Petition filed on : 14-07-2015
Petition registered on : 14-07-2015
Petition decided on : 30-09-2019
Duration : Y- M- Days
4 - 2 - 16

IN THE HON'BLE MOTOR ACCIDENT CLAIMS TRIBUNAL (MAIN), PATAN DISTRICT, AT – PATAN

M.A.C.P. No.188/2015
Ex.:66

APPLICANTS:-
Legal heirs of deceased Rameshbhai Dhudabhai Prajapati

1. Kanchanben Rameshbhai Prajapati
   Age: 25 yrs, Occupation: Housewife
2. Pratiben Rameshbhai Prajapati
   Age: 11 yrs, Occupation: Study
3. Payalben Rameshbhai Prajapati
   Age: 9 yrs, Occupation: Study
4. Hipti @ Diptiben Rameshbhai Prajapati
   Age: 3 yrs, Occupation: -
5. Sagar Rameshbhai Prajapati
   Age: 1 yrs, Occupation: -

All R/o.(Original):- Sampra, Ta-Dist. Patan
All R/o.(Present):- Thara, Ta. Kankrej, Dist. Banaskantha

Vs.

OPPONENTS:-

1. Jenubha Babaji Vaghela
   Age: Adult, Occupation: Agriculture
   Add.:- Vada, Ta. Kankrej, Dist. Banaskantha
2. Bajaj Allianz General Insurance Company Ltd.
   Add.:- Patan, 46-47, Shridev Complex, Opposite Main Post Office, Railway Station Road, Patan, Dist. Patan

APPEARANCE:-
Ld. advocate Mr.R.R.Shrimali for applicants.
Ld. advocate Mr.J.C.Thakor for opponent No.1.
Ld. advocate Mr.H.N.Patel for opponent No.2.

A claim petition for compensation u/s 166 of M.V. Act.
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-:: J U D G E M E N T ::-

1. Deceased Rameshbhai Dhudabhai Prajapati succumbed to injuries following the vehicular accident. So, the applicants, who are dependents as well as legal heirs of the deceased, have filed the present petition u/s 166 of M.V. Act for getting compensation of Rs.15,00,000/-.

2. Applicant No.1 is wife, whereas Nos.2-5 are minor children of the deceased respectively.

3. Opponents No.1 & 2 are owner & insurer respectively of Alto Car No.GJ-8-AJ-7539(For short 'car' only).

4. Facts and reasons for claiming compensation can be shortly stated as under:-

(4.1) On 09/04/2015, deceased Rameshbhai Dhudabhai Prajapati was travelling in the said car from Totana village to Thara village being driven by his friend Dilipji @ Pintubha. It is submitted that Pintubha was driving the car in a reckless manner and lost control over the car while taking a turn and the car collided with the tree on the road side. As a result, the deceased sustained multiple injuries and was taken to Government Hospital where he was declared dead by the doctor. Moreover, car driver Dilipji @ Pintubha also succumbed to injuries due to said accident. Thus, it is claimed that the said accident had occurred on account of rash and negligent driving of car driver.

(4.2) It is claimed by the applicants that, deceased was only 28 years old at the time of accident and earning more than Rs.10,000/- per month through agriculture and paint work. It is also claimed by the applicants that, if the deceased had not succumbed to injuries due to said vehicular accident, he would have lived long and healthy life and could earn double than to his existing income at the time of his death. It is also claimed by the applicants that, on account of untimely death of the deceased, applicants have become destitute and their later life has become gloomy and painful. The applicants were depending upon the income of the deceased, but due to untimely death of the deceased, applicants will have to suffer future potential and dependency loss. Along with these causes, applicants have also claimed compensation for expenses incurred for the last rites and rituals performed for the death of the deceased. In total, applicants have claimed compensation of Rs.15,00,000/- from the opponents.

5. After execution of process, opponent No.2 filed written statement vide Ex.18 and pleaded total denial of the facts of the claim petition including the deceased did not fasten the seat belt at the time of accident and therefore deceased was himself negligent for the accident. Thus, it is submitted by the opponent that there was negligence on the part of deceased and opponent is not liable to pay any compensation to the petitioners.

6. This Tribunal has framed issues at Ex.22, which are as under:-

-::I S S U E S::-

1. Whether the applicants prove that deceased died in the accident which occurred due to rash, careless and negligent driving of the driver of the

motor vehicle involved in the accident?

2. What amount of compensation the applicants are entitled to get and from whom and at what rate of interest?
3. What order and award?

7. My answers to above issues are as under:-
1. In affirmative
2. As per final order
3. As per final order

8. The applicants have led oral as well as documentary evidences to establish their claim. Opponent No.2 also appeared and pleaded in its defence by producing certain oral as well as documentary evidences.

9. I have heard the learned advocates for the respective parties. Written arguments produced by the applicants and opponent No.2 vide Ex.64 & 65 respectively are taken into consideration.

-:: R E A S O N S ::-

Issues No.1 & 2:

10. Since both the issues involve common line of fact, to avoid multiplicity of reasons, they are decided together.

11. The present application for getting compensation has been filed by the legal heirs of

deceased Rameshbhai Dhudabhai Prajapati for his death due to vehicular accident. To establish the claim, Kanchanben Rameshbhai Prajapti, wife of the deceased has deposed vide Ex.26, reiterating the facts of claim petition.

12. Apart from this oral evidence, coming to documentary evidences produced by the applicants, copy of F.I.R. is produced vide Ex.34. Copy of Panchnama of place of accident is produced vide Ex.35. Copies of Inquest Panchnama, P.M. Report and Birth Certificate of the deceased are produced vide Ex.36-38 respectively. Copies of R.C. Book and Insurance Policy of the car are produced vide Ex.39 & 40 respectively. Copies of Revenue Record(Form No.7,12,8-A) are produced vide Ex.41-45 respectively.

13. The complaint of the incident was given by Ashokbhai Vajabhai Raval, who was an eye witness to the accident, as he was travelling in the same car with deceased Rameshbhai, at the time of accident. The complainant has submitted that, the car was driven in rash and negligent manner and as a result, the car collided with the Neem tree on the road side after the car driver lost control over it. Moreover, panchnama of place of accident also suggests that, the car was lying on

the spot in totally damaged condition and there was a Neem tree there. Thus, the facts of the claim petition and complaint of the incident are corroborated on perusing the panchnama of place of accident. In such circumstances, this Tribunal, without getting indulged into any prolonged discussion, holds the driver of car sole negligent for the accident.

14. To arrive at just and reasonable compensation for which the applicants are entitled, this Tribunal has to assess the age, income, future prospects of the deceased and dependency of the applicants.

15. The applicants have produced the Birth certificate of the deceased to prove his age, which is 33 years at the time of his death. So, age of the deceased considered **33** years at the time of accident. Therefore, as per the guidelines given in the case of **Sarla Varma Vs. DTC, 2009 ACJ Page 1298 (SC)**, multiplier of **16** would apply to the multiplicand to arrive at just and reasonable dependency loss.

16. According to submissions made in the claim petition as well as in affidavit of the applicant wife of the deceased, he was earning more than Rs.10,000/- per month through agriculture and

paint work at the time of accident. However, applicants are not able to produce any evidence of the income of the deceased except copies of revenue records(Form No.7,12,8-A). In such circumstances, considering the accidental year, if income of the deceased is assessed **Rs.6500/-** per month according to Minimum Wages Act, it would be just and appropriate.

17. As guided in **National Insurance Co.Ltd. Vs. Pranay Shethi, reported in 2017 ACJ 2700(SC),** addition of **40%** should be added into the existing income of the deceased at the time of his death to calculate the loss of future prospects as the deceased was **33** years old and self employed at the time of accident. Deceased Rameshbhai Dhudabhai Prajapati is survived by his wife and four minor children. Hence, 1/4th amount of the deceased's income is required to be deducted for his personal expenditures.

18. Thus, the mathematical calculation would stand as under:-

Rs.6500/- X 40% = Rs.2600/-. Thus Rs.6500 + Rs.2600 = Rs.9100/-. Thus, income of the deceased would reach to **Rs.9100/-** per month. Then, 1/4 amount i.e. **Rs.2275/-(Rs.9100/4)** is deducted from his actual monthly income i.e. **Rs.9100/-** as personal expenses of the deceased. Thereafter, the amount that would come in the share of the dependents would be **Rs.6825/-(Rs.9100 - Rs.2275).** Calculating the amount of compensation for future dependency loss based upon above figures would reach to **Rs.81,900/-(Rs.6825 X 12 Months).** Thus, **Rs.81,900/-(Yearly Income) X 16(Multiplier)** = **Rs.13,10,400/-.**

19. In the case of **National Insurance Co. Ltd. V/s. Pranay Shethi(Supra),** the Hon'ble Apex Court has provided guidelines for grant of compensation under conventional heads. In such circumstances, this Tribunal grants **Rs.70,000/-** towards the conventional heads i.e. loss of consortium, loss of estate and funeral expenses to the applicants. Moreover, in the case of **MAGMA GENERAL INSURANCE CO. LTD. V/s. NANU RAM ALIAS CHUHRU RAM & ORS, reported in 2018(O) AIJEL-SC 62739,** the Hon'ble Supreme Court held that, Parental Consortium is awarded to children who lose their parents in motor vehicle accidents under the Act. In this circumstances, the Tribunal grants **Rs.40,000/-** (Rs.10,000/- each) towards Parental Consortium to the applicants No.2-5, who are minor children of the deceased.

20. Thus, the applicants, who are the legal heirs

of the deceased, are entitled to get total compensation of **Rs.14,20,400/-.**

21. The above figures are shown in the following tabular form to calculate the final amount of compensation.

Sr.No.	**Particulars**	**Amount**
1	Compensation for future dependency loss	Rs.13,10,400/-
2	Conventional amount	Rs.1,10,000/-
	Total compensation	**Rs.14,20,400/-**

22. Moreover, this Tribunal awards 9% interest p.a. on the awarded amount from the date of petition till realization with the cost of proceedings.

23. The insurance company of the car, i.e. opponent No.2, has raised objection that driver of the car was not holding valid driving license at the time of accident. Whereupon, the learned advocate for the insurance company examined Baldevji Pratapji Thakor, The Assistant Motor Vehicle Inspector, R.T.O. Office, Palanpur vide Ex.49 in this regard. The witness deposed that driver of the car i.e. Pintubha Bachubha Vaghela was holding driving license of L.M.V. non-transport vehicle and copy of Extract of his driving license was produced vide Ex.50, which is

taken into consideration. In such circumstances, there is no substance in the arguments of the learned advocate for the insurance company that driver of car was not holding valid license to drive the said car at the time of accident.

24. Moreover, the opponent insurance company has also objected that policy of the car is a "Private Vehicle" policy and therefore deceased Rameshbhai Dhudabhai Prajapati was not authorized to travel in the said private car as gratuitous passenger. The learned advocate for the insurance company examined Mahesh Rameshwarlal Shah, Legal Manager, Bajaj Allianz General Insurance Co.Ltd in this regard vide Ex.62, who stated that the deceased, being the gratuitous passenger, was not authorized to travel in the said private car and, in such circumstances, the insurance company is not liable to pay compensation. Opponent No.2 has produced copy of insurance policy with terms & conditions vide Ex.20. Moreover, learned advocate for the insurance company has produced copies of statements before the police of Kanchanben Prajapati and Baldevbhai Prajapati vide Ex.56 & 58 respectively and raised contentions that the deceased was not a friend of driver of the car and therefore not authorized to travel in the said private car as gratuitous passenger. But,

this Tribunal is of the view that, neither of them two is the eye witness to the accident and therefore their statements can not be admitted in evidence. Thus, the opponent has failed to establish that the deceased was a gratuitous passenger. Furthermore, in the case of **HEMENDRASINH MANSINH JADAV v/s. SANJAYBHAI GOVINDBHAI DABHI**, decided on **03/10/2018**, wherein the Hon'ble Gujarat High Court held that the insurance company is certainly liable to compensate the occupant of the private vehicle irrespective of nature of policy because there is nothing like different type of policy in the statute and the liability of the insurance company is certainly statutory and, therefore, it cannot escape from such liability.

25. R.C. Book and Insurance Policy of the car are on record and opponents No.1 & 2 are owner & insurer respectively of Alto car No.GJ-8-AJ-7539. Looking to the insurance policy of the car, the risk of third party is covered. Thus, there is nothing in regard to breach of any terms & conditions of the policy or non-coverage of insurance as on the date of accident. Thus, both the opponents are jointly and severally liable to pay compensation to the applicants.

26. In view of above reasons, issue No.1 is answered affirmatively, whereas for issues No.2 & 3, the following final order is passed.

-:: **O R D E R** ::-

1. M.A.C.P. No.188/2015 is partly allowed with interest and proportionate costs.

2. Applicants do recover **Rs.14,20,400/- (Fourteen Lac Twenty Thousand Four Hundred Rupees Only)** from both the opponents jointly and severally along with cost and interest @ 9% p.a. from the date of institution of petition till realization.

3. The opponents shall jointly and severally deposit the awarded amount along with costs of this petition and interest at the rate of 9% p.a. from the date of institution of the petition till realization in the office of this Tribunal within one month.

4. Any amount of interim compensation, if paid, shall be deducted from the awarded amount.

5. Court fee, if not paid, shall be first charged over amount of the award and shall be firstly deducted.

6. The said amount of compensation be distributed amongst the applicants in the ratio of 20% each.

7. Out of total amount of compensation, the amount that comes in the share of applicant No.1, 70% amount shall be invested in F.D.R. in the name of applicant in any Nationalized Bank of her choice for a period of 5 years and the remaining 30% amount shall be paid to her by way of Account Payee Cheque, after due verification.Moreover, amount that comes in the share of applicants No.2-5, who are minor, be invested in Nationalized Bank for a period of five years or till attaining the age of majority of minor applicants, whichever is later.

8. The concerned Bank is directed not to grant any loan, advances or withdrawal against the said F.D.Rs. without obtaining prior permission of this Tribunal. However, the applicant No.1, i.e. major, will be at liberty to withdraw the periodical interest accrued on the said F.D.R.

9. The Opponents are directed to scrupulously follow the guidelines issued by the Hon'ble Gujarat High Court in Case of ***Hansaguri Prafulchandra Ladhani and Others Vs. Oriental Insurance Co. Ltd.,and others*** **reported in 2007 ACJ 1897** regarding T.D.S.

10. Award be drawn accordingly.

Pronounced and signed in the open Court today.

Date: 30/09/2019 **(B.S.Upadhyay)**
Place: Patan **JUDGE, M.A.C.T(MAIN), PATAN**
UIC Code No.GJ00206

C R Dave