Tribunal has also deducted $1/5^{\text{th}}$ share towards the living expenditure of the deceased.

13. The documentary evidence in the nature of school leaving certificate is available on the record which disclosed the date of birth of the deceased as 23.11.1960 while the accident took place on 12.03.2008. Consequently, therefore, the age of the deceased is proved to be 48 years at the time of

accident. Considering the gross income of the deceased to be Rs.13,987/- per month and after deducting Rs.200/- towards professional tax, the income of the deceased can be considered to be Rs.13,787/- per month and considering the age of the deceased to be 48 years at the time of accident, as per the decision of the Hon'ble Supreme Court in the case of Sarla Verma (Supra), 30% of his income is required to be added towards his future prospective income, which comes to Rs.17,923/- per month ($\text{Rs.13,787/-} + \text{Rs.4,136/-} = \text{Rs.17,923/-}$). As there were only four claimants, instead of $1/5^{\text{th}}$ share which is already deducted by the learned Tribunal towards the personal and living expenditure of the deceased, $1/4^{\text{th}}$ share is required to be deducted from the aforesaid income of Rs.17,923/-. If that amount is deducted, then the net dependency benefits comes to Rs.13,442/- per month ($\text{Rs.17,923/-} - \text{Rs.4,481/-} = \text{Rs.13,442/-}$) and annual dependency benefits comes to Rs.1,61,304/-. As per the ratio laid down by the Hon'ble Supreme Court in the case of Sarla Verma (supra), if we apply 13 multiplier as the deceased was aged 48 years, then the amount would come to Rs.20,96,952/- towards dependency benefits. Over and above the amount of Rs.20,96,952/- towards dependency benefits, the claimant shall be entitled to Rs.1,00,000/- towards pain, shock and suffering as the deceased was taking treatment and survived of seven months, Rs.4,00,000/- towards medical bills, Rs.10,000/- towards loss of consortium, Rs.10,000/- towards loss of estate and Rs.5,000/- towards funeral expenses. Thus, in all the claimants shall be entitled to Rs.26,21,952/- as compensation.

14. In view of the aforesaid reasons and findings recorded

by us, the claimants shall be entitled to Rs.26,21,952/- as compensation instead of Rs.21,75,000/- as awarded by the learned Tribunal. The impugned judgment and award passed by the learned Tribunal in the aforesaid Motor Accident Claim Petition is modified to the aforesaid extent holding that the claimants shall be entitled to a sum of Rs.26,21,952/- as compensation instead of Rs.21,75,000/- as awarded by the learned Tribunal.

15. For the reasons recorded hereinabove, the appeal is partly allowed. The impugned judgment and award dated 22.08.2012 passed by the learned Motor Accident Claims Tribunal (Main), Panchmahals at Godhra in Motor Accident Claim Petition No.1266 of 2008 is hereby modified to the aforesaid extent. Rest of the judgment and award is confirmed. The insurance company is hereby directed to deposit the additional amount of compensation before the learned Tribunal within a period of 30 days from today. On deposit of such additional amount of compensation, the learned Tribunal is directed to invest and disburse the said amount of additional compensation amongst the claimants in terms of the award passed by it.

(M.R.SHAH, J.)

(R.P.DHOLARIA,J.)

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