IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 6038 of 1995
With
R/FIRST APPEAL NO. 6039 of 1995
With
R/FIRST APPEAL NO. 3671 of 2010

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE R.P.DHOLARIA

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	Yes
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

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JAGDISH JAYANTILAL JAISWAL
Versus
MOHANBHAI CHHAGANBHAI THAKARDA & 4

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Appearance:
MR DF AMIN(122) for the PETITIONER(s) No. 1
DELETED(20) for the RESPONDENT(s) No. 2,4
MR PALAK H THAKKAR(3455) for the RESPONDENT(s) No. 3,5
RULE SERVED(64) for the RESPONDENT(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE R.P.DHOLARIA**
Date : 28/03/2018
COMMON ORAL JUDGMENT

The aforementioned all the three appeals have arisen out of common judgment and award dated 21.02.1994 passed in M.A.C.P. Nos. 918 of 1984, 919 of 1984 and 920 of 1984 by learned Motor Accident Claims Tribunal (Main), Vadodara, dismissing all the

three claim petitions.

2. The original claimant-appellant herein, by way of preferring the present appeals, has inter alia contended that the fiat car which met with an accident was being driven by him, due to which, he derived serious injuries resulting into permanent disability, as well as his infant child named Jigar aged about one year and wife named Sadhana died because of accidental injuries. Preferring the aforesaid claim petitions, joining owner and Insurance Company of the said fiat car as well as driver, owner and Insurance Company of the truck involved in the accident, the claimant inter alia contended that though the incident in question happened due to sole negligence on part of the driver of the offending truck who parked the truck in a stationary condition in the middle of the road and that too during nocturnal hours without keeping any reflector or any sign, the learned Tribunal held that the incident occurred because of sole negligence on part of the driver of the fiat car and exonerated the driver of the truck. The claimant further contended that though the Tribunal recorded the aforesaid finding while deciding on the point of negligence, the Tribunal had not computed the amount of compensation and wrongly dismissed all three claim petitions as such. These are the precise contentions raised by way of preferring the present first appeals.

3. This Court has heard learned advocate Mr. Radhesh Vyas for the appellant-original claimant and learned advocate Mr. Palak Thakkar for the respondent-Insurance Company.

4. The case of the appellant in brief is that on the date of accident at the relevant time, he along with his wife Sadhanaben, his son Jigar alias Jitkumar and one friend Vohra were proceeding in the fiat car No. GTI 5285 from Baroda to Jarod to attend a birthday party. The said fiat car was being driven by the appellant himself with slow and moderate speed on the correct side of the road. When the appellant reached near Village Bhaniyar on National Highway No.8, one truck bearing No. GTG 3639 was parked on the road without back lights or other lights on it. There were no back red lights on or visible on the said truck and the major part of the truck was on the pacca road and it was in a stationary condition without putting any lantern or light. Therefore, the said truck was not visible in the night and hence, the fiat car driven by the appellant had dashed with the said truck from behind, as a result of which, the appellant had sustained serious injuries and his wife Sadhanaben and son Jigar had succumbed to the injuries received by them in the accident. His friend Mr. Vohra had also sustained injuries.

5. This Court perused the impugned judgment and award as well as record & proceedings.

6. Now, on the point of negligence, before the learned Tribunal, the claimant came to be examined at Exh.78. He was eye-witness to the incident. He deposed that on the date of incident, he was driving the fiat car bearing No. GTI 5285 from Jarod to Baroda. He further deposed that his son, wife and one friend were also with him in the car. He deposed that he was driving the fiat car in a moderate speed on the left side of the road and at that time, one truck bearing No. GTG 3639 which was in a stationary condition in the middle of the road had neither back light nor signal indicating that the truck was there in a stationary condition, due to which, he could not see the truck as his eyes dazzled due to light coming from opposite direction and dashed with the said truck lying on the middle of the road, as a result of which, he, his friend and family members received serious injuries.

6.1 Panchnam of scene of incident came to be drawn soon after the incident clearly indicates that the incident occurred within the vicinity of village Bhaniyar on National Highway No.8—Bombay to Ahmedabad. At the place of incident, the road was running from east to west and west to east, as also the width of the tar is mentioned to be 25 ft having solder road for about 4ft. on each side, consequently therefore, the total width is mentioned to be 28ft. The truck was found facing towards Baroda in the middle of the road nearby dividing line on its left side, whereas the car was found facing towards Baroda

and heavily damaged on the entire front portion as the car smashed due to collision with the truck. The damage to the car was quantified to the extent of Rs.30,000/- as per panchnama, whereas the damage to the truck was quantified to the extent of Rs.100/- only. The sign as regards the collision of fiat car to the truck was also found front on the rear portion of the truck and the car was at about 10 ft away from the truck. No signs of reflector or any sort of barricade were found at the place of incident indicating that the truck was lying in a stationary condition in the middle of the road.

6.2 In view of aforesaid nature of evidence on record, indisputedly, the incident in question occurred during nocturnal hours. The truck was parked in a stationary condition in the middle of the road and the driver of the truck had not placed any barricade or any sort of reflector, due to which, while the driver of the fiat car was proceeding towards Baroda could not see the truck and dashed with the truck as his eyes dazzled due to light coming from opposite direction, as a result of which, the incident occurred. The aforesaid evidence on record clearly indicates negligence on part of the driver of the truck and car both. It appears that the learned Tribunal, without appreciating the evidence on record, as the driver of the car himself had made the claim petitions, held the driver of the car sole negligent. The evidence on record is also clearly indicative of the fact that when the driver of the

truck was driving the heavy vehicle and parked the vehicle in the middle of the road without keeping any reflector or barricade upon it, it clearly indicates his negligence, whereas the driver of the fiat car who could not slow the car, could also be held responsible for the incident in question.

6.3 Taking into consideration the aforesaid nature of evidence, contributory negligence would be assigned to the extent of 50% on each driver of the vehicle involved in the accident. Consequently therefore, contributory negligence on part of the driver of the fiat car could be assigned to the extent of 50%, whereas the contributory negligence on part of the driver of the truck could be assigned to the extent of 50%.

7. First Appeal No. 6038 of 1995 is preferred against M.A.C.P. No. 918 of 1984 by the claimant, claiming compensation for the death of his wife Sadhana because of accidental injuries. The claimant pleaded the age of the deceased to be 22 years. No documentary evidence is produced to prove the age of the deceased except postmortem report disclosing her age between 26-30 years and therefore, the Tribunal held the age of the deceased falling within the age group of 26-30. The claimant pleaded that she studied inter Arts and was helping in the business of transport of her husband and also imparting tuition and used to earn Rs.500/- per month.

7.1 As no documentary evidence is produced to prove the income, taking into consideration the year of accident of 1984, her income of Rs.500/-, she was falling within the age group of 26-30 and was doing household work, 40% rise in income is required to be added as prospective rise of income and in doing so, it comes to Rs.700/-. Further, out of it, 1/3rd amount is required to be deducted towards personal and living expenses which she would have spent for maintaining herself and in doing so, it comes to Rs.467/- (Rs.700-Rs.233). Now, as she was falling within the age group of 26-30, 17 years multiplier would be applicable. In doing so, it comes to Rs. 95,268/- (Rs.467 x 12 x 17 = 95268/-). The claimant is also entitled to receive Rs.55,000/- towards non-pecuniary benefits in the nature of loss of estate, loss of consortium and funeral expenses. In doing so, it comes to Rs. 1,50,268/-.

8. First Appeal No. 3671 of 2010 is preferred against M.A.C.P. No. 919 of 1984 by the claimant, claiming compensation for the accidental injuries sustained by him in the aforesaid accident. The record & proceedings indicates that due to accidental injuries, the claimant sustained fracture of nose and bone which resulted into disfigurement of face and he had undergone plastic surgery, prolong treatment and had also undergone operation, though disfigurement of face remained.

8.1 Taking into consideration the aforesaid factual scenario, as the claimant failed to produce any certificate of disability indicating disability and that the fracture of nose and bone which resulted into disfigurement of face and he had also undergone prolong treatment and operation, ultimately compensation of Rs.75,000/- would meet the ends of justice. As the claimant himself is negligent to the extent of 50%, from the said amount, 50% shall be sliced down and the amount of compensation is awarded to be Rs.37,500/-.

9. First Appeal No. 6039 of 1995 is preferred against M.A.C.P. No. 920 of 1984 by the claimant, claiming compensation of Rs. 26,000/- for the death of his son aged about one year.

9.1 Taking into consideration the age of the deceased infant about one year, this Court deems it appropriate to award the compensation of Rs.50,000/- which would meet the ends of justice.

10. For the reasons recorded above, the aforementioned appeals succeed and judgment and award dated 21.02.1994, dismissing M.A.C.P. Nos. 918 of 1984, 919 of 1984 and 920 of 1984 stands quashed and set aside.

10.1 In First Appeal No. 6038 of 1995 preferred against M.A.C.P. No. 918 of 1984, the claimant shall be entitled to receive the compensation of Rs.1,50,268/- along with costs with running interest

at the rate of 9% from the date of the application till realization.

10.2 In First Appeal No. 3671 of 2010 preferred against M.A.C.P. No. 919 of 1984, the claimant is entitled to receive Rs.37,500/- with cost along with with running interest at the rate of 9% from the date of the application till realization.

10.3 In First Appeal No. 6039 of 1995 preferred against M.A.C.P. No. 920 of 1984, the claimant is entitled to receive Rs.50,000/- with cost along with with running interest at the rate of 9% from the date of the application till realization.

11. The amount of compensation awarded in each of the claim petitions shall be jointly and severally satisfiable from all the opponents.

12. The Oriental Insurance Company shall deposit the amount of compensation within a period of three months from the date of receipt of this order.

13. In view of above, all the three first appeals are allowed and stands disposed of. The R & P, if any, be returned to the concerned lower court forthwith.

(R.P.DHOLARIA, J)

CHANDRASHEKHAR