

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**FIRST APPEAL NO. 5301 of 1996****With****FIRST APPEAL NO. 5302 of 1996****FOR APPROVAL AND SIGNATURE:****HONOURABLE MS.JUSTICE HARSHA DEVANI**

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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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RAMABEN WD/O DURLABHBHAI BHIKHABHAI PATEL & 2....Appellant(s)

Versus

SOPANBABA PONKHRE & 1....Defendant(s)

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Appearance:

MR AJAY R MEHTA, ADVOCATE for the Appellants

MRS VASAVDATTA BHATT, ADVOCATE for the Respondent No. 2

NOTICE SERVED for the Respondent No. 1

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CORAM: HONOURABLE MS.JUSTICE HARSHA DEVANI**Date : 29/04/2014**

ORAL COMMON JUDGMENT

1. Both these appeals arise out of the common judgment and award dated 27th August, 1996 passed by the Motor Accident Claims Tribunal (Main), Surat (hereinafter referred to as "the Tribunal") in M.A.C. Petitions No.105 of 1988 and No.106 of 1988 respectively, and therefore, both the appeals were heard together and are decided by this common judgement.

2. First Appeal No.5301 of 1996 arises out of M.A.C. Petition No.105 of 1988 and First Appeal No.5302 of 1996 arises out of M.A.C. Petition No.106 of 1988.

3. The facts giving rise to these appeals are that the appellants herein (original claimants) filed two claim petitions before the Claims Tribunal in respect of an accident that occurred on 20.10.1987 at about 01:00 p.m. on the outskirts of Umbhel between an ST bus bearing No. GRT 8408 and a Rajdoot motorcycle bearing No.GUC 7842. It was the case of the claimants that one Ashokkumar and his wife Ramilaben were going on the above referred motorcycle from village Parab to Umbhel. Ashokbhai was driving the motorcycle and his wife Ramilaben was a pillion rider. When they reached near the spot, the above referred ST bus came from opposite side and collided with the motorcycle, resulting in the death of both, Ashokkumar and Ramilaben. The claimants, accordingly, being the legal heirs of deceased Ashokkumar and Ramilaben, filed the above referred claim petitions.

4. It was the case of the claimants that Ashokkumar Durlabhbhai was aged 36 years at the time of accident. He was an agriculturist and owning 15 vighas of land and was earning Rs.75,000/- per annum and that they had incurred expenses of Rs.10,000/- on his obsequial ceremonies. They, accordingly, claimed compensation of Rs.8,00,000/- (rupees eight lakhs).

5. M.A.C. Petition No.106 of 1988 was preferred in respect of the death of Ramilaben wherein the claimants claimed Rs.4,00,000/- (rupees four lakhs) as compensation. According to the claimants, deceased Ramilaben was aged 36 years and her income was Rs.50,000/- per annum. She owned 6 vighas of land and was also engaged in the dairy business and that the claimants were required to spend Rs.5,000/- towards obsequial ceremonies.

6. In M.A.C. Petition No.105 of 1988, the Tribunal after appreciating the evidence on record, assessed the income of deceased Ashokkumar at Rs.1,200/- per month. The Tribunal assessed the dependency at two-third thereof, being Rs.800/- per month and computed the annual dependency at Rs.9,600/-. Having regard to the fact that the age of the deceased was 36 years, the Tribunal applied a multiplier of 14 and accordingly, assessed the loss of dependency at Rs.1,34,400/-. The Tribunal added Rs.20,000/- towards loss of estate and Rs.2,000/- towards obsequial ceremonies. In all, the Tribunal awarded compensation of Rs.1,56,400/- to the claimants. Being aggrieved, the claimants are in appeal.

7. In M.A.C. Petition No.106 of 1988, the Tribunal assessed

the monthly income of deceased Ramilaben at Rs.450/- and computed the loss of dependency at Rs.300/- and annual loss of dependency at Rs.3,600/-. Having regard to the age of the deceased, the Tribunal applied a multiplier of 14 and computed the total loss of dependency at Rs.50,400/-. The Tribunal also awarded Rs.20,000/- towards loss of estate and Rs.2,000/- towards obsequial expenses. In all, the Tribunal awarded compensation of Rs.72,400/- to the claimants. Being aggrieved, the claimants are in appeal.

8. Mr. Sunil Parikh, learned advocate for Mr. Ajay Mehta, learned advocate for the appellants submitted that having regard to the nature of the evidence led by the claimants, the Tribunal has erred in assessing the monthly income of the deceased at Rs.1,200/-. Moreover, while computing the loss of dependency, the Tribunal has failed to take into consideration, the future prospective income of the deceased. It was pointed out that the Tribunal has applied a multiplier of 14, whereas having regard to the age of the deceased which was 36 years, a multiplier of 15 ought to have been applied in terms of the decision of the Supreme Court in case of **Smt. Sarla Verma and others v. Delhi Transport Corporation and another**, (2009) 6 SCC 121.

9. Insofar as the Claim Petition No.106 of 1988 is concerned, it was submitted that the Tribunal has erred in assessing the monthly income of the deceased at Rs.450/- per month. It was submitted that having regard to the fact that the deceased was a house-wife and was also engaged in dairy farming and agriculture, the Tribunal ought to have assessed her monthly income as claimed by the appellants. It was submitted that the

Tribunal has erred in applying a multiplier of 14 for computing the loss of dependency, which was not in consonance with the decision of the Supreme Court in the case of **Smt. Sarla Verma v. Delhi Transport Corporation** (supra), wherein it is held that in case the age of the deceased was between 36 to 40 years, a multiplier of 16 is required to be adopted. It was, accordingly, urged that the appeals are required to be allowed and the claims as prayed for by the appellants are required to be allowed.

10. Opposing the appeals, Mrs. Vasavdatta Bhatt, learned advocate for the respondent No.2 – Corporation supported the impugned judgement and award, by submitting that the Tribunal has duly and properly appreciated the evidence on record while assessing the income of the deceased and as such, there is no warrant for interference. Insofar as the multiplier applied by the Tribunal is concerned, it was submitted that in view of the decision of the Supreme Court in the case of **Smt. Sarla Verma v. Delhi Transport Corporation** (supra), to that extent, the impugned award can be modified.

11. This court has considered the submissions advanced by the learned counsel for the respective parties and has perused the record and proceedings of the case.

12. Insofar as Claim Petition No.105 of 1988 is concerned, though it was contended on behalf of the appellants that the deceased was growing sugarcane, paddy and wheat, and was earning Rs.1,50,000/- per annum, except for the oral evidence led by the claimants, no documentary evidence had been

produced on the record in support of their claim. It is in these circumstances, that the Tribunal assessed the monthly income of the deceased at Rs.1,200/-. However, at the same time, the Tribunal, while computing the loss of dependency has not taken into consideration the future prospective income of the deceased. The Supreme Court in the case of **Rajesh and others v. Rajbir Singh and others**, (2013) 9 SCC 54, has held that even in case of a self-employed persons or persons with fixed wages, where the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Having regard to the fact that the age of the deceased was 36 years at the time of the accident, the future prospective income of the deceased was required to be computed by adding 50% of the income to the actual income as assessed by the Tribunal. Accordingly, the future prospective income of the deceased would come to Rs.1,800/- (Rs.1,200/- plus Rs.600/-). The Tribunal has applied a multiplier of 14 in case where the age of the deceased was held to be 36 years. In terms of the decision of the Supreme Court in the case of **Smt. Sarla Verma v. Delhi Transport Corporation** (supra), where the age of the deceased is between 36 to 40 years, a multiplier of 15 is required to be applied. The Tribunal has awarded Rs.20,000/- towards loss of estate. However, having regard to the fact that the minor children have lost both their parents at one stroke, in the opinion of this court, the Tribunal ought to have awarded some compensation towards loss of love and affection. Accordingly, an amount of Rs.20,000/- is required to be awarded under the head of loss of love and affection. Accordingly, the total compensation can be worked out as under :

Monthly income	= Rs.1,200/-
Future prospective income	= Rs.1,800/- (Rs.1,200 + Rs.600)
Monthly dependency	= Rs.1,800/- minus one-third = Rs.1,200/-
Annual dependency	= Rs.14,400/- (Rs.1,200/- x 12)
Total dependency	= Rs.2,16,000/- (Rs.14,400/- x 15)
Loss of estate	= Rs.20,000/-
Loss of love and affection	= Rs.20,000/-
Obsequial ceremonies	= Rs.2,000/-
Total compensation	= Rs.2,58,000/-

The Tribunal has awarded a total compensation of Rs.1,56,400/-. The claimants shall, therefore, be entitled to an additional compensation of Rs.1,01,600/-.

13. Insofar as the Claim Petition No.106 of 1988 is concerned, the Tribunal has assessed the monthly income of the deceased at Rs.450/-. Though the claimants had claimed that the deceased was earning Rs.50,000/-, in the absence of any evidence to establish that the deceased was earning the aforesaid amount, the Tribunal has considered the monthly income of the deceased at Rs.450/-. Having regard to the fact that the accident had taken place in the year 1988, the court is of the view that there is no warrant for interference to the extent of the monthly income as assessed by the Tribunal. However, the dependency loss was required to be considered by taking into account the future prospective income. Accordingly, the future prospective income would come to Rs.450 plus Rs.225 = Rs.675/- per month. The Tribunal has applied a multiplier of 14. Having regard to the fact that the

age of the deceased was 36 years, a multiplier of 15 ought to have been applied. Besides, the Tribunal has awarded Rs.20,000/- towards loss of estate and Rs.2,000/- towards obsequial ceremonies. However, no amount has been awarded under the head of loss of love and affection. Having regard to the fact that the minor children have lost their both parents in the vehicular accident, the Tribunal ought to have awarded some compensation under the head of loss of love and affection. Therefore, compensation of Rs.20,000/- is awarded under the head of loss of love and affection. Accordingly, the total compensation can be worked out as under :

Monthly income	= Rs.450/-
Future prospective income	= Rs.675/- (Rs.450 + Rs.225)
Monthly dependency	= Rs.450/- (Rs.675 – Rs.225/-)
Annual dependency	= Rs.5,400/- (Rs.450/- x 12)
Total dependency	= Rs.81,000/- (Rs.5,400/- x 15)
Loss of estate	= Rs.20,000/-
Loss of love and affection	= Rs.20,000/-
Obsequial ceremonies	= Rs.2,000/-
Total compensation	= Rs.1,23,000/-

The Tribunal has awarded a total compensation of Rs.72,400/-. The claimants shall, therefore, be entitled to an additional compensation of Rs.50,600/-.

14. In the light of the above discussion, the appeals partly succeed and are allowed to the following extent:

The claimants in M.A.C. Petition No.105 of 1988 shall be entitled to recover an additional compensation of Rs.1,01,600/-

with interest at the rate of 7.5% from the date of filing claim petition till realization thereof from the respondents, jointly and severally.

The claimants in M.A.C. Petition No.106 of 1988 shall be entitled to recover an additional compensation of Rs.50,600/- with interest at the rate of 7.5% from the date of filing claim petition till realization thereof from the respondents, jointly and severally.

15. The appeals stand disposed of accordingly.

16. The Registry shall forthwith send back the record and proceedings of the case.

(HARSHA DEVANI, J.)

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