

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**  
**R/FIRST APPEAL NO. 187 of 2003**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MR.JUSTICE A.G.URAIZEE**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	NO
2	To be referred to the Reporter or not ?	NO
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

UNITED INDIA INSURANCE CO LTD.

Versus

MANJULABEN BABUBHAI PATEL & 8 other(s)

Appearance:

MR VIBHUTI NANAVATI for the Appellant(s) No. 1

DELETED for the Defendant(s) No. 6,7

NOTICE SERVED for the Defendant(s) No. 8,9

SERVED BY AFFIX(N)(7) for the Defendant(s) No. 1,2,3,4,5

**CORAM: HONOURABLE MR.JUSTICE A.G.URAIZEE**

**Date : 16/08/2016**

**ORAL JUDGMENT**

1. The present appeal under Section 173 of the Motor Vehicles Act, 1988 (herein after referred to as “M.V. Act”) is filed against the judgment and award dated 11.07.2002 passed by learned MACT (Aux.) Court No.18, Ahmedabad in MACP No.459 of 1998 so far as it relates to quantum of compensation.

2. The facts in nutshell giving rise to the present appeal are that there was an accident between scooter bearing registration No. GJ-1-AF-5466 and trailer truck bearing registration No. HR-51-GA-669. It is alleged in the claim petition that on 7.1.98, while the scooter was being driven by Jagdishbhai Tribabhai Patel, original opponent no.4 and deceased Babubhai Patel was on the pillion seat of the Scooter, opponent no.1 driver of the offending truck trailer bearing registration No. HR-51-GA-669 came in a rash and negligent manner and collided with the scooter—Babubhai Patel sustained fatal injuries and died. The respondent Nos. 1 to 5 being the legal heirs of the deceased, filed MACP No.459 of 1998 in the Motor Accident Claim Tribunal, Ahmedabad to claim compensation of Rs.18 lac. The learned Tribunal by the impugned order, judgment and award attributed sole negligence on the part of the driver of the offending trailer truck which was insured with the present insurance company, and accordingly, directed the present insurance company along with respondent No.7 herein, and the appellant to pay a compensation of Rs.9,95,000/- jointly and severally exonerated rest of the respondents.

3. The appellant-insurance company being unhappy with the quantum of compensation has preferred the present appeal. To understand the compensation awarded by the Tribunal to the extent of Rs.3,25,000/-.

4. I have heard Mr. Nanavati, learned advocate for the appellant-insurance company. There is no appearance on behalf of respondents despite service of notice of admission.

5. It is the contention of Mr. Nanavati that the Tribunal ought to have assessed Rs.25,000/- as annual income of the deceased and ought to have 30% of prospective income thereto, and accordingly, the Tribunal ought to have calculated the compensation under the provisions, which would have come to figure of Rs. 3 lac. He, therefore, submits that the impugned judgment of the Tribunal may be modified accordingly and the awarded compensation may be reduced.

6. Having heard learned advocate for the appellant and having perused the impugned judgment and award. It appears that the respondent Nos. 1 to 5 had claimed compensation of Rs. 18 lac on the ground that the deceased was doing agricultural work and was also doing business of selling milk. To substantiate their say the claimants had produced revenue record.

7. The Tribunal has recorded the findings that the agricultural land did not belong exclusively to the deceased, as his father and through two brothers were also co-owner in the said ancestral agricultural land. The claimants had produced documentary evidence to established on record in the year

1997. The deceased had sold grain worth Rs.2,25,000/- accordingly by dividing the said income in three parts. The Tribunal came to the conclusion that the annual income of the deceased was Rs.75,000/-.

8. In my view the Tribunal has clearly fallen in error in assessing the annual income of deceased of Rs.25,000/- on the basis of grains sold by the deceased. Here also the Tribunal has committed an error in dividing this income in three parts instead of four parts, because according to the Tribunal itself there are three or four co sharers i.e. the deceased, his father and two brothers, and therefore, Rs.56,250/- would have come to the share of the deceased.

9. It is clear from the appeal memo that from the averments made in the present appeal that according to the appellant-insurance company the Tribunal ought to have taken annual income of Rs.60,000/- from all sources and the Tribunal ought to have awarded a sum of Rs.6,50,000/- under the head of loss of dependency with a further sum of Rs.20,000/- as conventional amount. Thus the Tribunal ought to have awarded 6,20,000/- to the claimants. It is therefore clear that the appellant-insurance company has challenged the judgment and award of the Tribunal to the extent of Rs.3,25,000/-. Hence, the contention of Mr. Nanavati, learned advocate for the appellant to asses the annual income of the deceased at

Rs.24,000/- cannot be accepted.

10. As discussed herein above, the Tribunal has taken the documents of the grains sold by the deceased on the basis arrived at, the annual income of the deceased is Rs.75,000/-. In my view the basis adopted by the Tribunal for determining the annual income of the deceased does not warrant any interference in this appeal, but, the Tribunal has fallen in error in dividing Rs.2,25,000/- for grains sold by the deceased in three equal shares instead of four equal shares, and therefore, if Rs.2,25,000/- is divided by 4, the shares of the deceased would come to Rs.56,250/- and not Rs.75000/- as assessed by the Tribunal. There is no cavil that the deceased was aged 45 years at the time of his death. Hence, as per the settled proposition of law 30% is required to be added to the annual income of the deceased as prospective income. Accordingly, prospective income of the appellants would come to Rs. 72,800/- from which  $1/3^{\text{rd}}$  is required to be deducted towards the personal expenses of the deceased. Hence, the dependency of the claimants would come to Rs.24,266/-p.m. Accordingly, the annual dependency of the claimants would come to Rs.48,534/-. I am of the opinion that the Tribunal has rightly adopted multiplier of 13 in looking to the age of the deceased. Accordingly, the claimants are entitled to  $\text{Rs.}48534 \times 13 = \text{Rs.}6,30,942/-$  towards the dependency loss.

11. The Tribunal has awarded a sum of Rs.20,000/- towards loss of expectation of life. This compensation according to me is on the lower side and it should be Rs.70,000/- to cover compensation under all the conditional heads. The claimants, therefore, entitled to Rs.7,00,942/- as compensation.

12. For the foregoing reasons, the appeal is partly allowed. The judgment and award dated 11.07.2002 passed by the Tribunal is hereby modified and the claimants are held entitled to Rs.7,00,942/- as compensation with 9% interest in place of Rs.9,95,000/- awarded by the Tribunal.

13. Amount, if lying in this Court, is ordered to be transmitted to the Tribunal.

14. Excess amount, if lying with the Tribunal be refunded to the appellant-Insurance Company with accrued interest, if any.

15. Parties are left to bear their own costs.

16. Record and Proceedings, be transmitted to the Tribunal forthwith.

**(A.G.URAIZEE, J)**

Manoj