

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/FIRST APPEAL NO. 4963 of 2006**

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

RANJANBEN LAJIBHAI RATHOD (DECD. THRO LEGAL HEIRS & R)

Versus

RAGHUBHAI JEMABHAI KANGAD & 3 other(s)

Appearance:

MR KIRTIDEV R DAVE(3267) for the Appellant(s) No. 1,1.1,1.2,1.3,1.4

MR RAHUL K DAVE(3978) for the Appellant(s) No. 1

MR MAULIK J SHELAT(2500) for the Defendant(s) No. 3

NOTICE SERVED for the Defendant(s) No. 1,2

RULE SERVED for the Defendant(s) No. 4

CORAM: HONOURABLE MR. JUSTICE A.G.URAIZEE

Date : 25/07/2017

ORAL JUDGMENT

1. The appellants have not happy with the quantum of compensation awarded by the Tribunal as per the following details:-

	Heads	As per award under challenge	As per submission of Ins. Co./Claimants
1	Loss of dependency benefit	Rs.1,91,952/-	Rs.3,60,000/-
2	Conventional amount for loss to estate	Rs.20,000/-	Rs.50,000/-
3	Funeral expenses	Rs.3000/-	Rs.5000/-
4	Total Compensation	Rs.2,14,952/-	Rs.4,15,000/-

2. The facts as could be gathered from the record are that on 07.08.2002 the deceased-*Ranjanben Laljibhai Rathod* was standing the side of the road after alighting from truck bearing registration No. GJ-10-T-9303 when a tanker bearing registration No. GJ-12-U-6816 which was driven by the respondent No.1 herein was of the ownership of the respondent No.1 herein came at very high speed with rash and negligent manner and dashed with the deceased. She suffered fatal injuries and died. The appellant preferred M.A.C.P. No.468 of 2002 in the Motor Accident Claims Tribunal, Surendranagar to recover a sum of Rs.4,00,000/- as compensation from the respondents herein. The Tribunal partly allowed the Claim Petition as aforesaid.

3. The appellants are not satisfied with the quantum of compensation awarded by the Tribunal. They preferred appeal under Section 173 of the Motor Vehicles Act, 1988.

4. I have heard Mr. K.R. Dave, learned advocate for the appellant and Mr. Maulik J. Shelat, learned advocate for the respondent No.2-Insurance Company.

5. Mr. Dave, learned advocate for the appellant vehemently submits that the monthly income of the deceased assessed by the Tribunal is on a lower side and that the Tribunal has not considered the prospective income. He further submits and considering the age of the deceased the Tribunal ought to have adopted multiplier of 15 instead of 12. According to Mr. Dave, learned advocate for the appellant the amount of Rs. 13,000/- awarded under the head of conventional amount is also of lower side, it would be Rs.15,000/-. It is his further submission that it is the case of composite negligence on the part of the drivers of the

vehicles involved in the accident, and therefore, without assigning any reasons, the Tribunal has committed an error in the final order by directed all the respondents to pay the awarded compensation jointly and severally accepted of bifurcating it 7.5% on the part of the respondent Nos. 1 to 3 and 25% on the part of the respondent No.4. He, therefore, urges that the appeal may be allowed.

6. Mr. Shelat, learned advocate for the respondent No.3- Insurance Company has supported the impugned award of the Tribunal. He submits that in absence of any proof of income, the Tribunal has rightly assessed Rs.2000/- as the monthly income of the deceased who was home maker. It is his further submission that the compensation awarded under other heads is also just and reasonable, and therefore, the impugned judgment and award does not deserves any interference in this appeal.

7. Having heard learned advocates of either side and having considered the record of the Claim Petition, I am of the view that keeping in mind the date of accident i.e. 07.08.2002, I am of the view that the kinds of justice would be served having Rs.3000/- per month inclusive of perspective income is considered for determining the dependency of the appellants. So far as the compensation awarded under the head of conventional amount and funeral expenses is concerned it appears that the amount awarded by the Tribunal is not inconsonance with decision of this Court and Supreme Court. It is required to be enhance to Rs.55,000/- from Rs.23,000/- as awarded by the Tribunal under the impugned award, in my view the appellants are entitled to the following sum as compensation:-

	Heads	As per award under challenge	As per submission of Ins. Co./Claimants	Difference
1	Loss of dependency benefit	Rs.1,91,952/-	Rs.3,60,000/-	Rs.168048/-
2	Conventional amount for loss to estate	Rs.20,000/-	Rs.50,000/-	Rs.30000/-
3	Funeral expenses	Rs.3000/-	Rs.5000/-	Rs.2000/-
4	Total Compensation	Rs.2,14,952/-	Rs.4,15,000/-	Rs.2,00,048/-

8. The appellants are, therefore, entitled to additional compensation of Rs.2,00,048/-.

9. For the foregoing reasons, the appeal succeeds and is hereby allowed. The impugned judgment and award of the Tribunal is hereby modified and the appellants are entitled to Rs.2,00,048/- with 9% interest as compensation in place of Rs.2,14,952 as awarded by the Tribunal.

10. The respondent No.3-Insurance Company is directed to deposit the additional amount of Rs.2,00,048/- with 9% interest in the Tribunal within two months from the date of receipt of certified copy of this judgment.

11. The amount being deposited in the Tribunal is directed to disburse in favour of the appellants in terms of the award. No order as to costs.

12. Record and Proceedings, is order to remitted back to the Tribunal forthwith.

Sd/-
(A.G.URAIZEE, J)

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