

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/FIRST APPEAL NO. 4508 of 2007**

=====

HEIRS OF DECD. ABDUL KADAR MUSAMIYA & ORS.

Versus

KASHMIRASINH GURUNAMSINH & ORS.

=====

Appearance:

DECEASED LITIGANT THROUGH LEGAL HEIRS/

REPRESENTATIVES for the Appellant(s) No. 1

DELETED for the Appellant(s) No. 1.1,1.2,1.3

MR DHAIRYAWAN D BHATT(11817) for the Appellant(s) No. 1.4

MR SHASHIKANT S GADE(1706) for the Defendant(s) No. 3

NOTICE SERVED for the Defendant(s) No. 4

SERVED BY AFFIX(N) for the Defendant(s) No. 1

SERVED BY PUBLICATION IN NEWS for the Defendant(s) No. 2

=====

CORAM:**HONOURABLE MR. JUSTICE J. C. DOSHI**

Date : 22/01/2025

ORAL ORDER

1. The present First Appeal, under Section 173 of Motor Vehicles Act, 1988, is preferred by the appellants – original claimants being aggrieved and dissatisfied with the judgment and award dated 02.03.2006 passed by the Motor Accident Claims Tribunal, Morvi in Motor Accident Claim Petition No.247 of 1992.

2. Brief facts of the case are as under:

2.1 The brief fact of the present appeal is such that on 10.09.1992, the deceased Abdul Kadar was riding taxi Car No.GJ-10-T-1724 from Morvi to Amran and when he reached near the place of accident, opponent No.1 came in Truck No.GQA-6240 in rash and negligent manner and dashed with

the taxi car of the deceased and upon occurrence of the accident, deceased sustained fatal injuries and later on died.

3. Learned advocate Mr.Bhatt for the appellants - claimants has submitted that the Tribunal has committed an error in assessing 50% negligence of the deceased who was driver of taxi No.GJ-10-T-1724 in causing the road accident only on the ground that two vehicles are collided with each other on head on collision manner. He would further submit that learned Tribunal while assessing 50% negligence of deceased has failed to consider that other vehicle being truck which is heavy vehicle and the driver of which has to take more care and caution while driving the said vehicle and therefore, he submits to reassess the issue of negligence. Secondly, he would submit that learned Tribunal committed error in assessing the income of deceased at Rs.2,000/- despite evidence being produced on record to show that deceased was not only skilled driver of taxi, he was supervising the agricultural fields and evidence of which is produced at Exhibit 52 to 54. Moreover, he was also managing paratha house constructed on land of gram panchayat and purchased the same (Exhibit-56 and 57). He would submit that these evidence clearly suggests that deceased was earning more than Rs.5,000/- per month. He has submitted that amount of award is on lower side as the Tribunal has not properly considered the various aspects; like prospective income of the deceased, negligence, liability and family circumstances, etc. He has submitted that the compensation is required to be enhanced by modifying the award impugned accordingly and this appeal may be allowed.

4. *Per contra*, learned advocate Mr.Gada for respondent – Insurance Company has submitted that the impugned judgment and award passed by the Tribunal is just and proper. He would submit that there is no actual evidence on record to prove income of the deceased and therefore, the Tribunal has rightly considered the income of the deceased at Rs.2000/-. Secondly, he would submit that learned Tribunal has not committed any error in assessing 50% negligence of the deceased in causing road accident as accident took place in head on collision manner between taxi car and truck and both drivers lost their lives on the spot which shows the impact of the accident. Looking to this, learned Tribunal has rightly assessed that drivers of both vehicles are equally negligent in causing the road accident. Upon above submissions, he submitted that this appeal may be dismissed and no interference be made by this Court.

5. Apt to note that the Motor Vehicle Act, 1988 is a beneficial piece of Legislation. The concept of just and fair compensation is integral and seminal to the MV Act. The compensation to be awarded under the principle of just and fair compensation to the injured of the road accident or the legal representative/s of the deceased person is based on the principle of fairness, reasonableness and equability. Anguish of the heart or for mental turbulence being consequential result of the road accident cannot be actually compensated, but the quint essentiality lies in adopting holistic and pragmatic view to the computation of the compensation for the loss sustained, which is to be in the realm of realistic approximation. Although exact or perfect arithmetical calculation of compensation for reparation of

the loss arrived from the road accident is almost impossible. The Tribunal is bestowed with duty to make an endeavour to award just compensation regardless of the amount claimed by the claimants. The determination of the quantum of compensation therefore, must be liberal and not niggardly since the law values life and limb in a free country in generous scale. Needless to state that money may be awarded, so that something tangible may be procured to reach something else of the like nature, which has been destroyed or lost, but money cannot renew physical frame that has been battered and shattered being a result of the road accident. Yet Tribunal to endeavour to bring back victim to stage of pre-road accident as far as possible. Thus, the award must be reasonable and cannot be assessed with moderation though it cannot at the same time be pity and what could be granted must be just, fair and equitable compensation.

6. I have considered the submissions made by the rival parties. I have perused the record and proceedings of the Tribunal. I have gone through the impugned judgment and award passed by the learned Tribunal. Firstly, let me address the issue of whether deceased was 50% negligent in causing the road accident.

7. In case of **T. O. Anthony vs Karvarnan and Others – 2008 (3) SCC 748**, the Hon'ble Supreme Court has explained the term contributory negligence as under :

“6. 'Composite negligence' refers to the negligence on the part of two or more persons. Where a person is injured

as a result of negligence on the part of two or more wrong doers, it is said that the person was injured on account of the composite negligence of those wrong-doers. In such a case, each wrong doer, is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrong-doer separately, nor is it necessary for the court to determine the extent of liability of each wrong-doer separately. On the other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence of the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stands reduced in proportion to his contributory negligence.”

8. In the present case, the accident took place between two vehicles in head on collision manner wherein drivers of both the vehicles lost their lives. Perusing the FIR at Exhibit-58 along with Panchnama indicates that drivers of both vehicles expired on the spot which shows the impact of the accident. Learned Tribunal has assessed this issue as under :

“If we look at the FIR and Panchnama it appears that the incident had taken place near Lutawaar village. Taxi Car No.GJ-10T-1724 was lying in wrong side on Kachha metal road. Front side bumper, shape and bonnet’s PATRA were found broken, front side radiator of engine, battery and its stand also found broken. Doors of driver side is found broken, the front wheel of driver is found bent. Front side glass is also found broken and it was badly damaged inside and blood stains were found on seats and inside the taxi. Brake-marks upto 10 ft. distance also observed. From this place truck No. GQA-6240 is lying at about 1/2 km. Driver side bumper and

front show of driver side is found damaged. Two cut marks also observed in front driver side wheel of the truck. It is also observed from the FIR that originally Taxi No. GJ-10T-2417 was written and then it was changed to GJ-10T-1724, which create doubt to some extent but, looking to the damage caused, it cannot be said that the entire vehicle is changed but, by some bona fide mistake, first two figure were misplaced. Looking to the FIR and panchnama, it is certain that the Taxi Car No. GJ-10T-1724 and Truck No. GQA-6240 are involved in the accident and the drivers of both vehicles were equally negligent and responsible. Therefore, there seems contributory negligence. Considering the above facts and circumstances, I hold that Taxi Car NO.GJ-10T-1724, Truck No.GQA-6240 and the drivers of both these vehicles are rash and negligent.”

9. Looking to the position of both the vehicles post accident, damages received by both vehicles and death of both drives on the spot indicates that both vehicles were plied at dangerous speed, endangering human life and therefore learned Tribunal has not committed any error in holding decease as well as truck driver equally negligent in causing the road accient.

10. From the record, it transpires that the learned Tribunal has taken up the income of the deceased at Rs.2500/-. The deceased was skilled driver and he was also supervising the agricultural fields and he owned paratha house on the land of gram panchayat. According to this Court, it would be just and proper to take Rs.3000/- per month as the income of the deceased. Learned Tribunal has erred in not adding the future prospects. Looking to the age of the deceased as 26 years as per the judgment of Hon'ble Supreme Court in case of **National Insurance Company Limited vs. Pranay Sethi – 2017 (16) SCC 680**, 40% rise for future prospects is required to be granted and

multiplier of 17 would be applied. The deceased is survived by four dependents and therefore 1/4 shall be deducted for pocket and personal expenses. Further, considering the ratio laid down by the Hon'ble Apex Court in the case of *National Insurance Company Ltd. Vs. Pranay Shethi* reported in (2017) 16 SCC 680, the general and non-pecuniary damages, Rs.18,150/- each towards loss of estate and funeral expenses should be awarded. Towards loss of consortium, there are four dependents and therefore, Rs.48,400/- to each dependent should be awarded as per the decision of the Hon'ble Apex Court in the case of *United India Insurance Co. Ltd., versus Satinder Kaur @ Satwinder Kaur* reported in (2021) 11 SCC 780. The interest rate of 6% p.a. granted by learned Tribunal is maintained. However, considering the facts of the case, it appears that deceased is negligent to the extent of 50%.

11. Therefore, total compensation would be as under, which the claimants/s is/are entitled to get.

Particulars	Amount (Rs.)
Future dependency Loss =Rs.3,000/- + Rs.1200/- (40% rise) =Rs.4200/- minus 1/4 for personal exp. =Rs.3150/- x 12 months x 17 multiplier	6,42,600/-
Loss of Estate	18,150/-
Funeral expenses	18,150/-
Consortium (Rs.48,400/- x 4 dependents)	1,93,600/-
Total	8,72,500/-
Less: 50% self negligency of the deceased	4,36,250/-
Less : Amount which is already awarded	1,86,500/-
Additional amount which is awarded	2,49,750/-

12. Therefore, I hold that the claimants are entitled to get the enhanced compensation of **Rs.2,49,750/-** with 9% p.a. interest from the date of filing the claim petition till its realisation, which would meet the ends of justice. Rest of the direction(s) of the Tribunal remain same.

13. For the reasons recorded above, the following order is passed.

13.1 The present appeal is **partly allowed**.

13.2 The Insurance Company is directed to deposit the enhanced amount with interest as stated herein above within a period of six weeks from the date of receipt of this order.

13.3 The Tribunal shall disburse the entire awarded amount lying in the FDR and/or with the Tribunal, with accrued interest thereon, if any, to the claimantss, by account payee cheque / NEFT / RTGS, after proper verification and after following due procedure.

13.4 While making the payment, the Tribunal shall deduct the courts fees, if not paid, in accordance with rules/law.

13.5 Record and proceedings be sent back to the concerned Tribunal, forthwith.

(J. C. DOSHI, J)

GAURAV J THAKER

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: GAURAVKUMAR JANARDANBHAI THAKER(HC00951), Principal Pvt. Secretary, at High Court of Gujarat on 23/01/2025 17:24:23