

HIGH COURT OF GUJARAT**SHARDABEN WD/O AMARSINH MULIBHAI GOHIL & 5 OTHER(S)***Versus***BHAGWANBHAI DATTUBHAI PAVAR & 4 OTHER(S)****Date of Decision:** 17 December 2021**Citation:** 2021 LawSuit(Guj) 4941**Hon'ble Judges:** [Hemant M Prachchhak](#)**Case Type:** First Appeal**Case No:** 1413 of 2011**Final Decision:** Appeal allowed**Advocates:** [M T M Hakim](#), [Maulik J Shelat](#), [Palak H Thakkar](#), [Nanavati Associates](#)**Cases Referred in (+):** 3**Hemant M Prachchhak, J.**

[1] This appeal is filed by the appellants - original claimants seeking enhancement of the compensation amount awarded by the Motor Accident Claims Tribunal (Main), Surat (hereinafter referred to as "**the Tribunal**") vide impugned judgment and award dated 21.10.2008 passed in M.A.C.P. No.487 of 1991, whereby the Tribunal has partly allowed the claim petition and awarded a sum of Rs.1,42,800/- along with interest at the rate of 9% p.a.

[2] Brief facts of the present case are that on 24.02.1991, at about 9.30 p.m., one Amarsinh was travelling in his motor car bearing registration No.GBU-450 from Bharuch to Surat on the left side of the road with moderate speed and when he reached within the limits of Village: Mahuvej, at that time, opponent no.1 came driving truck bearing registration No.GJ-6-T-4923 from opposite direction in excessive speed and in rash and negligent manner, lost control over the truck, dashed in front side of the motor car which was driven by said Amarsinh, as a result of which, he sustained serious injuries and he succumbed to the injuries. Hence, the legal heirs of the deceased Amarsinh have filed M.A.C.P. No.487 of 1991 before the Tribunal, which came to be partly allowed by the Tribunal and awarded a sum of Rs.1,42,800/- along with interest at the rate of 9% p.a.

[3] It came to be held by the Tribunal that said amount was ordered to be awarded to the dependents. Not being satisfied with the quantum of compensation awarded, this appeal has been filed.

[4] Heard Mr.MTM Hakim, learned counsel appearing for the appellants, Mr.Maulik Shelat, learned counsel appearing for respondent No.3 - Insurance Company and Mr.Palak Thakkar, learned counsel appearing for respondent No.5 - Insurance Company.

[5] Mr.Hakim, learned counsel appearing for the appellants has submitted that the Tribunal has committed a serious error in awarding abysmally very less compensation without considering the material evidence available on record and in particular he would draw the attention of this Court to the documentary evidence and contend that income of the deceased, as per the record, has not been considered by the learned Tribunal as the deceased was serving as driver with Vinaj Agencies and his salary certificate was produced on record. He has submitted that even the future prospective income was also not considered by the learned Tribunal nor proper multiplier was applied nor considered dependency benefit, while considering the amount of compensation. He has further submitted that the learned Tribunal has committed serious error of facts and law in not considering the income of the deceased. He has also submitted that the Tribunal has not awarded just and reasonable compensation. He has submitted that additional amount of premium paid by the owner of the ambassador car which was driven by the deceased and, therefore, the Insurance Company cannot be exonerated from its liability. Hence, he prays for enhancement of compensation under all heads.

[6] As against that, Mr.Shelat, learned counsel appearing for respondent No.3 and Mr.Thakkar learned counsel appearing for respondent No.5 have supported the impugned judgment and award passed by the Tribunal and in support, they have submitted that the Tribunal has rightly considered the income at Rs.1200/- per month of the deceased. They have opposed enhancement on the ground that there is no cogent and convincing reliable evidence produced by the claimants and, therefore, the appeal could be dismissed.

[7] Having considered the averments made in the appeal, submissions canvassed by the learned counsel appearing for both the sides and considered the facts of the case and on perusal of the record and proceedings of the case, it appears that it is the case of composite negligence on the part of the vehicles. It appears from the record that the Tribunal has not awarded just compensation to the next kin of the deceased. It appears from the record that the deceased was serving as driver and at the time of incident, he was aged about 36 years only and the fact that the accident took place only on the

negligency of the driver of the truck and, therefore, considering overall fact and documentary as well as oral evidence, it is complete negligency on the part of the driver of the truck.

[8] The aspects relating to the accident, issuance of policy to the offending vehicle and same being in force or vogue as on the date of accident are all aspects which are not in dispute and as such they are not delved upon by me in the present appeal as it would be repetition of facts.

[9] The records on hand would clearly indicate that accident had occurred on 24.02.1991, at about 9.30 p.m. The charge- sheet has been filed by the jurisdictional police against the driver of the offending vehicle i.e. truck bearing registration No.GJ-6-T-4923. This is not disputed by the insurer. The contents of the FIR and the panchnama are not challenged by the insurer. These aspects though noticed by the Tribunal has awarded the compensation which is on lower side.

[10] That Tribunal has assessed 40% negligency on the part of the driver of the ambassador car and 60% negligency on the part of the driver of the truck. Considering the fact that even the deceased was entitled to get compensation from respondent no.5 of the ambassador car under the Employee's Compensation Act, 1923 and calculation as per the Employee's Compensation Act, 1923 schedule and as the deceased was aged 36 years and as per the quantum, the claimants are entitled to Rs.1,94,000/-.

Therefore, the liability of respondent no.5 is as under:- Next Income Rs.2000 per month x 50% = Rs.1,000 x 194.64 (factor) = Rs.1,94,640/-.

[11] Considering the above facts and liability of 40% is considered on the part of respondent no.5 - insurance company, it comes to Rs.1,73,400/- and 60% on the part of respondent no.3 - insurance company is considered it comes to Rs.2,60,100/- from the total amount of compensation of Rs.4,33,500/-. Therefore, the respondents no. 5 and 3 are directed to deposit the said amount respectively along with interest from the date of application till realization of the amount.

[12] Considering the decisions of the Hon'ble Apex Court in the case of [Sarla Verma and others Vs. Delhi Transport Corporation and another](#), 2009 6 SCC 121, National Insurance Company Limited Vs. Pranay Sethi and others, 2017 16 SCC 68 and United India Insurance Company Limited Vs. Satinder Kaur alias Satwinder Kaur and others, 2020 AIR(SC) 620, I am of the considered view that the appellants are entitled to get additional amount of compensation considering the income of the original claimant at Rs.1500/- plus 40% rise and the appeal requires to be allowed and the impugned judgment and award requires to be substituted by enhancing the amount of

compensation and, therefore, the compensation is required to be redetermined as under:- Future loss of income Rs. 18,900/-

Future loss of income Rs.1500 per month Rs.1500 x 40% prospective rise = Rs.600 Rs.2100 (1500 + 600) – Rs.525 (1/4th towards personal expenses) = Rs.1575 x 12	Rs. 18,900/-
Rs.18,900 x 15 multiplier	Rs. 2,83,500/-
Loss of consortium	Rs. 1,20,000/-
Loss of estate	Rs. 15,000/-
Funeral expenses	Rs. 15,000/-
Total compensation	Rs. 4,33,500/-
Less: Compensation awarded by the Tribunal	Rs. 1,42,800/-
Enhanced amount	Rs. 2,90,700/-
Less: 30% negligency on the part of the appellant	Rs. 37,740/-
Total amount	Rs. 88,060/-

Accordingly, a sum of Rs.2,90,700/- as additional compensation requires to be awarded toward future loss of income, which is just and reasonable compensation and the same is awarded in addition to Rs.1,42,800/- awarded by the Tribunal. However, the appellants are entitled to the enhanced amount of compensation of Rs.2,90,700/- amount along with interest at the rate of 6% from the date of application till realization of the amount.

[13] For reasons aforesaid, I proceed to pass following order.

(i) Appeal is partly allowed.

(ii) Judgment and award dated 21.10.2008 passed by the Motor Accident Claims Tribunal (Main), Surat in M.A.C.P. No.487 of 1991 is hereby modified and in addition to what has been awarded by the Tribunal a sum of Rs.2,90,700/- with interest at the rate of 6% per annum is awarded which shall be from the date of petition till date of payment of deposit whichever is earlier.

(iii) The insurance companies are directed to deposit amount of compensation with interest at the rate of 6% as early as possible within an outer limit of eight weeks

from the date of receipt of certified copy of this order.

(iv) The apportionment and order for disbursement as made by the Tribunal in paragraph no.26 of the operative portion of the order shall hold good for the substituted award.

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

