

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****FIRST APPEAL NO. 1201 of 2011****FOR APPROVAL AND SIGNATURE:****Sd/-****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

MAKWANA RAMANBHAI PUNABHAI....Appellant(s)

Versus

JOHARBHAI ABBASBHAI DEPUTY & 1....Defendant(s)

Appearance:

MR MTM HAKIM, ADVOCATE for the Appellant(s) No. 1

MR PALAK H THAKKAR, ADVOCATE for the Defendant(s) No. 2

RULE SERVED for the Defendant(s) No. 1

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

**Date : 23/02/2017**

**ORAL JUDGMENT**

The appellant has preferred the present appeal under section 173 of the Motor Vehicles Act, 1988 [hereinafter referred to as 'the M.V.Act' for short] for enhancement of the compensation, which is awarded by the Motor Accident Claims Tribunal (Aux.), F.T.C. No.3, Vadodara in MAC Petition No.193 of 2005 vide order dated 1<sup>st</sup> October 2010.

2 The brief facts giving rise to the present appeal are that the appellant and his wife - Baluben were going to Adiraj on motorcycle bearing registration No.GJ6-MM-376 on 18<sup>th</sup> November, 2004. The appellant was plying the motorcycle while the deceased wife was a pillion rider.

3 When the motorcycle reached near Khandevada Canal on Halol-Vadodara road, respondent no.1 herein came with a Maturi Car bearing registration No.GJ17-C-1555 from Halol side at an excessive speed and in a rash and negligent manner and dashed with the motorcycle. The appellant suffered serious injuries while his wife unfortunately died. The appellant preferred MAC Petition No.193 of 2005 to recover Rs.6 lakhs as compensation from the respondents. He also filed Claim Petition No.195 of 2005 to recover a sum of Rs.5 lakhs as compensation from the respondents for the death of his wife. The Motor Accident Claims Tribunal (Aux.), F.T.C. No.3, Vadodara by a common judgment and award partly allowed the claim petitions. The appellant has preferred the present appeal for enhancement of compensation which is awarded by the Tribunal in MAC Petition No.193 of 2005, which was preferred by the appellant for having suffered bodily injuries in the motor vehicular accident.

4 I have heard Mr Hakim, learned advocate for the appellant and Mr Palak Thakkar, learned advocate for respondent no.2-insurance company. There is no appearance on behalf of respondent no.1.

5 Mr Hakim, learned advocate for the appellant has vehemently urged that the Tribunal has fallen in error in

attributing the multiplier of 5 because the appellant had taken voluntary retirement from his service. He further submits that the appellant had suffered very serious injuries and therefore, the Tribunal ought to have awarded substantial amount under the head of Pain, Shock and Suffering instead of Rs.35,000/-. He, therefore, urges that the appeal may be allowed and the compensation may be enhanced.

6 Mr Palak Thakkar, learned advocate for respondent no.2-insurance company on the other hand, supported the impugned judgment and award. He further submits that the Tribunal has awarded just and reasonable compensation under the head of Pain, Shock and Suffering. It is his further submission that the appellant had not suffered any loss of income and therefore, the Tribunal has rightly adopted the multiplier of 5. He, therefore, urges that the appeal may be dismissed.

7 The main question which requires consideration in this appeal is whether the Tribunal was justified in adopting the multiplier of 5 ignoring the age of the appellant only because on account of the injuries and resultant disability suffered by the appellant in the motor vehicular accident he had to take voluntary retirement from his service.

8 The Tribunal in paragraph no.5 of the impugned judgment and award has taken note of the fact that the appellant took voluntary retirement from service from 2.4.2007. As it did not find any *prima facie* satisfactory evidence that the appellant had to take voluntary retirement from service owing to the injuries and the disablement, it

adopted the multiplier of 5. I am of the view that the reasons adopted by the Tribunal are unjustifiable. Had the claimant continued in service till the disposal of the claim petition, the Tribunal would have adopted the appropriate multiplier keeping in view the age of the claimant. Merely because he took voluntary retirement for any reason, the Tribunal could not have adopted the multiplier of 5. The statement at exhibit 33 reveals that the date of birth of the appellant is 1.6.1959. The accident had happened on 18.11.2004. Therefore, the appellant was around 43 years of age at the time of the accident. Therefore, in view of the decision of Supreme Court in the case of **Sarla Verma v. Delhi Transport Corporation**, (2009) 6 SCC 121 the multiplier of 14 will have to be adopted for considering the future loss of income. Therefore, the appellant would be entitled to get Rs.12,34,674/- under the head of future loss of income as against Rs.4,40,955/-.

9 It appears from the medical report at exhibit 27 issued by Bhailal Amin General Hospital that the appellant had sustained head injury and hemiplegia. The Tribunal has awarded Rs.35,000/- under the head of Pain, Shock and Suffering. Considering the injuries suffered by the appellant, I am of the view that this compensation is just and reasonable and does not warrant any interference.

10 The appellant is, therefore, entitled to get additional amount of compensation of Rs.7,93,719/- under the head of future loss of income along with interest at the rate of 7.5% per annum. The rest of the award is not disturbed.

11 For the foregoing reasons, the appeal is allowed in part.

The judgment and award dated 1.10.2009 passed by the Motor Accident Claims Tribunal (Aux.), F.T.C. No.3, Vadodara in MAC Petition No.193 of 2005 is modified and the appellant is entitled to Rs.12,69,674/- against Rs.4,68,960 awarded by the Tribunal. The respondents are directed to deposit the additional amount of compensation of Rs.7,93,719/- along with interest at the rate of 7.5% from the date of the petition till realisation with the Tribunal at an early date and in any case not later than two months from the date of receipt of certified copy of this order.

12 At this stage, Mr Hakim, learned advocate for the appellant requests that the Tribunal may be directed to disburse the amount of enhanced compensation along with interest to the appellant. If the appellant makes a request in writing to the Tribunal for disbursing the enhanced amount of compensation to the appellant instead of depositing the same in an FDR, the Tribunal shall consider such request keeping in mind the advanced age of the appellant.

Record and proceeding is ordered to be remitted to the Tribunal forthwith.

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

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