

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/FIRST APPEAL NO. 905 of 2011****With****R/FIRST APPEAL NO. 2146 of 2011****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE A.G.URAIZEE**

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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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NATIONAL INSURANCE COMPANY LIMITED**Versus****LEGAL HEIRS OF DECEASED JAYANTIBHAI KANTILAL GANDHI &
2 other(s)**

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Appearance:**MR MAULIK J SHELAT(2500) for the Appellant(s) No. 1****MR MTM HAKIM(1190) for the Defendant(s) No.****1.1,1.2,1.3****RULE SERVED for the Defendant(s) No. 1.1,1.2,1.3,2,3**

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CORAM:HONOURABLE MR. JUSTICE A.G.URAIZEE**Date : 23/02/2017****COMMON ORAL JUDGMENT****1. These two appeals, one at the instance of the**

Insurance company and the other at the instance of the claimants are directed against the selfsame judgment and award dated 13.09.2010 passed by the Motor Accident Claim Tribunal (Aux.), Himmatnagar-Camp at Idar in Motor Accident Claim Petition No.1182 of 2005. Therefore are being disposed of analogously by this judgment.

2. The Insurance Company has preferred First Appeal No.905 of 2011 to assail the impugned judgment and award on the ground that the deceased - driver of the scooter was also contributorily negligent for the accident.
3. That the claimants have preferred the First Appeal No.2146 of 2011 for enhancement of compensation.
4. The facts in brief are that the deceased Jayantilal Kantilal Gandhi, husband of claimant No.1 - Vimlaben Jayantilal Gandhi, and father of claimant No.2 - Jigneshkumar Jayantilal Gandhi and Claimant No.3 - Umang Jayantilal Gandhi had gone to Idar on 23.08.2005 on his scooter bearing registration No.GJ-9-B-1170 with one Rajubhai Parmar who was riding pillion. The deceased took turn on Bhiloda three road to go to Pathik Petrol Pump. At that time a Jeep bearing registration No.GJ-9B-2663 came from Idar side with an excessive speed and dashed with the scooter when it had almost reached the

Pathik Petrol Pump. Deceased Jayantilal suffered fatal injury on his head and other parts of the body and became unconscious. He was taken to Idar Hospital but as his condition was critical he was shifted to Apollo Hospital, Ahmedabad where he was treated from 23.08.2005 to 25.08.2005. As there was no improvement in his condition, he was discharged and was taken to Civil Hospital, where he breathed his last on 26.08.2005. At the relevant time, the offending jeep was driven by the respondent no.1 and it was ownership of respondent No.2 and was insured with the respondent No.3. The wife and two sons of the deceased therefore, preferred a claim petition before the Motor Accident Claim Tribunal, Himmatnagar being Motor Accident Claim Petition No.1182 of 2005 to recover Rs.10,00,000/- as compensation. The tribunal by impugned judgment and award has partly allowed the claim petition and has directed the respondents to pay a sum of Rs.7,21,175/ with 9% interest and proportionate cost to the claimant jointly and severally. The Insurance Company as well as claimants are not happy with the impugned judgment and therefore, these two appeals.

5. I have heard Mr. M.T.M. Hakim, learned advocate for the claimants and Mr. Maulik J. Shelat, learned advocate for the Insurance Company. There is no representation on behalf of the

other respondents despite service of notice.

6. Mr. Shelat, learned advocate for the Insurance Company has vehemently urged that the tribunal has committed an error in not attributing contributing contributory negligence on the part of the deceased. It is his submission that the accident had happened in the middle of the road, as can be seen from the Panchnama of place of accident and therefore, the deceased was contributorily negligent to the extent of 50% to the occurrence of the accident. It is his further submission that the tribunal ought not to have considered income tax return of the year 2005-06 which was filed long after happening of the accident. He therefore urges that the appeal may be allowed and compensation awarded by the tribunal may be reduced appropriately.

7. Mr. Hakim, the learned advocate for the claimants submits that the tribunal has considered all the relevant aspects and has rightly not attributed negligence part on the deceased. It is his further submission that the tribunal has not awarded compensation for medical expenses, though the medical bills to the tune of Rs.1,23,122/- were produced on record of the claim petition vide Exh.33. He also submits that the tribunal has awarded a very conservative amount under the head of enjoyment of life. He therefore, urges that the

compensation may be enhanced appropriately.

8. The first question that the Court is required to address is the question whether there is any error in not attributing contributory negligence on the part of the deceased.
9. As per the case of the claimants, the accident had happened when the deceased took a turn to go to Pathik Petrol Pump for filling petrol when the offending jeep came from the opposite direction and hit the scooter. For deciding this issue the panchnama of place of accident Exh.28 is very important document as the claimants are not the eye witness but Rajubhai Dahyabhai Parmar who was riding pillion is examined by the Exh.37.
10. As per the evidence of Rajubhai, the accident had happened after the scooter had crossed the road and had almost reached the petrol pump. It is true that in the cross examination he has stated that he had told the deceased that the jeep was coming from the opposite direction. The evidence of this witness has to be read in conjunction Exh.37 panchnama, which reveals that the offending jeep had come from the Idar side whereas the Pathik Petrol Pump is located on the western side of the road. It appears that the deceased had come from the norther direction and had taken turn towards western side to go to Pathik Petrol Pump. The width of the road is twenty four feet and the

scooter was found lying past Pathik Petrol Pump. Moreover, it emerges from the Panchnama that the scooter was dragged for about four feet and was severely damaged. It also emerges from the Panchnama that the scooter was found almost near the edge of the road. Therefore, the contention of Mr. Shelat that the accident had happened in the middle of the road does not find any support from the Panchnama of place of accident. The tribunal has considered the documentary as well as oral evidence to record the finding in the impugned judgment and award that the jeep driver is solely negligent and responsible for the accident and therefore, I am of the view that considering the facts of the present case contributory negligence cannot be attributed to the deceased and tribunal had not committed any error in holding that Driver of the jeep is solely responsible for happening of the accident.

11. So far as the quantum of compensation is concerned, it was the case of the claimants that the deceased was running business of Mandap Decoration under the name and style of Paras Mandap Decoration. They have produced income tax return of First Year 2004-05 which was filed wherein the income was mentioned as Rs.59,162/- and in the income tax return for the subsequent year 2005-06 the income of Rs.12,100/- was disclosed. The accident had happened on

23.08.2005. The tribunal thought it fit to assess the monthly income of Rs.8500/- being impressed by the return of year 2005-06. The Supreme Court of India in the case of **V. Subbulakshmi and Others Versus S.Lakshmi and Another, 2008 (4) SCC 224**, held that the income tax return after the death cannot be considered for assessing income of the deceased.

12. I am therefore, of the opinion that the tribunal has fallen in considering the income tax return for the year 2004-05 and ought to have assessed the income of the deceased on the basis of the income tax return of the year 2003-04. As noted herein above in the said return Rs.59,162/- is disclosed as the income and therefore, I am of the view that the monthly income ought to have been assessed at Rs.5000/- per month and Rs.60,000/- per annum.

13. In the case of **Rajesh and others Versus Rajbir Singh & Ors., 2013 (9) SCC 54**, the Supreme Court has held that even in case of self employed person, prospective income is required to be considered. In the present case, deceased was around 57 years at the time of accident. I am of the view that 15% is required to be added to the monthly income for determining the income of the prospective income. Therefore, Rs.9000/- is required to be added to Rs.60,000/-. The prospective income, therefore, would come to

Rs.69,000/- per annum.

14. The tribunal has deducted 1/4th towards personal expenses of the deceased to consider the dependency. In view of the Supreme Court in case of **Sarla Varma and Others Versus Delhi Transport Corporation and Another, (2009) 6 SCC 121**, there are only three dependents so 1/3rd is required to be deducted instead of 1/4th towards the personal expenses of the deceased. Hence, Rs.23,000/- is required to be deducted from Rs.69,000/-. Thus, the annual dependency would come to Rs.46,000/-. In view of Sarla Varma multiplier of nine is required to be adopted. Hence, the claimants are entitled to get [Rs.46,000 X 9] Rs.4,14,000/- under the head of future loss of income .

15. Mr. Hakim, learned advocate for the appellant is right in submitting that the tribunal has given a very conservative amount that the loss of love and affection. As per the settled proposition, I am of the view that the amount of Rs.1,10,000/- inclusive of loss of consortium and funeral expenses would met the ends of justice. It seems that through oversight though the tribunal has recorded Medical Bills which produced vide Exh.33, the tribunal has not awarded any amount towards the reimbursement of medical expenses. It appears that the Claimants had produced medical bill of Rs.1,23,122/-. This

bill reveals that the discount of Rs.27,421/- was given to them. Therefore, the claimants had spent an amount of Rs.95,000/- towards the treatment of the deceased, which is required to reimbursement accordingly. The claimants are entitled to the following as compensation.

Head	Amount of awarded by Tribunal	Amount awarded by this judgment
Future loss of income	Rs.6,99,175/-	Rs.4,14,000/-
Conventional head and Funeral Expenses	Rs.22,000/-	Rs.1,10,000/-
Medical Expenses	-	Rs.95,000/-
Total	Rs.7,21,175/-	Rs.6,19,000/-

16. Thus, the claimants are entitled to get Rs.6,19,100/- as against Rs.7,21,175/- as awarded by the tribunal. Thus, Rs.1,02,175/- is required to be refunded to the Insurance Company. The award is, therefore, reduced to the aforesaid extent. First Appeal No.905 of 2011 is allowed in part.

17. In view of the foregoing reasons, First Appeal No.905 of 2011 is allowed in part. The claimants are held entitled to Rs.6,19,100/- as total compensation instead of Rs.7,21,175/- as awarded by the tribunal. Accordingly, the appellant Insurance Company is entitled to refund of Rs.1,02,175/- with proportionate

interest.

18. The First Appeal No.2146 of 2011 stands dismissed.

19. The tribunal is directed to refund Rs.1,02,175/- with proportionate interest to the Insurance Company and pay the remaining amount to the claimants.

20. Parties to bear their own costs. Record and Proceedings is ordered to be transmitted to the Tribunal forthwith.

(A.G.URAIZEE, J)

Pallavi