

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 2483 of 2021

With

R/FIRST APPEAL NO. 889 of 2022

With

CIVIL APPLICATION (FOR STAY) NO. 1 of 2022

In R/FIRST APPEAL NO. 889 of 2022

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.J.DESAI

and

HONOURABLE MRS. JUSTICE MAUNA M. BHATT

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 ?	

IBRAHIM AHMED PATEL

Versus

VINODKUMAR BHANABHAI PARMAR

Appearance:

NISHIT A BHALODI(9597) for the Appellant(s) No. 1,2,3

MS KIRTI S PATHAK(9966) for the Defendant(s) No. 5

MS SEJAL K MANDAVIA(436) for the Defendant(s) No. 2

NOTICE SERVED for the Defendant(s) No. 1,3,4

CORAM:HONOURABLE MR. JUSTICE A.J.DESAI

and

HONOURABLE MRS. JUSTICE MAUNA M. BHATT

Date : 01/08/2022

ORAL JUDGMENT

(PER : HONOURABLE MRS. JUSTICE MAUNA M. BHATT)

1. These appeals under Section 173 of the Motor Vehicles Act, 1988 (“the Act” for short) are filed challenging the judgment and award dated 19.7.2021 passed by the Motor Accident Claims Tribunal at Bharuch in MACP No.79 of 2017, for the same accident.

2. First Appeal No. 2483 of 2021 is filed by the original claimants as appellants seeking enhancement of compensation whereas, First Appeal No. 889 of 2022 is filed by the Gujarat State Road Transport Corporation (GSRTC) (original opponent No.2), as appellant challenging negligence held and the quantum of compensation awarded. In MACP No.79 of 2017, opponent No.1 is driver of the bus, opponent No.2 is GSRTC, opponent No.3 is driver of Innova Car No. GJ 16 AU 5550, opponent No.4 is owner of Innova Car and opponent No.5 is Insurance Company of Innova Car.

3. Brief facts are:

3.1. That on 25.2.2017, Nabil Ibrahim Patel (hereinafter referred to as “deceased”) was going in Innova Car No. GJ 16 AU 5550 to Godhra for attending the marriage ceremony of his brother. The said car was driven by original opponent No.3.

It was case of the claimants that when the car was going towards Godhra, S.T.Bus No. GJ 18 Y 9676 driven by original opponent No.1 came with full speed in rash and negligent manner, because of which, it lost control over the steering and by coming on wrong side after crossing the divider, dashed with the Innova Car. The impact was so heavy that the car was dragged around 20 feet away and turned turtled. Because of the said accident, the deceased died on the spot. One Vaibhav also died during the treatment and Shakhir Hussain sustained serious injuries. All three were travelling in the same car. It was case of the original claimants that the deceased was healthy and fit at the time of accident and was aged 27 years. He was doing job at Riyadh, Kingdom of Saudi Arabia in Unified Real Estate Development Company as Executive Facility Manager and was earning SR (SAR Riyals) 7500 per month which comes to Rs.1,22,000/- p.m. It was further the case of the original claimants that the accident occurred on account of sole negligence on the part of the driver of bus. For the said accident they filed Claim Petition under Section 166 of the Act before the Claims Tribunal seeking compensation of Rs.2,50,00,000/-.

4. Upon issuance of the notice, opponent Nos. 1 and 2 (driver and owner of the Bus) appeared and filed their written statement at Exh.29. Opponent Nos. 3 and 4 (driver and owner of Innova Car) filed their statement vide Exh.23 and

opponent No.5 Insurance Company of Innova Car also filed the written statement. The Tribunal after hearing the parties and upon appreciation of evidence on record in relation to negligence, held the driver of the S.T. Bus as sole negligent. The Tribunal held opponent Nos. 1 and 2, liable for the payment of compensation. The Tribunal exonerated opponent Nos. 3, 4 and 5 (driver, owner and Insurance Company of the Innova Car) from the claim petition.

In relation to compensation, the Tribunal awarded total compensation of Rs.19,58,000/- under different heads as under:

Loss of dependency Income	Rs.19,28,000/-
Loss of Estate	Rs.15,000/-
Funeral Expenses	Rs.15,000/-
Total compensation amount	Rs.19,58,000/-

5. Opponent Nos. 1 and 2 (driver of bus and GSRTC) are directed to pay the compensation with interest @ 9% p.a. from the date of Claim petition till its realization.

6. Aggrieved by the said order as noticed earlier, the original claimants as appellants filed the First Appeal being F.A. No. 2483 of 2021 seeking enhancement of compensation, whereas, First Appeal No.889 of 2022 is filed by the GSRTC challenging the quantum of compensation awarded as also the negligence held by the Tribunal.

7. We have heard Mr. Nishit Bhalodi, learned advocate for the appellants (original claimants) and Ms. Sejal Mandavia, learned advocate for opponent No.2 (GSRTC) and Ms. Kirti Pathak, learned advocate for the Insurance Company of the Innova Car. Record and Proceedings of the Tribunal have been secured.

8. Mr. Nishit Bhalodi, learned advocate for the appellants (original claimants) contended that the Tribunal committed serious error in awarding lesser compensation, ignoring the fact that the deceased was earning SR 7500 per month by applying multiplier of 17.77 (exchange rate), it would come to Rs.1,22,000/- p.m. It is not in dispute that he was doing job at Unified Real Estate Development Company as Executive Facility Manager. In support of his submission, he relied upon Exh.60 and contended that the income of the deceased would be assessed accordingly. He further contended that as he was 27 years old at the time of accident, 40% would be entitled towards prospective income. As he was having two dependents and he being bachelor, 50% would be deducted towards personal expenses and multiplier of 17 would be applicable.

8.1. In relation to the enhancement of compensation, he relied upon following decisions:

(i). Jiju Kuruvila and Ors. v. Kunjuamma Mohan & Ors.
[2013 ACJ 2141]

(ii). Divisional Manager, Oriental Insurance Co. Ltd. v.
Swapna Nayak & Ors. [2017 ACJ 697]

(iii). Ramla and Ors. vs. National Insurance Co. Ltd. and Ors.
[2019 ACJ 559]

(iv). Triveni Kodkany and Ors. vs. AIR India Limited and Ors.
[2020 ACJ 1582]

(v). Tushar Bhanubhai Patel & 1 vs. Pranavbhai M. Patel in
First Appeal No. 1197 of 2010 decided on 1.2.2022.

9. Referring to the above decisions, he contended that in all the above referred decisions, the Hon'ble Court has considered the income earned by the deceased in the country in which he was working, at the time of accident. He therefore, contended that the observations of the Tribunal that the Indian economy and financial situation is required to be considered particularly in the background of the Country where the dependent beneficiaries are residing is erroneous. He further contended that the economic condition and the life style expenses of the country in which the deceased was working cannot be the ground for reducing the income of the deceased. The tribunal

is in error in assessing the income of the deceased at Rs. 15000/- p.m., by taking in to consideration the income of a person who performs similar nature of work in India. He thus, contended to enhance the compensation accordingly.

10. On the other hand, Ms. Sejal Mandavia, learned advocate for the GSRTC contended that the Tribunal has wrongly held driver of bus as 100% negligent. She contended that the bus driver tried to overtake the truck and while overtaking the truck lost control over the steering because of which, the bus crossed the divider and on account of impact he became unconscious. Therefore, it is not correct to state that the driver of bus was sole negligent. She contended that as there was some problem as the steering of the bus became free and that is how the accident occurred. She contended that the driver of the Innova car was also driving the car with high speed and for the said reason it turned turtle. Therefore, he may also be held negligent for occurrence of the said accident. She contended to hold driver of Innova Car as negligent to the extent of 30%.

10.1. In relation to compensation, she contended that not a single document is on record to establish that the deceased was sending money through bank to the claimants. The deceased was on probation and not permanent employee of the Company in Riyadh and therefore, it cannot be said that he was regularly having the income as referred at Exh.60. She

further contended that the claimants were not dependent as there is no proof that the deceased was sending money to them. She thus contended that the compensation awarded by the Tribunal is on much higher side, considering the Indian standards. If the salary of a person having similar job in India is equated with the job of deceased, then one would earn less than Rs.15,000/- p.m. and, therefore, also the orders of the Tribunal is erroneous. She in support of her submissions relied upon decision of Hon'ble Supreme Court in the case of ***United India Insurance Co. Ltd. & ors. vs. Patricia Jean Mahajan & Ors. [(2002) 6 SCC 281]***. Relying upon the decision she contended that as held by Hon'ble Supreme Court the economic standards of foreign country vis a vis Indian economic condition is also to be seen. Further, the aspect of deceased if would have been employed in India, then what he would have earned at the relevant time is required to be seen. She thus contended that the judgment and award of the Tribunal being erroneous needs to be modified accordingly.

11. Ms. Kirti Pathak, learned advocate for the Insurance Company of Innova Car supported the findings of the Tribunal and submitted that the Tribunal has correctly appreciated the evidence on record and exonerated the Insurance Company of Innova Car by holding that the driver of the bus was sole negligent for the occurrence of the said accident. She relied on panchnama at Exh.36 in support of her submission.

11.1. In relation to compensation, she contended that even though no liability has been fastened on the Insurance Company of the Innova Car, she relied on the decision in the case of *Chanderi and Anr. vs. Jaspal singh & Ors. [(2015) 11 SCC 703]* and contended that the Tribunal has rightly observed that the economic condition and the standard of living of the country in which the claimants are residing as also the fact that if the deceased would have employed in India what he would have earned at the relevant time is to be seen. She supported the order of the Tribunal and submitted that there being no error in the judgment and award of the Tribunal, the appeal of the appellants and GSRTC may be rejected. She relied on the decision of Hon'ble Supreme Court in the case of *Chandra & Ors. v. The Branch Manager, the Oriental Insurance Company Ltd. & Anr. in Civil Appeal No.5635 of 2021*.

12. The fact relating to the road traffic accident occurred on 25.2.2017 as well as the involvement of offending vehicle is not in dispute. These facts have been extensively considered by the Tribunal and, therefore, they are not discussed to avoid repetition of facts.

13. Having heard learned advocates appearing for the respective parties and upon perusal of the judgment and award of the Tribunal with the Record and Proceedings of the Tribunal, we are of the view that the following points would

arise for our consideration.

(1) Whether the Tribunal was correct and justified in arriving at the conclusion that the driver of the S.T. Bus No. GJ 18 Y 9676 was negligent to the extent of 100% for causing the accident? and therefore, opponent Nos. 1 and 2 are jointly and severally ordered to pay the compensation awarded.

(2) Whether the compensation awarded by the Tribunal in sum of Rs. 19.58,000/- is just and proper compensation? If not to what extent it is required to be enhanced and under what heads claimants would be entitled for enhancement.?

(3) What order?

Point No.1

Tribunal has noticed that opponent No.1 (driver of bus) was examined at Exh.75, who admitted that after jumping the divider, the bus went on the wrong side and dashed with Innova Car. It is not disputed that for the said accident, the departmental inquiry was conducted against him. One Imtiyaz Aiyubhai Patel was examined at Exh.64 who also reiterated that the accident occurred as the bus jumped the divider and dashed with the Innova Car. In cross-examination, also nothing contrary came on record. In the panchnama, it is

stated that Innova Car was badly damaged on account of the accident. The contents of the panchnama has not been disputed by the appellants. The Tribunal further observed that the driver of the heavy vehicle is expected to take more care while driving the vehicle. In view of the above findings, in our considered opinion the Tribunal is correct in holding that the driver of the bus was sole negligent for the occurrence of the said accident. We find no error, in judgment and award of the Tribunal dated 19.7.2021 and accordingly, we uphold the findings of the Tribunal in relation to negligence, that the driver of the bus was sole negligent for the occurrence of the accident. Therefore, we answer Point No.1 in favour of the appellants (original claimants) and against opponent No.2 (GSRTC).

Point NO.2

For compensation, upon reappreciation of evidence we have noticed that the deceased was holding degree of Bachelor's of Technology in Mechanical Engineering (Exh.47) and did his Diploma in Piping Engineering. The job offer Form at Exh.54 from Unified Real Estate Development refers that his total package was SR 5850 p.m., and the package shows the following breakup:

1.	Contract Status	Single Status
2.	Basic Salary	SR 4,000/- per month. This salary is based on 48 hours/ week.
3.	Housing Allowance	SR 1,000/- per month
4.	Transportation allowance	SR 500/- per month
5.	Supplementary Transpo Allowance	SR 250/- per month
6.	Mobile Allowance	SR 100/- per month
	Total Package	SR5,850 per month

This contract was for a period of one year. In the affidavit at Exh.60 by the Shehnaz Ibrahim Patel it was stated that the deceased was earning SR 6430 per month (Rs.1,22,000/- p.m. Indian currency). The affidavit refers to settlement report of Unified Real Estate Development Company at Exh.59, which shows the basic salary of the deceased at SR 4000 p.m. Further, in the case of *Patricia Jean Mahajan and Ors. (supra)*, the Hon'ble Supreme Court has observed that,

“19.Looking to the Indian economy, fiscal and financial situation, the amount is certainly a fabulous amount though in the background of American conditions it may not be so. Therefore, where there is so much of disparity in the economic conditions and affluence of the two places viz. The place to which the victim belongs and the place where the compensation is to be paid, a golden balance must be struck somewhere, to arrive at a reasonable and fair mesne. Looking by the

Indian standards they may not be much too overcompensated and similarly not very much undercompensated as well, in the background of the country where most of the dependent beneficiaries reside.....”

14. In the case of *Chanderi Devi and Anr. (supra)*, the Hon'ble Court held as under:

“9. On the other hand, it has been contended by the learned counsel for the respondent Insurance Company that the amount awarded by the High Court to the appellants as compensation is just and reasonable and does not call for any upward revision. In support of the same, reliance has been placed on the decisions of this Court in *State of Haryana v. Jasbir Kaur* and *Karnataka SRTC v. Mahadeva Shetty*, wherein it is held that the amount of compensation should be just and reasonable, it should neither be a bonanza nor a source of profit but at the same time it should not be a pittance.”

The Court in paragraph 10 has further held as under:

“10. We have heard the learned counsel for the parties & perused the record. The courts below have considered the evidence produced on record by the appellants, particularly the passport, salary certificate, income-tax certificates and whether or not the deceased was employed in Germany at the time of the accident to ascertain the annual income of the

deceased at the time of his death and the courts below found that the same cannot be assessed on the basis of the documents referred to above. The High Court found it to be just and reasonable to take the income of the deceased at the time of his death at Rs.8,333/- per month, which in our considered view is definitely on the lower side keeping in view that the deceased was employed as a cook in an Indian restaurant in Germany. At the same time, to consider the income of the deceased at Rs.62,975/- per month(i.e. 1145 Euros) as contended by the appellants to calculate the loss of dependency of the appellants would definitely be on the higher side. Hence, on considering the facts, circumstances of the case and plausibly estimating as to how much a cook of similar nature as the deceased would have earned in India in the year 2006, we are of the view that it would be just and reasonable for us to ascertain the income of the deceased at the time of his death at Rs.15,000/- per month. By adding 50% of the actual salary as provision for future prospects, the income of the deceased to be considered for calculation of loss of dependency is Rs.22,500/- per month i.e. Rs.2,70,000/- per annum. Deducting 10% towards income tax the net income comes to Rs.2,43,000/- per annum. Further, deducting 1/3rd towards personal expenses and applying the correct multiplier as per the legal principles laid down by this Court in the case of Sarla Verma (supra), the loss of dependency would come to Rs.25,92,000/-

[(Rs.2,43,000/- (-) 1/3rd of Rs.2,43,000/-) x 16].”

15. In the case on hand, we have noticed that the deceased was having basic salary of SR 4000 p.m. So far as other allowances are concerned, in our opinion, they would depend upon the economic condition and life style of the country in which, the deceased was employed. Therefore, the reliance placed by learned advocate for the appellants on Exh.60, showing income of SR 6430 in our view, is not appropriate to take into consideration. The rate of exchange at the relevant time as informed by learned advocate for the appellants (original claimants) was 1 Reyal equal to Rs.17.77. In addition to the above, we also need to take into account the fact that the salary which was being earned by the deceased was in a foreign country. Therefore, it may not be reasonable to apply the exchange rate to the basic salary without taking into consideration the parity of employment between India and Saudi Arabia. As laid down by the Hon'ble Apex Court as discussed above as the work conditions and other relevant aspects need to be considered such that the compensation remains reasonable and does not amount to a windfall profit. Applying the same principle, in our opinion, a person having similar qualification with similar work if would have been employed in India, he would have earned Rs. 50,000/- per month. This in our opinion being plausible estimation, we deemed it appropriate to assess income of the deceased at Rs.

50,000/- per month. This assessment is also in line keeping in mind the income purchase power parity between India and Saudi Arabia.

As the deceased was 27 years of age, 40% would be applicable towards prospective income. Being bachelor and having two dependents 50% towards personal expenses would be deductible. Considering the decision in the case of *National Insurance Co. Ltd. vs. Pranay Sethi and Ors.* reported in (2017) 16 SCC 680 multiplier of 17 would be applicable. Therefore, in our opinion the deceased would be entitled for the dependency loss as under:

“50,000/- p.m. + Rs.20,000/- (40% prospective income) =
Rs.70,000/- – Rs.35,000/- (50% personal expenses) =
Rs.35,000/- x 12 p.a. = Rs. 4,20,000/- x 17 (multiplier) = Rs.
71,40,000/-”

16. In relation to the compensation under conventional heads that loss of estate and funeral expenses Rs.15,000/- each, in our opinion is properly considered by the Tribunal.

Loss of dependency Income	Rs. 71,40,000/-
Loss of Estate	Rs. 15,000/-
Funeral Expenses	Rs. 15,000/-
Total	Rs.71,70,000/-

17. For the reasons aforesaid, we proceed to pass following

O R D E R

(i) The appeal filed by the original claimants as appellants in First Appeal NO. 2483 of 2021 is partly allowed and appeal filed by GSRTC (original respondent No.2) in First Appeal NO. 889 of 2022 is dismissed.

(ii) Thus, the appellants – original claimants would be entitled to total compensation of **Rs.71,70,000/-**. As the Tribunal has awarded an amount of **Rs.19,58,000/-**, the respondent No.2 - G.S.R.T.C. shall deposit the balance additional amount of compensation of **Rs.52,12,000/-** (Rs.71,70,000 – Rs.19,58,000) with 6% interest p.a. and proportionate costs from the date of filing of the claim petition till its realization with the Tribunal within a period of 8 weeks from the receipt of the order. If the aforesaid amount is not deposited as directed herein above, appellants would be entitled for interest at the rate of 9% from the date of filing of the petition till its realization.

(iii) The rest of the judgment and award passed by the learned Tribunal has remained unaltered.

(iv) Registry is directed to transmit back the Record and Proceedings of the case to the concerned Tribunal forthwith. However, there shall be no order as to costs.

18. In view of the above, Civil Application (for stay) also stands disposed of.

(A.J.DESAI, J)

(MAUNA M. BHATT,J)

NAIR SMITA V.

सत्यमेव जयते
THE HIGH COURT
OF GUJARAT

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