

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/FIRST APPEAL NO. 1432 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 ?	
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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**SHRIRAM GENERAL INSURANCE COMPANY LIMITED**

**Versus**

**BHUPENDRABHAI CHANDUBHAI VASAVA & 3 other(s)**

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**Appearance:****MR VIBHUTI NANAVALI for the Appellant(s) No. 1****MR MTM HAKIM(1190) for the Defendant(s) No. 3,4.1,4.2****RULE SERVED(64) for the Defendant(s) No. 1,2**

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**CORAM: HONOURABLE MR.JUSTICE S.R.BRAHMBHATT****and****HONOURABLE MR.JUSTICE A.G.URAIZEE****Date : 28/02/2018****ORAL JUDGMENT****(PER : HONOURABLE MR.JUSTICE A.G.URAIZEE)**

1. This appeal under Section 173 of the Motor Vehicles Act, 1988 ("M.V. Act" for short) is preferred by the appellant

Insurance Company to assail the quantum of compensation awarded to respondent Nos. 4, 4.1 and 4.2 - original claimants by Motor Accident Claims Tribunal (Main), Narmada at Rajpipla vide judgment and award dated 24.01.2004 rendered in MACP No.29 of 2012.

2. Facts in brief giving rise to the present appeal as could be gathered from impugned judgment as under:

2.1 On 29.12.2011, the deceased Bhupendrabhai was coming back by driving motorcycle No.GJ-22-7087, at that time near Patia of village Mojigam, the opponent No.1 came from back side by driving his truck No.GJ-17-9757 in rash and negligent manner and dashed with the motorcycle of the applicant, which resulted into accident in which the deceased Bhupendrabhai A. Vasava died. At the time of accident, the deceased was 35 years old, he was doing agricultural work and getting Rs.5,00,000/- p.a. and also possessing a truck from which he was getting Rs.10,000/- per month in all he was earning Rs.50,000/- per month. the deceased was only bread-winner of the family and on account of his sudden, death, the applicants have to suffer loss of his love, affection and company beside future income. Hence, the applicants have claimed Rs.25,00,000/- by way of compensation from the opponents.

2.3 The Tribunal has by impugned judgment and award partly allowed the Claim Petition and has directed the appellant and respondent Nos.1 and 2 herein to pay a sumo of Rs.14,25,000/- with 9% interest to the claimants from the date of the petition and proportionate costs thereon. Aggrieved

appellant - Insurance Company has preferred this Appeal.

3. Heard Mr. Vibhuti Nanavati, learned advocate for the appellant and Mr. MTM Hakim, learned advocate for the claimants. There is no representation on behalf of other respondents.

4. Mr. Nanavati, learned advocate submitted that the Tribunal has considered the income of the deceased on higher side in absence of cogent evidence. It is his further submission that the compensation granted under other heads such as loss of guidance, love and affection, loss of consortium, funeral expenses are also on higher side, which may be assessed at Rs.5000/- per month. In support of his submission, he has placed reliance on the decision of the Hon'ble Supreme Court in the case of National Insurance Company Ltd. Vs. Pranay Sethi and Ors. reported in 2017 (3) GLH 536. It is his further submission that in view of the decision in the case of Pranay Sethi, the addition of 40% may be considered in place 50% towards prospective income. He vehemently submitted that the Tribunal has erred in attributing 90% negligence to respondent No.1 driver of the truck. He submitted that the respondent No.1 was not holding license for plying the goods vehicle on the day of accident and therefore, the Tribunal has erred in fastening the liability of payment of compensation on the appellant. In support of his submission, he relied upon the decision of the Hon'ble Supreme Court in the case of National Insurance Company Ltd. Vs. Swaran Singh reported in AIR 2004 SC 1531 and urged that the Insurance Company may be exonerated on the ground that the respondent No.1 driver of the truck was not holding valid driving license. Or in the

alternatively, in light of the awarded compensation may be reduced.

5. Mr. MTM Hakim, learned advocate has supported the impugned judgment. He submitted that the Tribunal has not committed any error in assessing the monthly income of the deceased on higher side. He further submitted that the deceased was doing agricultural work and was also driving the tractor for supplementing his income and now, the claimants would have to engage a person to drive the tractor and for oversee the agricultural activities and therefore, the Tribunal has rightly considered Rs.3,500/- per month towards the expenses which the claimants will have to incur for hiring services of the helping hand. Relying upon the decision of the Hon'ble Supreme Court in the case of Ranjana Prakash and Others Vs. Divisional Manager and Another reported in (2011) 14 Supreme Court Cases 639. He submitted that even in absence of appeal or cross-objection by the claimants, if the High Court proposes to reduce the compensation, the claimants can defend the quantum of compensation by pointing out other errors or omissions in the award to show the compensation awarded by the Tribunal does not confer to reduce in the awarded amount of compensation. He therefore, submitted that the compensation awarded by the Tribunal does not warrant interference.

6. We have given thoughtful consideration to the submissions made at bar.

7. It emerges from the evidence and impugned judgment that the deceased was earning his livelihood by doing

agricultural work and was also earning additional income from driving the tractor on rental basis. After considering overall evidence on record and fact that now, the claimants will have to hire the driver to drive the tractor to earn extra money, we are of the view that monthly income assessed by the Tribunal does not warrant any interference, however, addition of 50% towards prospective income considered by the Tribunal, cannot be assessed in view of the decision of Pranay Sethi (Supra), which provides that addition of 50% towards prospective income in case of victim belonging to the age (of the deceased).

8. It appears that the Tribunal has awarded Rs.1,00,000/- towards loss of guidance, Rs.50,000/- towards loss of consortium, Rs.25,000/- towards funeral expenses i.e. to say Rs.1,75,000/- under these conventional heads. This award under conventional head is not with consonance with the decision of the Hon'ble Supreme Court in the case of Pranay Sethi(Supra), which provides for Rs.15,000/- towards loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- towards funeral expenses, in all Rs.70,000/- accordingly. The multiplier adopted by the Tribunal does not call for any modification. The claimants are therefore, entitled to the compensation as under:

1. Loss of dependency: Rs.13,44,000/-  
(Rs.5000 + 40% (Rs.2000) =Rs.7000x12x16)
2. Loss of consortium : Rs.40,000/-
3. Loss of Estate : Rs.15,000/-
4. Loss to Estate : Rs.15,000/-
- Total : Rs.14,14,000/-

9. We are, therefore, of the view that the claimants are entitled to Rs.14,14,000/- in place of Rs.15,83,000/- as awarded by the Tribunal. The Tribunal has found the deceased was negligent to the extent of 10% for happening of the accident. Hence, the total compensation is required to be reduced by 10%, which would come to Rs.1,41,400/- (Rs.14,14,000 x 10%). Accordingly, the claimants are entitled to Rs.12,72,600/- as compensation in place of Rs.14,25,000/- awarded by the Tribunal.

10. For the foregoing reasons, the appeal succeeds in part. The judgment and award passed by the Motor Accident Claims Tribunal (Main), Narmada at Rajpipla, in MACP No.29 of 2012 dated 24.01.2004 is hereby modified and the claimants are entitled to Rs.12,72,600/- in place of Rs.14,25,000/- awarded by the Tribunal. The Insurance Company has deposited awarded compensation in the Tribunal in compliance of the order passed by this Court. The Tribunal is therefore, directed to refund the balance amount to the Insurance Company with accrued interest.

Record and Proceedings be transmitted to be the Tribunal forthwith.

**(S.R.BRAHMBHATT, J)**

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

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