IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 697 of 2006

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS JUSTICE SONIA GOKANI

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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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HASMUKHKUMAR AMRUTLAL BRAHMBHATT
Versus
KADARKHAN DHANNEKHAN CHAUHAN (DRIVER OF GJ-1-Z-677)

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Appearance:
MR YOGENDRA THAKORE for the PETITIONER(s) No. 1,2
NOTICE SERVED(4) for the RESPONDENT(s) No. 2
RULE NOT RECD BACK for the RESPONDENT(s) No. 1

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CORAM: HONOURABLE MS JUSTICE SONIA GOKANI

Date : 23/06/2017

ORAL JUDGMENT

1. The appellants being aggrieved by and dissatisfied with judgment and award dated December 15, 2005, rendered by the learned Motor Accident Claims Tribunal (Auxiliary), Mahesana,

while dealing with M.A.C.P. No.329 of 1996, to the extent the learned Tribunal has granted lesser amount of compensation to the appellants, have preferred present appeal under section 173 of the Motor Vehicles Act, 1988.

It would be apt to regurgitate the reliefs prayed for by the appellants, which *inter alia* read as under :

> *"8(B) To enhance the compensation at the rate of Rs.20,000/- per annum and to consider the 2/3rd part of annual income to family dependency instead of 1/3rd part of annual income to family dependency as granted in MACP No.329/1996 and to pay all consequential (sic) orders.*
>
> *(C) To call for records and proceeding of MACP No.329/1996 from Motor Vehicle Accident Tribunal (Auxiliary) at Mehsana."*

2. It is the case of the appellants who are the parents of the deceased Ankit, who on the fateful day i.e. on December 30, 1995, was going on his bicycle to his friend's place, who was residing at the quarters of the Kheralu Civil

Hospital. While his returning home at around 03-45 p.m., near the main gate of Milk Cold Storage Centre, the respondent No.1-driver of a State Transport Bus had dashed with the bicycle of Ankit, resulting into his death.

2.1 The parents of the deceased Ankit had approached the Motor Accident Claims Tribunal (Auxiliary) at Mahesana (hereinafter referred to as 'the Tribunal') by way of preferring Motor Accident Claims Petition No.329 of 1996, both on the ground of negligence and also on the ground of the amount of compensation. The Court permitted the parties to adduce evidence and on the strength thereof, the respondent No.1 i.e. driver of the S.T. Bus bearing Registration No.GJ-1-Z-677 replied to the same and consequently, the owner of the said bus i.e. respondent No.2 herein, has been held responsible.

2.2 So far as the amount of compensation is concerned, the Tribunal had calculated the income of the deceased to be Rs.15,000/- per

annum as his notional income. Thereafter, deducting 2/3rd of his income as personal expenses, the family dependency has been calculated at the rate of Rs.5,000/- per annum. The Tribunal after taking the multiplier of 15 granted total amount of Rs.75,000/- towards family dependency. Insofar as loss of estate and loss of expectation of life, it has granted Rs.25,000/- and for pain, shock and suffering, it has granted an amount of Rs.25,000/-; and in respect of funeral expenses, the Tribunal has granted an amount of Rs.5,000/-. Thus, the Tribunal has granted total amount of Rs.1,30,000/- to the original claimants along with interest at the rate of 9% per annum. Hence, present appeal.

3. The aggrieved appellants are before this Court urging that the calculation made while granting compensation is contrary to the settled principles of law. It is also urged that the deceased was aged 11 years and the personal expenses which have been calculated by the Tribunal are quite on higher side. So far as the

challenge to the conclusion of the issue of negligence is concerned, the respondent No.2 i.e. owner of the GSRTC, has not filed any appeal and the said aspect remains unchallenged.

4. The short issue that arises for consideration before this Court is as to whether the amount granted by the Tribunal by the impugned judgment and award deserves any interference.

5. This Court has heard Shri Yogendra Thakore, learned counsel appearing for the appellants, who has urged that in the case of similarly situated appellants, this Court had already granted higher amount of compensation following various decisions of the Apex Court and, therefore, this Court needs to interfere at an appellate stage.

6. It is to be noted that both respondent Nos.1 and 2 have been served duly. However, none of them has chosen to represent the respondent-Gujarat State Road Transport Corporation. A request was made by this Court to the learned counsel Shri G.M. Joshi, who is an empanelled advocate of the

respondent-GSRTC, to appear in this matter, so that the right of neither side is jeopardised. However, none has remained present either for respondent No.1 or for respondent No.2.

7. This Court has perused the record and proceedings of M.A.C.P.No.329 of 1996. It can also be seen from the said record that the respondent No.1 has been prosecuted for the alleged death of Ankit. The chargesheet had culminated into Criminal Case No.36 of 1996, which is also forming part of the record. Eventually, the criminal matter has resulted into granting benefit of doubt to the respondent No.1 for want of sufficient evidence. The casual connection of the death of Ankit in a vehicular accident is duly established and, therefore, the Tribunal has held the respondent No.1 to be rash and negligent in driving the vehicle being the bus owned by the respondent No.2-GSRTC. The hardship would have no bearing so far as MACP is concerned. This Court needs to peruse the panchnama and other documentary evidence, including the *post-mortem* note. There being no

challenge eventually to the aspect of rashness and negligence in driving the vehicle, this issue may not be gone into.

8. As can be seen from the record, the death of son of the appellants was spontaneous due to various injuries to the vital organs of his body, including brain. The *post-mortem* report concludes that the death of Ankit has been caused on account of shock due to injuries to the vital organs, brain and associated haemorrhage due to the injuries. The appellants had only one son and two daughters. He was studying in Standard 6. He had obtained A Grade marks in Standards 4,5 and 6 as 82%, 85% and 93.49% respectively. Mathematics being his favourite subject, he used to get full marks i.e. 100 marks out of 100 marks. The evidence is also indicative that he being the only son, his death was a major shock to his parents.

9. At this stage, the decision of the Apex Court in the case of ***Kishan Gopal and others v. Lala and***

others[1], deserves consideration, wherein there was a death of 10 years old child travelling in a trolley of the tractor. While calculating compensation, the Court had referred to the decision of the Apex Court in the case of ***Lata Wadhva and others v. State of Bihar and others***[2], to observe that had the deceased boy alive, he would have contributed substantially to the family by working hard. In that view of the matter, it would be just and reasonable to take his notional income at Rs.30,000/- and taking the age of the mother at the time of accident, the multiplier of 15 can be applied to the multiplicand, making it to be Rs.4,50,000/- and Rs.50,000/- had been given under the conventional heads towards loss of love and affection, funeral expenses, last rites as held in ***Kerala SRTC v. Susamma Thomas***[3].

10. So far as decision in the case of ***Lata Wadhwa (supra***) is concerned, wherein while 150th

1 ***(2014) 1 SCC 244***

2 ***(2001) 8 SCC 197***

3 ***(1994) 2 SCC 176***

Birth Anniversary of Sir Jamshedji Tata, was being celebrated on March 03, 1989 within the factory premises and a large number of employees, their families including little children had been invited, but the organisers had not taken adequate safety measure and on the other hand, several provisions of the Factories Rules and Factories Act had been grossly violated. A devastating fire engulfed the VIP Pandal and area surrounding and by the time the fire was extinguished, a number of persons lay dead and many were suffering with burn injuries. Some of the injured also died on the way to the hospital or while being treated as the hospital. The death toll reached 60 and the total number of persons injured were 113. Amongst the persons dead, there were 26 children 25 women and 9 men. It was also stated that out of the 60 persons, who died, 55 were either employees or relations of employees of the Tata Iron and Steel Company and similarly, out of 113 persons injured, 91 were either employees or their relations. Smt. Lata Wadhwa, the petitioner No.1, lost her both

the children, a boy and a girl and her parents. A writ petition was made claiming compensation by various persons whose kiths and kins had suffered various injuries and even death in the said incident, wherein the Apex Court has held that in case of the death of an infant, there may have been no actual pecuniary benefit derived by its parents during the child's lifetime. But this will not necessarily bar the parents' claim and prospective loss will found a valid claim provided that the parents establish that they had a reasonable expectation of pecuniary benefit if the child had lived. At the same time, it must be held that a mere speculative possibility of benefit is not sufficient. The Apex Court further held that in examining the question of damages for personal injury, it is axiomatic that pecuniary and non-pecuniary damages are required to be taken into account. In case of pecuniary damages, loss of earning or earning capacity, medical, hospital and nursing expenses, the loss of matrimonial prospects, if provided, are required to be

considered. In the case of non-pecuniary losses, loss of expectation of life, loss of amenities or capacity for enjoying life, loss or impairment of physiological functions, impairment or loss of anatomical structures or body tissues, pain and suffering and mental suffering are to be considered. But for arriving at a particular figure on each of the aforesaid head, the claimant is duty bound to produce relevant materials, on the basis of which, a determination could be made, as to what would be the best compensation.

11. In the decision of the Apex Court in the case of ***Reshma Kumari and others v. Madan Mohan and another***[4], wherein the age of deceased was less than 15 years, irrespective of whether the claim is under section 166 or 166-A of the Act, the multiplier of 15 and assessment as indicated in Schedule II subject to correction as pointed out in Column (6) of Table in the decision of the Apex Court in the case of ***Sarla Verma v.***

4 ***(2013) 9 SCC 65***

Delhi Transport Corporation and another[5], was followed.

Apt it would be to regurgitate the relevant observations of the decision in the case of ***Reshma Kumari (supra***), which read as under :

> *"37. If the multiplier as indicated in Column (4) of the table read with paragraph 42 of the Report in Sarla Verma is followed, the wide variations in the selection of multiplier in the claims of compensation in fatal accident cases can be avoided. A standard method for selection of multiplier is surely better than a criss-cross of varying methods. It is high time that we move to a standard method of selection of multiplier, income for future prospects and deduction for personal and living expenses. The courts in some of the overseas jurisdictions have made this advance. It is for these reasons, we think we must approve the table in Sarla Verma for the selection of multiplier in claim applications made under Section 166 in the cases of death. We do accordingly. If for the selection of multiplier, Column (4) of the table in Sarla Verma is followed, there*

5 ***(2009) 6 SCC 121***

is no likelihood of the claimants who have chosen to apply under Section 166 being awarded lesser amount on proof of negligence on the part of the driver of the motor vehicle than those who prefer to apply under Section 163A. As regards the cases where the age of the victim happens to be upto 15 years, we are of the considered opinion that in such cases irrespective of Section 163A or Section 166 under which the claim for compensation has been made, multiplier of 15 and the assessment as indicated in the Second Schedule subject to correction as pointed out in Column (6) of the table in Sarla Verma17 should be followed. This is to ensure that claimants in such cases are not awarded lesser amount when the application is made under Section 166 of the 1988 Act. In all other cases of death where the application has been made under Section 166, the multiplier as indicated in Column (4) of the table in Sarla Verma17 should be followed.

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43. In what we have discussed above, we sum up our conclusions as follows:

43.1 In the applications for compensation made under Section 166 of the 1988 Act in death cases where the age of the deceased

is 15 years and above, the Claims Tribunals shall select the multiplier as indicated in Column (4) of the table prepared in Sarla Verma (AIR 2009 SC 3104 : 2009 AIR SCW 4992) read with para 42 of that judgment.

43.2 In cases where the age of the deceased is upto 15 years, irrespective of the Section 166 or Section 163A under which the claim for compensation has been made, multiplier of 15 and the assessment as indicated in the Second Schedule subject to correction as pointed out in Column (6) of the table in Sarla Verma should be followed.

43.3 As a result of the above, while considering the claim applications made under Section 166 in death cases where the age of the deceased is above 15 years, there is no necessity for the Claims Tribunals to seek guidance or for placing reliance on the Second Schedule in the 1988 Act.

43.4 The Claims Tribunals shall follow the steps and guidelines stated in para 19 of Sarla Verma for determination of compensation in cases of death.

43.5 While making addition to income for future prospects, the Tribunals shall

follow paragraph 24 of the judgment in Sarla Verma.

43.6 Insofar as deduction for personal and living expenses is concerned, it is directed that the Tribunals shall ordinarily follow the standards prescribed in paragraphs 30, 31 and 32 of the judgment in Sarla Verma subject to the observations made by us in para 38 above.

43.7 The above propositions mutatis mutandis shall apply to all pending matters where above aspects are under consideration."

12. In the decision of the Apex Court in the case of ***Sarla Verma (supra***), wherein while considering the income of the deceased bachelor or minor, the Apex Court has observed and held as under :

"31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of

his getting married in a short time, in which event the contribution to the parents and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependent and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependent on the father.

32. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependent, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third."

13. At this stage, a reference is also made to the decision of the Apex Court in the case of ***Rajesh v. Rajbir Singh***[6], wherein the Apex Court has granted an amount of Rs.1 lakh under the head of loss of life and affection, as also loss of estate.

14. A reference also to the decision of this Court (*Coram : M.R. Shah, J.*) rendered on January 22, 2016 in the case of ***Heirs of Decd. Nikhilkumar Madhusudan v. Vejaraja Mer***[7], would be needed, wherein this Court was dealing with a matter, wherein this Court calculated the income of the deceased to be Rs.3,000/- per month and the dependency has been considered to the tune of Rs.27,000/- per month, and applied the multiplier of 15 and thereby, granted an amount of Rs.4,86,000/-. Further, under the conventional head granted an amount of Rs.50,000/- and Rs.2500/- towards the funeral expenses i.e. total Rs.5,38,500/- along with interest at the rate of 9% per annum. The

6 ***(2013) 9 SCC 54***

7 ***2016 JX (Guj.) 108***

original claimants were permitted to amend the claim in appeal, subject to payment of additional Court fees.

15. Applying the decisions of the Apex Court in the case of ***Lata Wadhwa (supra***) and ***Kishan Gopal (supra)*** to the facts of the present case, this Court is of the opinion that the notional income of the deceased Ankit is considered to be Rs.30,000/- applying the ratio of the decision in the case of ***Lata Wadhwa (supra***); and if the $1/3^{rd}$ income is deducted towards his personal expenses i.e. Rs.10,000/-, the dependency amount would come to $2/3^{rd}$ i.e. Rs.20,000/- with multiplier of 15 i.e. Rs.20,000/- x 15 = Rs.3,00,000/-, and an amount of Rs.1 lakh under the head of loss of love and affection deserves to be granted in view of above cited decisions. Thus, the appellants would be entitled to receive total compensation of Rs.3,00,000/- + Rs.1,00,000/- i.e. Rs.4,00,000/- with interest at the rate of 9% *per annum* from the date of the application till its realisation, subject to payment of Court fees on the enhanced amount of

compensation above the amount claimed in the appeal and for that purpose, the appellants-original claimants are permitted to amend the claim in the present appeal to Rs.5,00,000/- and they shall pay the additional Court Fees on such claim of Rs.5,00,000/- (after deducting the Court fees already paid) within a period of two weeks from the date of receipt of a copy of this order.

16. For the foregoing reasons, the present appeal succeeds and the same is, accordingly, partly allowed. The impugned judgment and award dated December 15, 2005, rendered by the learned Motor Accident Claims Tribunal (Auxiliary), Mahesana, while dealing with M.A.C.P. No.329 of 1996, is hereby modified to the extent that the appellants now shall be entitled to an amount of Rs.4,00,000/- with interest at the rate of 9% thereon from the date of the claim petition till its realisation, subject to their amending the appeal enhancing the claim and making payment of additional Court Fees as aforesaid.

16.1 The respondent-insurer is directed to deposit the balance enhanced amount of compensation with the learned Tribunal within a period of four weeks from the date of receipt of a copy of this order and on such deposit, the same shall be paid to the appellants by way of an account pay cheque on due identification.

Disposed of accordingly. There shall be, however, no order as to costs.

(MS SONIA GOKANI, J)

Aakar