

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 1170 of 2007

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE NIRAL R. MEHTA

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

HEMAGAURI W/O RAMESHCHANDRA BALSHANKER BHATT & 3 other(s)

Versus

MAHENDRAKUMAR MANILAL PATEL & 3 other(s)

Appearance:

MR HM PARIKH(574) for the Appellant(s) No. 1,2,3,4

DS AFF.NOT FILED (N) for the Defendant(s) No. 1,3

MR DAKSHESH MEHTA(2430) for the Defendant(s) No. 2

MR PALAK H THAKKAR(3455) for the Defendant(s) No. 4

CORAM:HONOURABLE MR. JUSTICE NIRAL R. MEHTA**Date : 30/11/2022****ORAL JUDGMENT**

1. Feeling aggrieved by and dissatisfied by the judgment and award dated 21st December, 2001 passed in Motor Accident Claims Petition No.2110 of 1990 by Motor Accident Claims Tribunal (Aux.IV), Ahmedabad (Rural), Gandhinagar, the appellants - original claimants have preferred the present appeal under Section 173 of the Motor

Vehicles Act.

1.1 The original claim of the claimants was for Rs.07,00,000/-, as against that learned Tribunal has awarded sum of Rs.04,95,421/- with 9% interest.

2. It is the case of the claimants that on 30th November, 1990 deceased Rameshchandra Balashanker Bhatt along with other passengers was traveling in ambassador car bearing registration No.GJ-1-5936 from Dhrangadhra to Gandhinagar. The driver of the said car was driving the car at moderate speed and on the correct side of the road. However, when they reached near Village Sargasan, from the opposite direction, one Truck bearing registration No.GRX-3937 was being driven rashly and negligently by his driver and having lost the control over the steering, dashed with the ambassador car in which the deceased was traveling. Pursuant to the said accident, deceased received serious injuries and ultimately succumbed to the injuries. Thus, heirs and legal representatives of the deceased Rameshchandra Balashanker Bhatt approached Motor Accident Claims Tribunal by way of an application under Section 166 of the Motor Vehicles Act seeking, *inter alia*, compensation for untimely death of the deceased arising from the vehicular accident.

2.1 The learned Tribunal, having considered the evidence on record, held that the driver of the ambassador car as negligent to the extent of 20% and driver of the Truck as negligent to the extent of 80%. The learned Tribunal thereafter proceeded to award compensation by considering

monthly income of the deceased at Rs.05,322.37. The learned Tribunal has thereafter deducted one-third towards personal expenses. Considering the age of the deceased, learned Tribunal adopted multiplier of 10. Thus, the learned Tribunal arrived at a sum of Rs.06,67,743.60 under the head of loss of dependency, however thereafter the learned Tribunal has adopted 30% towards income tax. Hence, Rs.04,67,420.52 came to be awarded under the head of loss of dependency. The learned Tribunal has further awarded sum of Rs.10,000/- under the head of loss of expectation of life, Rs.10,000/- under the head of loss of consortium. However, the learned Tribunal has awarded Rs.04,95,421/-, after rounding off, towards the compensation.

3. Feeling aggrieved and dissatisfied with the aforesaid, the appellants have approached this Court by way of this appeal seeking enhancement of compensation.

4. I have heard learned advocate Mr.Kishan Dave for learned advocate Mr.H.M. Parikh for the appellants, learned advocate Mr.Dakshesh Mehta as well as learned advocate Mr.Palak Thakkar for the respective insurance companies.

4.1 Mr.Kishan Dave, learned advocate for the appellants, submitted that the judgment and award passed by the learned Tribunal is on lower side and cannot be said to be just and adequate in nature. Mr.Dave submitted that the learned Tribunal has committed serious error in computing the income of the deceased. According to learned advocate, the Tribunal, while computing the income, should keep in

mind the future prospectus as well. To substantiate this contention, learned advocate has heavily relied on the ratio laid down by the Apex Court in the case of **National Insurance Company Limited v. Pranay Sethi [(2017) 16 SCC 680]**. He further submitted that considering the number of dependents, personal deduction ought to have been one-fourth instead of one-third as per the ratio laid down by the Apex Court in the case of **Sarla Verma v. Delhi Transport Corporation [(2006) 9 SCC 121]**. Learned advocate further submitted that considering the age of the deceased and keeping in mind the ratio laid down by the Apex Court in the case of **Sarla Verma (supra)**, multiplier ought to have been 14 instead of 10. Learned advocate further submitted that even as per the ratio laid down by the Apex Court in the case of **Pranay Sethi (supra), The New India Assurance Company Limited v. Smt. Somwati, [(2020) 9 SCC 644]** and **Magma General Insurance Co. Ltd. v. Nanu Ram @ Chuhru Ram [(2018) 18 SCC 130]**, each dependent shall be entitled to Rs.40,000/- under the head of consortium and accordingly, they are also entitled to additional amount of Rs.15,000/- under the head of loss of estate and Rs.15,000/- under the head of funeral expenses.

4.2 By making above submissions, learned advocate has prayed this Court to enhance the compensation suitably.

5. *Per contra*, learned advocates for the respective insurance companies have vehemently opposed the present appeal contending *inter alia* that the judgment and award passed by the learned Tribunal is perfectly justified and

thereby not required to be interfered with. Learned advocates for the respective insurance companies further submitted that the learned Tribunal has not committed any error insofar as computing the income of the deceased is concerned. However, at the same time, learned advocates for the respective insurance companies could not dispute the ratio laid down by the Apex Court in the cases of **Pranay Sethi (supra)**, **Smt. Somwati (supra)** and **Magma General Insurance Co. Ltd. (supra)**.

5.1 By making above submissions, both the learned advocates for the respective insurance companies requested this Court to pass appropriate order in the interest of justice.

6. I have heard learned advocates for the respective parties and have also gone through the Record & Proceedings. No other and further submissions are made except what are stated hereinabove.

7. Having considered the submissions of the learned advocates and having gone through the materials produced on record, the short question that falls for consideration of this Court is whether the compensation awarded by the learned Tribunal can be said to be just and adequate?

8. So as to decide the aforesaid question, it would be profitable to take notice of the law laid down by the Apex Court in the cases of **Pranay Sethi (supra)**, **Smt. Somwati (supra)** and **Magma General Insurance Co. Ltd. (supra)** wherein the Apex Court, in no uncertain terms, has settled the

law of compensation. In the aforesaid judgments, the Apex Court has issued various guidelines so as to enable the courts concerned to arrive at just and adequate compensation. Keeping in mind the aforesaid ratio of law laid down by the Apex Court, in the instant case, the learned Tribunal, in my view, has committed serious error in computing the income of the deceased. The deceased was a salaries person who met with the vehicular accident and died untimely.

8.1 So far as the monthly income of the deceased at Rs.05,300/- is concerned, it seems not much in dispute. Accordingly, I propose to take Rs.05,300/- per month as base income. Now if the ratio of law laid down by the Apex Court in the case of **Pranay Sethi (supra)** is considered, the deceased being a salaried person and aged 45 years at the time of accident, prospective income at 30% is suggested. Therefore, I propose to consider 30% rise in base income as prospects in life. Considering the number of dependents, in my view, personal deduction deserves to be taken at one-fourth instead of one-third. 30% deduction of the income-tax by the learned Tribunal is not acceptable and accordingly, 10% T.D.S. if considered, would meet the ends of justice. Considering the age of the deceased at 45 years, multiplier of 14 is suggested by the Apex Court in the case of **Sarla Verma (supra)**. However, as per the law laid down by the Apex Court in the cases of **Pranay Sethi (supra)**, **Smt. Somwati (supra)** and **Magma General Insurance Co. Ltd. (supra)**, each dependent would be entitled to Rs.40,000/- under the head of loss of consortium. In addition thereto, the appellants-

claimants are entitled to Rs.15,000/- under the head of loss of estate and Rs.15,000/- under the head of funeral expenses.

9. In view of the aforesaid discussion, the compensation awarded by the learned Tribunal, in my view, cannot be said to be just and adequate. Accordingly, the same is hereby modified as under.

Particulars	Amount (in Rs.)
Loss of Dependency	07,81,368/- [Rs.5300/- (salary) – Rs.530/- (10% T.D.S.) + Rs.01,431/- (30% prospective income) - Rs.01,550/- (personal expenses) X 12 X 14 (multiplier)]
For Loss of Consortium (four dependents)	01,60,000/- (Rs.40,000/- X 4)
For Loss of Estate	15,000/-
For Funeral Expenses	15,000/-
Total	09,71,368/-
Amount awarded by the Tribunal	(-) 04,95,421/-
Additional compensation	04,75,947/-

10. For the foregoing reasons, the claimants shall be entitled to additional compensation of Rs.04,75,947/- with 6% interest from the date of application till its realisation. I answer the question accordingly.

11. In the result, the present appeal is hereby partially allowed. The insurance companies are hereby directed to deposit a sum of Rs.04,75,947/- with 6% interest as per their share in the ratio of 80% : 20% with the Tribunal concerned within a period of 12 weeks from the date of receipt of copy of order along with proportionate interest and cost.

12. The Tribunal shall thereafter issue account payee cheque in favour of the claimants after due procedure and proper verification. It is, however, clarified that the claimants shall be liable to pay additional court fees, if required. R & P be sent back forthwith to the concerned Tribunal. No costs.

(NIRAL R. MEHTA,J)

ANUP