



Exh.

64/A

Received on

25/07/2018

Registered on

25/07/2018

Decided on

10/02/2023

Duration

Y M Days

04 06 15

BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL

(MAIN) & PRINCIPAL DISTRICT JUDGE,

KACHCHH – BHUJ.

M.A.C.P No.268/2018

Legal heirs of deceased

Shri Ramjan Hasam Hajam (Khalifa);

1. Sharifaben Hasam Hajam (Khalifa),
Mother, Age 42, Occupation : Household,
2. Shahil Hasam Hajam (Khalifa),
Brother, Age 13, Occupation : Study,
Applicant No.2 being minor through his
mother applicant No.1.

R/o. Village Padhhar, Tal. Bhuj.

....Claimants

Vs.

1. Hasam Fakirmamad Hajam,
Age 47, Occupation : Driving,
R/o. Village Padhhar, Tal. Bhuj.
2. Ramesh Mavji Jatia,
Age adult, Occupation : Transport Operator,
R/o. Village Nadapa, Tal. Bhuj.
3. ICICI Lombard General Insurance Co. Ltd.,
Opp. General Hospital, Bhuj.
4. Paschim Gujarat Vij Co. Ltd.,
Through : Chief Engineer,
Bhuj – Kachchh.

....Opponents

**Claim u/s.166 of the M.V. Act for getting compensation
of Rs.30,00,000**

A P P E A R A N C E :

1. L.A. **Mr. Z. A. Saiyed** for claimants.
2. L.A. **Mr. D. K. Buch** for opponent No.3.
3. L.A. **Mr. D. J. Thacker** for opponent No.4.
4. Opponents No.1 and 2 absent.

-: J U D G M E N T :-

1. The claim petition is preferred by the legal heirs and representatives of deceased Shri Ramjan Hasam Hajam (Khalifa), under Section 166 of the Motor Vehicles Act, 1988 ('the M V Act') for getting compensation of Rs.30,00,000/-.

1.2 It is the case of the claimants that, the deceased late Shri Ramjan Hasam Hajam (Khalifa) was employed, as a Cleaner cum labourer on the Dumper bearing Registration No. GJ-12-BV-8817, owned by opponent No.2 and on 05.07.2018, the driver of Dumper bearing Registration No. GJ-12-BV-8817 had negligently parked his Dumper under the high voltage electric lines and the opponent No.1 - driver of opponent No.2 instructed the deceased to see to as to whether the sand is off loaded or not and accordingly, the deceased followed the instructions of opponent No.1 – driver and he climbed the body of the Dumper to check as to whether the sand is off loaded or not and in the meantime, he came into contact of the live electric lines passing over the said Dumper and the deceased got electric shock and burn injuries and died due to electrocution. It is alleged that alleged the accident occurred because of the negligent act of opponent No.1 and during the course of use of the aforesaid Dumper bearing Registration No. GJ-

12-BV-8817 and opponent No.4 Electricity Company.

2. The opponents No.1 and 2 though duly served they have not appeared and not contested the claim petition.

3. The Opponent No.3 - Insurance Company of the Dumper bearing Registration No. GJ-12-BV-8817 appeared through Ld. Advocate Mr. D. K. Buch and filed written statement in the matter *vide* Exh.25 and denied the facts in respect of accident, negligence of driver of the vehicle, age, income and nature of work of the deceased. Mainly it is contended that the deceased died due to his own negligence and there was no negligence on part of the opponent No.1 and it is also contended that the accident occurred due to negligence on part of the PGVCL in maintaining the electric lines therefore, Insurance Company is not liable to pay compensation to the claimants. On the basis of these pleadings, the insurance company has prayed to reject the present claim petition.

4. The opponent No.4 – PGVCL appeared through his Ld. Advocate Mr. D. J. Mehta and filed reply and mainly contended that the accident did not occur due to negligence on part of the PGVCL and vehemently contended that the accident occurred due to sole negligence of the driver of the said Dumper. Therefore, he has submitted to exonerate them.

5. Considering the pleading of the applicants as well as evidence produced, the following points are arisen for determination of the present claim petition.

1. *Whether it is proved that deceased sustained injuries and died due to rash and negligent act of the driver of vehicle involved in the accident and due to electrocution ?*

2. *Whether the applicants are entitled to get compensation from the opponents or any of them ? If yes, what amount and from whom ?*
3. *What order?*

5.1 My findings on the above points, for the reasons given below, are as under:-

1. *In the Affirmative.*
2. *In the Affirmative. As per final order.*
3. *As per final order.*

6. To prove the pleading of the claim petition and disprove the contents of the claim petition, the claimants have produced the following oral and documentary evidence on record:

Exh. No.	Particulars
	<u>Oral Evidence</u>
35	Deposition of claimant No.1 Sarifabai Hasam Hajam (Khalifa)
45	Deposition of Hasam Fakirmamad Hajam
50	Deposition of Apurva Devendra Tripathi
52	Deposition of Rajendra Virabhai Patel
	<u>Documentary Evidence</u>
37	Janva Jog entry
38	Panchnama of scene of offence
39	Inquest panchnama
40	Post-mortem report of deceased
41	Statement of opponent No.2 recorded by police
40	Post-mortem report of deceased
42	Income certificate of deceased

:- R E A S O N S :-

POINT NO.1 & 2 COLLECTIVELY :

7. Heard Ld. Advocates for the parties and perused the record. I have also considered written arguments submitted by Ld. Advocates for claimants and opponent No.3, which are recorded at Exh. Nos.54 and 55, respectively.

7.1 It is the specific case of the claimants that, the deceased late Shri Ramjan Hasam Hajam (Khalifa) was employed, as a Cleaner cum labourer on the Dumper bearing Registration No. GJ-12-BV-8817, owned by opponent No.2 and on 05.07.2018, the driver of Dumper bearing Registration No. GJ-12-BV-8817 (father of the deceased) had negligently parked his Dumper under the high voltage electric lines and the opponent No.1 - driver of opponent No.2 instructed the deceased to see to as to whether the sand is off loaded or not and accordingly, the deceased followed the instructions of opponent No.1 – driver and he climbed the body of the Dumper to check as to whether the sand is off loaded or not and in the meantime, he came into contact of the live electric lines passing over the said Dumper and the deceased got electric shock and burn injuries and died due to electrocution. It is alleged that alleged the accident occurred because of the negligent act of opponent No.1 and during the course of use of the aforesaid Dumper bearing Registration No. GJ-12-BV-8817 and opponent No.4 Electricity Company.

7.2 In support of the claim petition, claimants have examined the mother of the deceased and her deposition is recorded at Exh.35. The bare perusal of above referred oral

evidence depict the fact that this witness has not seen the accident and her evidence can not be taken into consideration for the purpose of deciding the point of negligence.

7.3 Claimants have also examined Shri Hasam Fakirmamad Hajam (father of the deceased) and his deposition is recorded at Exh.45 who was plying the aforesaid dumper and he has categorically stated that the deceased came in contact of the live wire passing over the dumper and stated that the accident occurred due to negligence on part of the opponent No.4 - Electricity company. At this stage it is worthy to note that since Shri Hasam Fakirmamad Hajam was plying the aforesaid dumper, he would obviously depose that there was no negligence on his part and the accident occurred due to the negligence and or fault on the part of the electricity company.

7.4 Claimants have produced copy of the *Janva jog* Entry at Exh.37, Panchnama of the scene of the offence at Exh.38. If we peruse the copy the *Janva jog* Entry - Exh.37, it appears that deceased got electric shock while he had climbed over the dumper. The Panchnama of the scene of the offence – Exh.38 reveals the fact that the aforesaid dumper was lying at the place of accident and electric wires were hanging over the dumper. In the said panchnama it is mentioned that the accident occurred exactly in similar fashion as it is alleged in the present claim petition. This panchnama is not disputed by the opponent No.3 and 4 and even opponent No.3 and 4 have not produced any evidence in rebuttal, therefore, the contents of the panchnama can not be ignored to decide the issue of involvement of the vehicle and death of the

deceased due to electrocution. From the above referred documentary evidence, it clearly appears that the Dumper was being driven by the opponent No.1 (father of the deceased) and deceased was required to follow the instructions of the opponent No.1 and at the time of accident, the deceased was employed as a cleaner in the above referred Dumper. It is the specific case of the claimants that the death of the deceased was a sequel to the rash and negligent act of the driver of the aforesaid Dumper while parking the Dumper under the electric wires. It is further pleaded by the claimants that to carry out the instructions of opponent No.1, the deceased climbed over the body of the dumper and while he was performing his duty, he came in contact of the live electric wire passing over the Dumper and got electric shock and died due to electrocution.

8. Herein the present case, as noted hereinabove, the opponent No.1 instructed the deceased to see to it whether the sand is off loaded or not. It is also proved by the claimants that the deceased came into contact of a live wire and because of the careless act of the opponent No.1, as he had parked the Dumper without seeing that live electric lines were passing over the Dumper and inspite of that he instructed the deceased to climb the dumper to see to it whether sand is unloaded or not. It is proved by the claimants that to carry out the instructions of opponent No.1, the deceased got out of the said Dumper and he climbed over the Dumper and while he was performing his duty as per the instructions of the opponent No.1, driver, he came into contact of the live electric wire, passing over the Dumper and felt electric shock.

9. From the discussion made hereinabove, the involvement and rash and negligent driving of the driver of Dumper bearing Registration No. GJ-12-BV-8817 and electric shock due to electric lines owned and under control of the opponent No.4 – PGVCL is proved and resultant death of the deceased due to the said accidental injuries, is duly proved by the applicants.

9.1 It is also not in dispute that inspite of the fact that opponent No.4 is required to follow the provisions contained under the Compensation to Victims of Electrical Accidents Regulations 2019, opponent No.4 failed to follow the same. If we peruse the Regulation 12 of the Central Electricity Authority (Measures relating to Safety and Electrical Supply) Regulations, 2010, (hereinafter referred as 'the Regulations') it is provided that the electric supply lines and apparatus shall be of sufficient rating for power, insulation and estimated fault current and of sufficient mechanical strength, for the duty cycle which they may be required to perform under the environmental conditions of installation, and shall be constructed, installed, protected, worked and maintained in such a manner so as to ensure safety of human beings, animals and property. Regulation 73[1] has stipulated that every overhead line which is not being suspended from a dead bearer wire, not being covered with insulating material and not being a trolley-wire, is erected over any part of street or other public place or mine or in any factory or mine or on any consumers' premises shall be protected with earth guarding for rendering the line electrically harmless in case it breaks.

9.2 As per the Regulation 5(3) of the Regulations, the Electrical Safety Officer shall ensure periodic inspection of such

installations, get them tested and keep a record thereof and such records shall be made available to the Electrical Inspector if and when required. As per the Regulation 22(3)(ii) of the Regulations the electric supply line shall be periodically inspected and tested where accessible, and the result of each such inspection and test shall be duly recorded by the supplier or the owner. As per the Regulation 30(1) of the Regulations, where an installation is already connected to the supply system of the supplier or trader, every such installation shall be periodically inspected and tested at intervals not exceeding five years either by the Electrical Inspector or by the supplier as may be directed by the State Government. As per the Regulation 31(3) of the Regulations, if as a result of such inspection and test, the supplier is satisfied that the installation is likely to be dangerous, he shall serve, on the applicant a notice in writing requiring him to make such modifications as are necessary to render the installation safe and may refuse to connect or reconnect the supply until the required modifications have been completed.

9.3 Admittedly in the resent case, none of the above referred Regulations appear to be complied with by the opponent No.4. Thus, from the above referred discussion, it appears that the opponent No.4 has not followed the mandatory provisions contained under the above referred Regulations.

10. It is also not in dispute that the deceased died because he got electric shock and as per the Regulations of 2010, the opponent No.4 was required to ensure the safety of human beings, animals and property. But herein the present case opponent No.4 has failed in the above referred duty.

11. It is required to be noted that opponent No.4 has produced on record the report of electrical inspector dated 13.08.2021 and same is produced at M. 49/1 wherein, it is mentioned that at the scene of occurrence Dumper bearing Registration No. GJ-12-BV-8817 was parked near the place of accident and in the said vehicle sand was loaded and it further appears from the said report that the construction work was going on and the driver of the dumper had parked his vehicle beneath 11 KV electricity line and when the deceased was trying to pull off the sand from the dumper he accidentally touched 11 KV line and he got electric shock. It is further mentioned in the said report that regulations No.12 and 64 of the Regulations of 2010 have been violated. At this stage, a reference is required to be made to the regulations No.12 and 64 of the Regulations which read as under.

12. General safety requirements, pertaining to construction, installation, protection, operation and maintenance of electric supply lines apparatus: -

(1)All electric supply lines and apparatus shall be of sufficient rating for power, insulation and estimated fault current and of sufficient mechanical strength, for the duty cycle which they may be required to perform under the environmental conditions of installation, and shall be constructed, installed, protected, worked and maintained in such a manner as to ensure safety of human beings, animals and property. (2)Save as otherwise provided in these regulations, the relevant code of practice of the Bureau of Indian Standards or National Electrical Code, if any, may be followed to carry out the purposes of this

regulation and in the event of any inconsistency, the provisions of these regulations shall prevail. (3)The material and apparatus used shall conform to the relevant specifications of the Bureau of Indian Standards or International Electro-Technical Commission where such specifications have already been laid down. (4)All electrical equipment shall be installed above the Mean Sea level (MSL) as declared by local Municipal Authorities and where such equipment is to be installed in the basement, consumer shall ensure that the design of the basement should be such that there is no seepage or leakage or logging of water in the basement.

64. **Transporting and storing of material near overhead lines.**-(1)No rods, pipes or similar materials shall be taken below, or in the vicinity of, any bare overhead conductors or lines if these contravene the provisions of regulations 60 and 61 unless such materials" are transported under the direct supervision of a person designated in this behalf by the owner of such overhead conductors or lines. No rods, pipes or other similar materials shall be brought within the flash over distance of bare live conductors or lines. (2)No material or earth work or Agricultural produce shall be dumped or stored, no trees grown below or in the vicinity of, bare overhead conductors, or lines to contravene the provision of regulations 60 and 61.(3)No flammable material shall be stored under the electric supply line. (4)No fire shall be allowed above underground cables. (5)Firing of any

material below electric lines shall be prohibited.

11.1 If we peruse the regulations No.12 and 64 of the Regulations, it clearly appears that the opponent No.4 was also negligent in the above referred incident. It is also required to be mentioned here is, that in the above referred report the dumper number is mentioned as GJ-12-BY-8817 whereas the registration number of the offending vehicle is Dumper bearing Registration No. GJ-12-BV-8817 but the said defect appears to be a *bonafide* mistake in noting down the registration number of the offending vehicle. It is also required to be noted that 11 KV line was not having sufficient distance from the earth and was lying in the hanging condition and said aspect is also reported by the investigating agency. Thus, from the above referred discussion it becomes clear that opponent No.4 was also negligent in the above referred incident.

11.2 At this stage it is worthy to note that, while deciding the point of negligence in such cases, it has to be borne in mind that the negligence is required to be proved only on the touchstone of the preponderance of probability and not beyond doubt. Above referred ratio is laid down by Hon'ble Apex Court in the cases of **Bimla Devi v/s H.R.T.C., reported in AIR 2009 SC 2819 and Parmeshwari Devi v/s Amir Chand, reported in 2011 (11) SCC 635.**

11.3 In view of the above, I hold that the deceased died due to the electrocution due to the negligent act of the both the opponents i.e. driver of Dumper bearing Registration No. GJ-12-BV-8817 and PGVCL - opponent No.4. At this stage, it is worthy to note

that since the present is a case of composite negligence and as held hereinabove the deceased did not contribute any negligence, no apportionment of negligence can be made *inter-se* between the defendants. Therefore, I decide Issue No.1 accordingly.

QUANTUM :

12. Applicant No.1 – Sharifabai Hasham Hajam (Khalifa) – mother of the deceased has categorically stated on oath (Exh.35) that at the time of accident the deceased was working as a cleaner cum labourer with the opponent No.2 on Dumper bearing Registration No. GJ-12-BV-8817 and by doing this activity he was getting salary of Rs.12,000/- p.m. and in addition to the salary, deceased was also getting daily allowance of Rs.200/-. Hence, claimants have claimed that the deceased was earning total amount of Rs.15,000/- p.m. But claimants have not produced any cogent and reliable oral and documentary evidence to prove income of the deceased. Of course, the claimants have produced the income certificate at Exh.42 but the claimants have not examined the author of the said income certificate and they have also not produced the copy of salary slip, vouchers with respect to payment of salary to the deceased, etc. Therefore, this Tribunal holds that the claimants have failed to prove income of the deceased as alleged. However, it is an admitted fact that the deceased met with an accident when he was working on the said dumper as a cleaner. Herein this case as per the case of the claimants the deceased was working as a Cleaner and since the deceased was not working as a driver of heavy vehicle his salary must be less in comparison to the driver. Therefore, considering the fact that the deceased was working as a cleaner on Dumper bearing Registration No. GJ-12-

BV-8817 at the time of accident and further considering the rates of minimum wages prevalent at the time of accident i.e. 05.07.2018, if the income of the deceased is assessed as Rs.8,000/- p.m. then it would be just and proper. Therefore, I hold the income of the deceased as **Rs.8,000/- p.m. and Rs.96,000/- p.a.**

13. So far as age of the deceased is concerned, it is case of the claimants that age of the deceased was 19 years and same has not been disputed by the opponents. Therefore, the deceased would fall under the age group 15 to 20 and the claimants would be entitled to get compensation calculated on the basis of the multiplier of **18**.

14. As discussed hereinabove, the age of the deceased, at the time of accident was around 19 years, in view of the ratio laid down by the Larger Bench of the Hon'ble Supreme Court rendered in the case of **National Insurance Company vs. Pranay Sethi, 2017 (16) SCC 680**, income of the deceased shall be increased by **40%** i.e. **Rs.38,400/-** thus the final amount would come to **Rs.1,34,400/-** per annum.

15. The deceased was unmarried at the time of accident. He left behind him his mother and younger brother. The father of the deceased is joined as opponent No.1 who was doing driving work. Therefore, it can be said that the family of the deceased was not dependent upon the income of the deceased. Therefore, this is a fit case to deduct 1/2 towards the personal expenses in view of the law laid down by the Hon'ble Apex Court in **Magma General Insurance Co. Ltd. Vs. Nanu Ram (supra) and Sarla Verma V. Delhi Transport Corporation (supra)**. Hence, the amount would

come to **Rs.67,200/-**. Considering the age of the deceased, applying the multiplier of 18, the amount would come to **Rs.12,10,000/-**.

16. As this Tribunal is deciding the claim petition in the year 2023, as held in para No.61(viii) of the Pranay Sethi's case that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years. As three years have been passed from the date of the pronouncement of the Pranay Sethi's case, I deem it fit to enhance the amount to be paid under the conventional head at the rate of 10%. Therefore, as per the directions of Hon'ble Supreme Court in Pranay Sethi's case, petitioners are entitled for **Rs.16,500/-** towards loss to estate and **Rs.16,500/-** towards funeral expenses.

17. So far as grant of consortium to the applicants is concerned, the Hon'ble Apex Court in the latest judgment in case of **Magma General Insurance Com. Ltd. V/s. Nanu Ram @ Churhu Ram, 2018 (18) SCC 130** and **United India Insurance Co. Ltd. V. Satinder Kaur @ Satwinder Kaur, 2020 SCC Online 410 (SC) (FB)** and **N.I.A Com. V/s. Smt. Somwati, 2020 (9) SCC 644** has categorically held that in addition to spouse, the children are entitled for parental consortium in case of death of a parent and Filial consortium is the right of the parents to compensation in case of death of a child and the amount to be awarded for loss of consortium will be as per the amount fixed in Pranay Sethi's case.

18. Hence, the claimant No.1 being mother of the deceased is entitled for Filial Consortium of Rs.44,000/-.

19. Hence, the applicants are entitled to the total amount of compensation as under :

PATICULARS	AMOUNT
FUTURE LOSS OF DEPENDENCY	RS.12,10,000/-
LOSS TO ESTATE	RS.00,16,500/-
FUNERAL EXPENSES	RS.00,16,500/-
CONSORTIUM	Rs.00,44,000/-
TOTAL AMOUNT OF COMPENSATION	RS.12,87,000/-

LIABILITY :

20. As discussed hereinabove, the deceased Shri Ramjan Hasam Hajam (Khalifa) died in a vehicular accident, dated 05.07.2018 involving Dumper bearing Registration No. GJ-12-BV-8817 and due to electrocution, as the opponent No.1 was the driver, No.2 was the owner and opponent No.3 was the insurance company of the said Dumper bearing Registration No. GJ-12-BV-8817. The bare perusal of the insurance policy (M.8/6) depicts the fact that the insurance company has received extra premium of Rs.50/- covering the risk of the Cleaner/conductor/collies (IMT-40) and the said fact is not rebutted by the insurance company. Therefore risk of the deceased was covered under the policy. There is no evidence in rebuttal regarding violation of terms and condition of policy by the insurance company and as the electric lines were under management and control of the opponent No.4 – PGVCL, all the opponents are liable to pay the aforesaid amount of compensation of **Rs.12,87,000/-** to the applicants jointly and severally.

21. Ld. Advocate for opponent No.3 - insurance company submitted that the opponent No.1 namely, Hasam Fakirmamad Hajam was plying the offending vehicle. He further submitted that opponent No.1 is the father of the deceased namely, Shri Ramjan Hasam Hajam (Khalifa), and in the above mentioned offending vehicle the deceased was travelling as a Cleaner and accident occurred because of the negligent driving of the opponent No.1 and, therefore, the amount of compensation which may fall in the share of the opponent No.1 may be deducted, as the opponent No.1 who was the tortfeasor and he cannot be benefited for his own wrong under the guise that he is the legal heir or legal representative of the deceased.

22. *Per contra*, Ld. Advocate for the claimants submitted that this Tribunal is only required to decide the just amount of compensation and Tribunal is not required to decide an issue as to whether, out of the awarded amount of compensation, the share which may fall in the share of the tortfeasor can be deducted or not. He also submitted that the share of the opponent No.1 may be added in the shares of the other claimants with a direction that opponent No.1 shall not be entitled for any amount of compensation. In support of his above referred submissions, he relied upon the following authorities.

(1) New India Assurance Com. Ltd. v/s. Himaniben,
2016 ACJ 1371.

(2) New India Assurance Com. Ltd. v/s. K. Jothilingam,
2011 ACJ 333.

23. I have heard the Ld. Advocates for the parties. I have also perused the above referred two authorities relied upon by the claimants.

24. It is not in dispute that the opponent No.1 namely, Hasam Fakirmamad Hajam is the driver of the offending vehicle Dumper bearing Registration No. GJ-12-BV-8817 and was plying the offending vehicle at the relevant point of time. The Opponent No.1 is the father of the deceased namely, Shri Ramjan Hasam Hajam (Khalifa), and in the offending vehicle, deceased Shri Ramjan Hasam Hajam (Khalifa) was travelling as a Cleaner and while deciding the Issue No.1, this Tribunal has held that the accident occurred because of the negligent driving of the opponent No.1. Thus opponent No.1 was the joint tortfeasor and was also the father of the deceased.

25. Therefore, to decide an issue, as to whether opponent No.1 is entitled to get any amount of compensation or not, a reference is required to be made to the ratio laid down in the case of United India Insurance Company Limited v/s. Kiritikumar Tulsibhai Patel, First Appeal No.1450 of 2016, decided on 01.09.2016. It is worthy to note that in the above referred ratio, the authority relied upon by the Ld. Advocate for the claimants namely, New India Assurance Com. Ltd. v/s. Himaniben, 2016 ACJ 1371 (supra) has been referred.

25.1 The facts before the Hon'ble High Court in the above referred case were, the accident occurred because of the negligence of the driver of the car and one another vehicle and wife of the driver of the said car was travelling on the said car as one of the

occupants and she sustained fatal injuries in the said accident. Husband of the deceased (driver of the car) had been joined as a claimant No.1 and also as opponent No.1 in the capacity of owner cum driver, in the claim petition filed by the legal representatives of the deceased wife.

25.2 In these facts and circumstances of the case, Hon'ble High Court has held in para No.16 to 22 as under...

(16) Thus, as such the original claimant No.1 can be said to have filed the claim petition against him. It cannot be disputed that the liability of the insurance company is indemnified the award against the owner of the vehicle. Unless and until the owner of the vehicle insured is held liable to pay compensation, the insurance company is not liable to indemnify the award.

(17) As observed hereinabove, even no other driver, owner or the insurance company of any of the vehicles are joined as party opponents.

(18) Identical question came to be considered by the learned Single Judge of this Court in case of The New India Assurance Company Limited Vs. Minor Himaniben & Ors. (supra) wherein it was a fatal case and the husband of the deceased was found to be tortfeasor and considering the provisions of the Motor Vehicles Act as well as the Hindu Succession Act, learned Single Judge in Paragraph Nos.26 to 29 has observed and held as under:

“26. The next and significant question that arises for consideration is whether in a case where the husband is a tortfeasor, the heirs of the wife can claim damages. In the

opinion of this court, in the present case, the respondent No.3 original defendant No.1, who is the husband of the deceased being tortfeasor, would not be entitled to file a claim petition as a tortfeasor cannot make a claim against himself. However, the minor children can certainly file a claim petition.

27. At this juncture, reference may be made to the provisions of section 166 of the Motor Vehicles Act. The proviso to section 166 says that where all the legal representatives of the deceased have not been joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application. In the present case, the respondent No.3 original defendant No.1 is a legal representative of deceased Nitaben. Therefore, it was incumbent upon the claimants to join the respondent No.3 as a claimant. It appears that since the respondent No.3 had been joined as a defendant he has not been joined as a claimant in the claim petition. Nonetheless, having regard to the fact that the respondent No.3 is a legal representative of deceased Nitaben and is a party in the claim petition, even if he has not made any claim or waived his share in favour of the claimants, while apportioning the compensation, the share of the respondent No.3 would also be required to be determined. It is only thereafter, in case of waiver on the part of the

respondent No.3 that the amount would go to the other claimants. Therefore, in all, there would be three claimants, namely, two minor children and the respondent No.3 driver of the motorcycle. Under section 15 of the Hindu Succession Act, 1956, the property of a female Hindu dying intestate shall devolve according to the rules set out in section 16, firstly, upon the sons and daughters (including the children of any predeceased son or daughter) and the husband. Therefore, the husband as well as the children are entitled to equal shares in the property of the female Hindu dying intestate. Thus, both the claimants as well as the respondent No.3 husband, would be entitled to an equal share in any compensation that may be awarded on account of the death of deceased Nitaben.

28. At this juncture, reference may be made to the decision of this court in the case of Pravinkumar Vallabhdas (Minor) and another v. M/s Chhotalal Parmanandas & Co. and others, 1978 GLR 62 , wherein the court has held that an application made by one or more heirs of the deceased is maintainable under section 110A of the Motor Vehicles Act, even if other heirs are not impleaded and even in such a case, the power of the Tribunal is not limited to awarding compensation in favour of applicants or to the extent of their shares and that a legal representative of the deceased applying for compensation and getting the same will hold it not only on his own behalf but also as a trustee for other legal

representatives entitled to a share in the compensation. Therefore, even if the respondent No.3 original opponent No.1 is not impleaded as a claimant, the other claimants would hold the compensation to the extent of his share as trustee on his behalf.

29. In the facts of the present case, on the evidence which has come on record, the respondent No.3 husband being a tortfeasor would not be entitled to file a claim petition against himself. But he being an heir, to the extent of his share, the claim would not be maintainable. Therefore, after determining the quantum of compensation, the extent of the share of the husband/rider of the motorcycle should be determined and the compensation awarded to the other heirs should be reduced to that extent.”

(19) Considering the aforesaid decision of the learned Single Judge as well as considering the provision of Section 166 of the Motor Vehicles Act and the Hindu Succession Act, original claimant No.1 husband of the deceased driver cum owner of Car bearing registration No.GJ18AC2401 involved in the accident and he being the tortfeasor, was not entitled to file the claim petition against himself. Therefore, after determining the quantum of compensation, the extent of the share of the husband should be determined and the compensation awarded to the other heir (in the present case minor original claimant No.2) should be reduced to that extent. Under the circumstances, though it is held that the original claimants shall be entitled to Rs.26,58,010/, however, after deducting share of the original claimant No.1, being the tortfeasor and

driver cum owner of Car bearing registration No.GJ18AC2401 involved in the accident, the original claimant No.2 shall be entitled to Rs.13,29,005/ with 9% interest thereon from the date of the claim petition till realization.

26. Here in the present case, the evidence which has come on record, clearly depicts the fact that the opponent No.1 - father being a tortfeasor would not be entitled to file a claim petition against himself. But he being an heir of the deceased, to the extent of his share, the claim would not be maintainable. Therefore, after determining the quantum of compensation, the extent of the share of the father/tortfeasor should be determined and the compensation awarded to the other heirs should be reduced to that extent. Therefore, in view of the ratio laid down by Hon'ble Gujarat High Court in the case of Kiritikumar Tulsibhai Patel (supra), I hold that opponent No.1 is not entitled for any amount of compensation, as he was the tortfeasor.

26.1 As far as the second authority relied upon by the Ld. Advocate for the claimants namely, New India Assurance Com. Ltd. v/s. K. Jothilingam, 2011 ACJ 333 (supra) is concerned, in the said authority it has been held that the husband of the deceased who is a tortfeasor cannot claim compensation for the death of his wife and, therefore, said authority does not rescue the case of the claimants.

27. The present claim petition has been preferred by mother and younger brother of the deceased. Since father of the claimant No.2 is alive and he was earning his livelihood by doing the driving work and maintaining his family, the claimant No.2

cannot be said to be dependent upon the income of the deceased, therefore, the liability of maintenance of the claimant No.2 was upon the opponent No.1 and not upon the deceased. Over and above the claimant No.1 – mother of the deceased, the opponent No.1 – father of the deceased could have been held to be entitled for the amount of compensation had he not been the tortfeasor. In the normal circumstances, the parents get equal share out of the total awarded amount of compensation. **Therefore, in the present case, the claimant No.1 and opponent No.1 would get 1/2 share each out of the total awarded amount of compensation.** Therefore, considering the ratio laid down in the case of in Kiritikumar Tulsibhai Patel (supra) the share of the opponent No.1 - father of the deceased should be reduced to an extent of 1/2 out of the total awarded amount of compensation and hence claimants No.1 and 2 are entitled to get 1/2 share out of the total awarded amount of compensation.

28. As held hereinabove the claimants and opponent No.1 are entitled for Rs.12,87,000/-, deducting 1/2 share of the opponent No.1 from the awarded amount the net amount which the claimants are entitled would come to **Rs.6,43,500/-**. Hence, I hold that the claimants are entitled for **Rs.6,44,000/-**.

INTEREST :

29. Claimants have prayed for interest at the rate of 18% per annum. At this juncture, I have sought guidance from the judgment of the Hon'ble Constitutional Bench of the Hon'ble Apex Court, in the case of **Pranay Sethi (supra)**, wherein, the Hon'ble Apex Court has allowed interest at the rate of 09% p.a. Hence, I hold that the claimants are entitled for interest at the rate of 09% p.a.

29.1 The Issue No.2, is, therefore, answered accordingly and the following final order is passed in the interest of justice.

:- ORDER :-

- [1] The present Motor Accident Claim Petition is partly allowed.
- [2] The claimants are entitled to recover the amount of **Rs.6,44,000/-** (Rupees Four Lac Forty Four Thousand Only) **from opponents, jointly and severally** along with proportionate costs and interest at the rate of **09% (Nine Percentage)** per annum from the date of filing the claim petition, till the amount is realized.
- [3] The aforesaid opponents are directed to deposit the awarded amount within 30 days.
- [4] The amount of compensation shall be disbursed among the applicants in the proportion that the applicant No.1 shall get 80% whereas applicant No.2 shall get 20%.
- [5] Out of the deposited amount, 60% share of major applicant be invested in fixed deposit scheme in any Nationalized Bank in the name of claimants, for a period of Five years and same may be released in a phased manner in accordance with Motor Accident Claims Tribunal Annuity Deposit Scheme stipulated in Form XIX of the Amended M.V. Rules, 2022 and the remaining 40% shall be paid by way of Account Payee cheque only.
- [5.1] In case of minor applicant, the whole share shall be invested in fixed deposit scheme in any Nationalized Bank in the name of the minor applicants through the natural guardian i.e. *claimant No.1* for a period of five years or till the minor become major, whichever is later, and same may be released

in a phased manner in accordance with Motor Accident Claims Tribunal Annuity Deposit Scheme stipulated in Form XIX of the Amended M.V. Rules, 2022.

[5.2] The claimants shall not be entitled to get any loan, advance or withdrawal or can create any encumbrances on the aforesaid FDR without prior permission of this Tribunal. However, interest accrued from time to time on the said FDR may be paid in cash to the claimant.

[6] **The Claimant/s are directed to submit following details within one week from today:**

1. Name of the claimant(s)/ victim(s) with address
2. Name of the Bank & Branch Bank IFSC Code Account No(s). of the claimant(s)/victim(s)
3. The first page of the bank pass-book, which will compulsorily contain the photograph of the claimant(s)/victim(s), duly attested by the Bank concerned, should be made available.
4. Wherever the claimant(s)/victim(s) are impleaded as respondents, before the claims tribunal, their account details, as above, will have to be furnished.

[7] The insurance companies and transport corporations and such other entities shall deposit the amount as directed in circular dated 27.12.2021 and on such deposits being made, the insurance companies and

transport corporations and such other entities shall submit a letter to the Registry of District Court enclosing a copy of the said bank advice, in prescribed format as above, as per which the deposit was made to the bank account of the Claims Tribunal, to enable the Claims Tribunal to keep tab on the deposits made and the MACPs for which they were made, which is a fundamental need for a smooth implementation. The Payment advice for remittance of compensation is as under:

PAYMENT ADVICE FOR REMITTANCE OF
COMPENSATION From:

..... Bank

To:

..... Court

We confirm remittance of compensation as follows on instructions of (insurance company/transport corporation):-

1. MACP Number
2. On the file of (Claims Tribunal Name)
3. Place
4. Date of award
5. Amount Deposited
6. Income Tax Deduction at Source, if any
Unique Transaction Reference (UTR) No.

- 7.1 The Insurance Companies, Transport Corporations and such other entities making such deposit, shall also send a copy of the payment advice in the aforesaid Clause to the Claims Tribunal concerned and serve a copy of the same on the claimants or their counsel as the case may be.

7.2 Insofar as tax deduction at source is concerned, Form 16-A of the Income Tax Act should be provided to the claimant/victim on whose behalf the deduction has been made so as to enable him to seek refund of tax deducted.

Award be drawn accordingly.

Pronounced in open Tribunal today on this 10th day of February, 2023.

Sd/-

(H. S. MULIA)
Motor Accident Claims Tribunal,
(Main), Kachchh at Bhuj.
(Code : GJ00915)