

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**FIRST APPEAL NO. 2922 of 2007****With****FIRST APPEAL NO. 5365 of 2007****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE JAYANT PATEL****and****HONOURABLE MR.JUSTICE G.B.SHAH**

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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 or any order made thereunder ?

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ORIENTAL INSURANCE CO. LTD.....Appellant(s)**Versus****KAPILABEN RAMESHBHAI & 6.....Defendant(s)**

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Appearance:

MR VIBHUTI NANAVATI, ADVOCATE for the Appellant(s) No. 1
 MR MEHULSHARAD SHAH, ADVOCATE for the Defendant(s) No.1-4
 RULE SERVED for the Defendant(s) No. 5 - 7

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CORAM: HONOURABLE MR.JUSTICE JAYANT PATEL**and****HONOURABLE MR.JUSTICE G.B.SHAH****Date : 31/03/2015****ORAL JUDGMENT****(PER : HONOURABLE MR.JUSTICE JAYANT PATEL)**

1. Leave to delete appellant no.5 of FA No.5365/07,

since, as stated by Mr. Shah, he has expired and the other legal heirs of the deceased-claimants are already there on record.

2. As both the appeals arise from the common judgment and award passed by the Tribunal, they are being considered simultaneously. Both the appeals are directed against the common judgment and award passed by the Tribunal in MACP No.761/04, whereby the Tribunal has awarded compensation of Rs.19,07,000/- with interest at the rate of 9% p.a.

3. The short facts of the case appear to be that deceased Rameshbhai Ishwarbhai was going as pedestrian with complainant Kanubhai for the evening walk and when they reached near Saibaba Mandir, at Lakhwad road of taluka Mehsana, one jeep bearing registration No.GJ-2Y-4506 dashed to the deceased Rameshbhai and he was thrown away and he sustained injuries and he succumbed to the injuries. It may be recorded that in the said accident, the other persons of the vehicle were also injured and they also filed claim petitions, but as in the present appeals, it is restricted to the claim petition filed by the dependent members of family of deceased Rameshbhai, we find it appropriate not to discuss the facts and circumstances of the other claimants in the respective petitions. On account of the aforesaid accident and death of Rameshbhai, claim petition was filed, being MACP No.761/04, by the

dependent members of the family of the deceased for compensation of Rs.35,00,000/-. The Tribunal at the conclusion of the claim petition, together with the other connected claim petitions arising from the accident, passed the common judgment and award and so far as the present claim petition being MACP No.761/04 is concerned, as recorded earlier, the amount of compensation awarded is of Rs.19,07,000/- with interest at the rate of 9% p.a. It is under these circumstances, the insurance company of the jeep has preferred First Appeal No.2922/07 for reduction of the amount of compensation, whereas, the original claimants have preferred First Appeal No.5365/07 for enhancement of the compensation.

4. We have heard Mr. Nanavati for Oriental Insurance Co. Ltd. and Mr. Mehul Sharad Shah for the original claimants appears in the respective matters for the concerned parties.
5. It was contended by the learned counsel for the insurance company that the Tribunal has awarded higher amount of compensation and the assumption of income as well as assessment of the compensation towards economic loss and under other heads is much on higher side and therefore, this Court may reduce the quantum of compensation suitably.
6. Whereas, learned counsel for the original claimants submitted that the quantum of

compensation awarded by the Tribunal is on much lower side and is not as per the settled legal position as held by the Apex Court in the case of Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr. reported at (2009) 6 SCC 121 and he submitted that neither prospective income nor appropriate multiplier has been applied by the Tribunal and hence, the compensation deserves to be enhanced.

7. The examination of the aforesaid contention raised by the learned counsel appearing for the respective parties shows that as per the Tribunal, the income assessed was Rs.18,870/- based on the salary slip and thereafter, the Tribunal assessed income at Rs.17,000/- per month. The Tribunal has also not considered the prospective income though the deceased was aged 48 years.

8. It is undisputed position that the deceased was working as Bank Manager and his salary was Rs.18,870/-. Therefore, in our view, it was required for the Tribunal to consider the actual income as per the salary slip at the time of death, more particularly, in view of no evidence on record showing that amount of the salary slip could not be considered as the income. As the deceased was aged 48 years, even if the observations made by the Apex Court in the case of Sarla Verma (supra) are considered for the purpose of prospective income, in any case, he

would be entitled to 30% rise and such amount shall be Rs.5,661/- and accordingly, the prospective income can be assessed at Rs.24,531/- p.m.

9. Out of the aforesaid amount, the deduction towards income tax would be required to be considered. The date of the accident is 30.05.2004 and during the said period of 2004-2005, the exemption limit under the Income Tax Act was Rs.50,000/- and therefore, on the amount above Rs.50,000/-, there would be taxable liability and the income tax may be payable subject to the provisions of deduction on account of the investment in PPF, GPF, etc. Further, after 2004-2005, there is substantial rise in the exemption limit as well as the tax slabs have also gone substantially down. Therefore, considering the overall facts and circumstances, the deduction towards income can be considered at the rate of 10% above the amount of Rs.50,000/-. If the prospective income is considered as Rs.24,531/- per month, as observed earlier, the yearly income would be Rs.2,94,372/- minus the amount of Rs.50,000/- and such amount would be Rs.2,44,372/- and towards 10% deduction, it would be Rs.24,437/-. So it can be rounded off to Rs.24,000/-. Hence, monthly it would be Rs.2,000/-. Accordingly, the net income after deduction of income tax can be considered at Rs.22,531/- per month.
10. The Tribunal has considered the agricultural

income at Rs.1,000/- per month to which we find no case for interference, more particularly because there was no evidence produced by showing the voucher or bills for sale of agricultural products, etc. In any case, the amount of Rs.1,000/- in the year 2004 could be considered towards loss of supervision in the agricultural activity and as the Tribunal has already assessed the said amount, we do not find it proper to interfere with the same. Accordingly, the amount of agricultural income can be considered at Rs.1,000/- per month and in any case, there will not be any deduction towards income tax over the said amount. Hence, the prospective income after including the agricultural income can be considered at Rs.23,531/- per month which will be the income after deduction of income tax.

11. As per the decision of the Apex Court in the case of Sarla Verma (supra), if the number of claimants were from 4-6 (in the present case 6), $\frac{1}{4}^{\text{th}}$ of the amount would be required to be deducted towards personal expenses and $\frac{1}{4}^{\text{th}}$ of the said amount of Rs.23,531/- per month would come to Rs.5,893/- and accordingly, the balance $\frac{3}{4}^{\text{th}}$ of the amount would come to Rs.17,638/- per month and if multiplied by 12, it would be Rs.2,11,656/- per year for the purpose of dependency benefit. As the deceased was aged 48 years, the appropriate multiplier would be 13 and hence, the total amount towards future economic loss can be assessed at Rs.27,51,528/- (2,11,656

x 13) as against the amount assessed at Rs.18,72,000/- by the Tribunal.

12. It further appears that the Tribunal has awarded amount of Rs. 10,000/- towards loss of estate, Rs.10,000/- for loss of love and affection, Rs.10,000/- towards loss of consortium and Rs.5,000/- towards funeral expenses, which we find on lower side. Considering the recent trend of the Apex Court, we find it appropriate to award Rs.1,00,000/- under the head of loss of estate, loss of consortium and loss of love and affection and Rs.10,000/- towards funeral expenses. If the aforesaid amount is added to the earlier amount of future economic loss, the total would come to Rs.28,61,528/- as against the award passed by the Tribunal for Rs.19,07,000/-. Under the circumstances, the award passed by the Tribunal would be required to be modified.

13. In view of the aforesaid observations and discussions, it is held that the original claimants shall be entitled to the compensation of Rs.28,61,528/- with the interest at the rate of 9% p.a. from the date of the application until the amount is paid or deposited with the Tribunal together with the accrued interest if the amount is deposited with the Tribunal and invested.

14. The judgment and award of the Tribunal shall stand modified accordingly. First Appeal No.2922/07 shall stand dismissed. First Appeal No.5365/07 shall stand partly allowed to the

aforesaid extent. Considering the facts and circumstances, no order as to costs.

(JAYANT PATEL, J.)

(G.B.SHAH, J.)

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