

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/FIRST APPEAL NO. 2900 of 2014
With
R/FIRST APPEAL NO. 3065 of 2014

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

and

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

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

MANISHABEN WD-O RAJESHBHAI ALIAS RAJUBHAI PANDOR

Appearance:

MR HS MUNSHAW for the PETITIONER(s) No. 1

MR PARESH M DARJI(3700) for the RESPONDENT(s) No. 1

RULE SERVED(64) for the RESPONDENT(s) No. 2,3,4,5

CORAM: HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

and

HONOURABLE MR.JUSTICE A.G.URAIZEE

Date : 29/06/2017

COMMON ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE A.G.URAIZEE)

1. Both these appeals under Section 173 of the Motor Vehicles Act emanates from the judgment and award passed by the Motor Accidents Claims Tribunal, and therefore, they are being disposed of by this common judgment.

2. First Appeal No.2900 of 2014 is preferred by the ST Corporation to question the quantum of compensation while First Appeal No.3065 of 2014 is preferred by the claimants for enhancement of the compensation.

3. The brief facts giving rise to the appeals as could be seen from the impugned judgment are that the deceased-Rajeshbhai@Rajubhai Pandor, working as a constable, attached to Ahmedabad (Rural) Kalba Police Station, who was the husband and father of respondent Nos. 1, 2 and 3 respectively and son of respondent Nos. 4 and 5, was coming towards Odhav, riding his motorcycle bearing registration No. GJ-01-MF-1090 at about 11.45 p.m. on 21.07.2011, when he was passing by Singarwa junction on Canva-Odhav road, the driver of ST Bus bearing registration No. GJ-18-Y-1135 came in very high and excessive speed from the opposite direction i.e. from the Odhave side and dashed with the motorcycle of the deceased who was riding while overtaking a motorcycle going ahead of the ST Bus. As a result of the ambit of the accident, the deceased fell off from the motorcycle and sustained serious injuries resulting in instantaneous death on the spot.

4. The legal heirs and representatives of the deceased have lost their sole wonder and filed Motor Accident Claim Petition No. 484 of 2011 in the Motor Accident Claims Tribunal, Ahmedabad to recover Rs.40,00,000/- as compensation against the ST Corporation and the driver of the offending bus. The Tribunal

found the driver of the offending ST Bus negligent to the extent of 85% and 15% contributory negligence was attributed to the deceased, and accordingly, partly allowed the Claim Petition, awarded a total sum of Rs.25,91,208/- with 9% interest after deducting 15% towards contributory negligence of the deceased. The ST Corporation as well as the claimants have questioned the quantum of compensation in these appeals.

5. I have heard Mr. H.S. Munshaw, learned advocate for ST Corporation and Mr. Paresh Darjee, learned advocate for the claimant in both these appeals.

6. Mr. H.S. Munshaw, learned advocate for ST Corporation has vehemently submitted that indisputably the accident had occurred in the middle of the road, and therefore, it was the deceased who was solely responsible for happening of the accident. He submitted that it emerges from the evidence of the driver that the bus was driven at the sole speed and dashed the deceased came from the opposite direction at a very high and excessive speed and dashed with the ST bus. He, therefore, urges that the appeal may be allowed and the ST Corporation may be exonerated from its liability to pay the compensation to the claimants.

7. Mr. Darjee, learned advocate for the claimants submitted that the Tribunal has wrongly attributed 15% contributory negligence to the deceased. He submitted that the Panchnama of the place of accident clearly indicated that the ST bus found in the middle of the road, and therefore, it was the ST bus driver who was solely

responsible for the accident. It is his further submission that the Tribunal has wrongly applied the principle of *res ipsa loquitur*. It is his further submission that 30% ought not to have been deducted from the income of the deceased towards income tax by the Tribunal. He, therefore, urges that the appeal preferred by the claimants may be allowed.

8. The questions that fall for consideration in these appeals are whether the Tribunal has rightly apportioned negligence between the driver of the ST bus and the deceased and that whether the Tribunal has rightly deducted 30% towards the income tax from the income of the deceased.

9. The undisputed fact is that the accident resulting in the death of the deceased had happened at Singarwa junction of Conva-Odhav road. It emerges from the evidence of the driver of the offending ST bus that the accident had happened while the driver of the ST Bus was overtaking a motorcycle going ahead of it. The learned Tribunal solely on the basis that both the vehicles i.e. ST bus and motorcycle of the deceased were found lying in the middle of the road at the time of drawing panchnama and has invoked the principle of *res ipsa loquitur* to record a findings that the deceased was also responsible to the extent of 15% in the happening of the accident. In our considered view, the spot where the vehicles were found lying after the accident as per the panchnama cannot be the basis to assume by invoking the principal of *res ipsa loquitur* that it was the very spot where both the vehicles were being driven at the

time of accident. It cannot be safely inferred that after the accident of this nature in which the victim has died, the motorcycle which the deceased was riding would be pushed forward after the collision and being hit by the high speeding ST bus. The Tribunal has not found that the spot noted in the panchnama was the spot where the accident actually occurred. The findings recorded by the Tribunal is that the vehicles involved in the accident were found lying in the middle of the road when the panchnama was prepared that can be the basis to assume that the deceased was driving the motorcycle on the wrong side of the road when the accident happened. It is pertinent to note that the driver of the ST bus did not produce any contra evidence to indicate that the motorcycle was being driven on the wrong side of the road when the ST bus dashed it. In our view, upon conjoint reading of the FIR, panchnama of the place of accident and the oral evidence of the driver of the offending ST bus, it cannot be said that the deceased was contributory negligence for the happening of the accident, and the Tribunal ought not to have been attributed 15% contributory negligence on the part of the deceased. The driver of the ST Bus himself has stated in his oral evidence that it was raining when the accident had happened. It was therefore, all the more obligatory on the driver of the ST bus to have been the driver of the vehicle in slow speed at the night hours at about 11.45 p.m. Had the driver of the ST bus taken proper care as is expected of a prudent driver while overtaking motorcycle going ahead of the ST bus, the unfortunate accident would have been averted. We are, therefore, of the opinion that no contributory negligence can be ascribed to the deceased. The driver of ST bus

was solely negligent in the happening of the accident.

10. It is undisputed fact that the deceased was working as a Head Clark in the Police Department and at the time of accident he was drawing salary of Rs.16649/-. He was aged around 38 years. Hence, the Tribunal has rightly added 50% i.e. Rs.8324/- towards prospective income and has considered Rs.24973/- as prospective income. It emerges from the impugned judgment that it was the case of the appellant that the deceased had worked during the holidays for which he was monetarily compensated. Accordingly, a sum of Rs.3049/- was paid to the deceased in the month in which he met with unfortunate accident. The Tribunal has added Rs.3000/- to the salary income of the deceased towards the salary in lieu of holiday as according to the Tribunal there was no evidence on record that on every holiday the deceased had to work.

11. In our view, the monetary compensation in lieu of salary cannot be considered as part of salary of an employee, such income is not consist and the employee get such compensation only if he is called upon to work during holidays. We are, therefore, of the view that the monetary compensation which was paid to the deceased in lieu of holiday cannot paid to be forming part of his salary and the same cannot be considered for determining the dependency of the claimants. The same is, therefore, required to be deducted from the monthly salary of the deceased.

12. We are of the view that since there are around five dependents, the Tribunal has rightly deducted $\frac{1}{4}$ from the monthly

income of the deceased towards personal expenses. The compensation awarded by the Tribunal and other heads is according to us just and reasonable.

13. The Tribunal on the basis of decision of the Supreme Court in the case of ***Rejesh v. Rajbir Singh and another, 2013 (9) SCC 54*** has deducted 30% towards the income tax from annual income determined by it. In our considered view the Tribunal could not have deducted the income tax and seems to have misunderstood and misinterpreted the decision of the Supreme Court in the case of *Rajesh v. Rajbir Singh (supra)*. The Supreme Court has in this case observed as under in paragraph No.8:-

“8. Since, the Court in Santosh Devi case actually intended to follow the principle in the case of salaried persons as laid down I Sarla Verma Case and to make it applicable also to the self-employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Addition should be 30% in case the deceased was in the age group of 40 to 50 years.” (Emphasis of ours).

14. It is thus, clear from the above paragraph that if the victim was happens to be a tax payer after paying the tax i.e. the net income could be considered for the purpose of determining the compensation. In the case on hand, there is no evidence on record to even remotely indicate that the income of the deceased was exigible to tax, and therefore, the Tribunal ought not to have deducted income tax, that too, at the rate of 30% from the annual income of the deceased to determine the dependency of the appellants. We are, therefore, of the opinion that the compensation

awarded by the Tribunal has to be reassessed as under:-

Sl. No.	Head	Calculation
1	Salary	Rs.16,649/-
2	50% to be added as future prospects	Rs.8324/-
3	Prospective Income (5+1+2)	Rs.24,973/-
4	¼ of (Sl. No.3) deducted as personal expenses	Rs.6243/-
5	Dependency of the appellants claimants (Sl. No. 3-4)	Rs.18730/-p.m. X 12=Rs.2,24,760/-p.a.
6	(Sl. No. 5 x 15 multiplier)	Rs.33,71,400/-
7	Loss of Consortium	Rs.1,00,000/-
8	Loss of care and guidance for children	Rs.1,00,000/-
9	Funeral Expenses	Rs.5,000/-

15. The Tribunal has determined Rs.30,48,480/- as total compensation from which Rs.4,47,272/- is deducted towards the contributory negligence of the deceased, and accordingly, awarded Rs.25,91,208/-as compensation to the appellants. The compensation awarded by the Tribunal is required to be modified. In our view, the appellants are entitled to Rs.35,76,400/- as compensation. Accordingly, Rs.9,85,192/- is receivable by the appellants as additional compensation. The amount of additional compensation shall carry interest at the rate of 9%.

16. In the result, the First Appeal No.2900 of 2014 is hereby dismissed and First Appeal No.3065 of 2014 is hereby partly allowed. The judgment and award of the Tribunal is hereby modified and the appellants are held entitled to Rs. 35,76,400/- as total compensation in place of Rs.25,91,208/- as awarded by the Tribunal. The claimants are entitle to receive Rs.9,85,192/- as

additional compensation with 9% interest.

17. The parties are left to bear their own costs.

18. The Gujarat State Road Transport Corporation is hereby directed to deposit the amount of additional compensation within three months from the date of receipt of copy of this order.

19. R & P, if summoned, is ordered to be remitted to the Tribunal forthwith.

(S.R.BRAHMBHATT, J)

(A.G.URAIZEE, J)

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