

Ex.:50

Received on	15.05.2009
Registered on	15.05.2009
Decided on	16.10.2019
Duration	Y.10 M.05 D.01

**Before the Motor Accident Claims Tribunal (Auxi.2)
Patan at Radhanpur**

M.A.C.P. No.415 of 2018
OLD M.A.C.P. No.148 of 2009

Applicants :-**Legal Heirs of deceased Punjibai Valaji Malek,**

Rasulkhan Valaji Malek,

Age :35 Yrs., Occupation : Farming & Labourwork,
(Son of the deceased)

Residence: Jivranivas, Varahi, Tal.Santalpur,

Dist.Patan

Versus**Opponents:~**

- 1 Kanubhai Punabhai Damor,
Age : Major, Occupation : Driving,
Residence: Patediador, Ta.Santrampur,
Dist.Godhra.

(Driver of Truck No.GJ-12-Y-6753)

(Deleted order below Exh.19)

2. Mitesh Dharamshibhai Thaker,
Age:Major, Occupation:Business,
Resi.Add-Hospital Road, Bhuj-Kutchh,
(Owner of Truck No.GJ-12-Y-6753)

(Amendment vide Exh.25)

3. New India Assurance Co. Ltd.,
Divisional Office-Mehsana
(Ins. Co. of Truck No.GJ-12-Y-6753)

Appearance:-

For the applicants	Ld.Advocate Mr.F.Y.Suthar
For the Opponent No.2	Ex-parte
For the Opponent No.3	Ld.Advocate Mr.M.D.Pandya

Claim Petition u/S 163-A of M.V.Act, 1988**Claim Valued at Rs.4,67,500/-****-: J U D G M E N T :-**

1. Present claim petition is preferred under Section-163-A of the Motor Vehicle Act, 1988 (which is herein after referred as 'Act'), for getting compensation of Rs.4,67,500/-.

2. The factual matrix leading to the present proceeding are as under :-

That on 28/12/2006, at about 7.00 p.m. on Varahi-Bhuj National Highway Road, at Balochvas of village-Varahi, the deceased was standing, at that time driver of Truck No.GJ-12-Y-6753 drove his truck in rash and negligent manner and dashed with the deceased due to that deceased died.

3. The notice of claim petition was served upon the opponents, wherein due to non service of notice, the opponent no.1 has been deleted order

below Exh.19 and the opponent No.2 though served did not appear, therefore, ex-parte order has been passed against the opponent No.2, the opponent No.3 appeared through his ld.Advocate and filed written statement vide Exh.22, wherein he denied the facts of the case, age, income and also denied dependency loss. Ld.Advocate of the opponent No.3 has also pleaded that the policy produced by the applicant does not cover the involved vehicle and owner as mentioned in the petition.

4. Following issues have been framed vide Exh.20:-

- 1 Whether the claimant proves that the deceased sustained injuries and died on account of accident and involved vehicle?
- 2 Whether claimant proves that claimant is entitled to get compensation and from which of the opponents?
- 3 What Order and award?

5. My findings to the above issues are as under:-

- 1 In affirmative.
- 2 Partly in affirmative.
- 3 As per final award.

6. Following evidence has been produced by

the applicants:-

Sr. No.	Description of Documents	Exhi.
1	Chief examination of applicant	31
2	Copy of FIR	35
3	Copy of Panchnamas	36-37
4	Copy of Inquest Panchnama	38
5	Copy of P.M.Report	39
6	Copy of driving licence	40
7	Copy of R.C.Book	41
8	Copy of Insurance Policy	42
9	Copy of goods carriage permit	43
10	Copy of fitness certificate	44
11	Copy of PAN Card	45
12	Copy of Adhar Card	46
13	Copy of Ration Card	47

7. Ld.Advocates for the applicant & opponent No.3 have submitted closing pursis for evidence vide Ex.48 & 49 respectively. Argument heard for applicant and opponent No.3.

-: R E A S O N S :-

Issue No.1:

8. It is the case of the applicants that on 28/12/2006, at about 7.00 p.m. on Varahi-Bhuj National Highway Road, at Balochvas of village-Varahi, the deceased was standing, at that time driver of Truck No.GJ-12-Y-6753 drove his truck in rash and negligent manner and dashed with the deceased due to that deceased died.

9. At this stage it is required to be noted

that Tribunal is not required to decide point of negligence in the cases where claim petitions are preferred U/s 163-A of the Act. As per the judgment of Hon'ble Supreme Court, in case of ***United India Insurance Co. Ltd. Vs. Sunil Kumar*** delivered in ***Civil Appeal No.9694/2013***, wherein the Hon'ble Supreme Court has established that ***"grant of compensation U/s-163-A of the Act on the basis of the structured formula in the nature of a final award and the adjudication thereunder is required to be made without any requirement of any proof of negligence of the driver/owner of the vehicle involved in the accident. This is made explicit by Section -163A(2)."***

Looking the ratio laid down by our Hon'ble Supreme Court, there is no necessity to prove the negligence of vehicles involved in the accident and also the Opponent has no right to take defence for the same.

10. In support of their submission, the applicant has produced copy of FIR at Exh.35, given by brother-in-law of the deceased, wherein he stated that, at about 7.00 p.m. on Varahi highway road, near balochvas, the deceased was standing on the side of the road to take milk, at that time driver of truck No.GJ-12-Y-6753 came in rash and negligent manner and dashed his truck

with deceased Punjibai and due to that deceased fell down on the road and sustained serious injuries and brought to Radhanpur Referral hospital for treatment, but the deceased was dead. Looking to the place of panchnama vide Exh.36, at the spot blood stains are visible and the said road is 6 mtr. wide and work is in progress and on the road at about 20 ft. from away the wheel marks of applied brakes are visible. Ld.Advocate of the opponent No.3 has cross examined the applicant No.1, wherein he deposed that, when the accident occurred there was darkness and he has also deposed that, the Radhanpur to Kandla road is four lane, he has denied that, the accident occurred due to negligence of his mother. Opponents have not given oral evidence and opponent No.3 has submitted written statement but he has not filed affidavit as per order 6 rule 15(4) of c.p.c. Hence, it is required to draw adverse inference against opponents, therefore it is drawn accordingly against opponents. Looking to the facts and circumstances of the case as well as documentary evidence, FIR and Panchnama produced by the applicants, it is crystal clear that the accident took place and truck was involved in the accident. Hence, I hold that accident occurred and due to that deceased sustained injuries and died. In view of the above referred discussions, I

decide issue No.1 in affirmative.

ISSUE No. 2 :

11. It is the case of the applicants, in his petition that at the time of accident, deceased was earning her livelihood by doing agriculture work and animal husbandry and she was getting Rs.40,000/- per year. But, applicant has not produced any evidence to show that the deceased was earning Rs.40,000/- per year and applicant could not prove that the deceased was skilled person. It is also cardinal principle of law that when there is no proof of income of victim of the motor accident, his/her monthly income can be assessed on the basis of the prevailing minimum wages. In the case of ***Govind Yadav v/s N.I.I.Com., reported in 2012 ACJ 28 (SC), para No.17*** it has been held that when there is no proof of income, income of the deceased or injured claimant shall be decided by taking into consideration prevailing minimum wages. Since, accident occurred in the December-2006, minimum wages for the year 2006 is required to be taken into consideration. As per notification Rs.2,400/-p.m. is minimum wages. Hence, I assessed deceased's monthly income Rs.2,400/-.

12. The applicant has claimed that the

deceased was aged about 55 years at the time of accident and in the copy of P.M.Report produced vide Exh.39, wherein also mentioned age of the deceased as 55 years, whereas in his cross examination, the applicant has deposed that his mother will be about 60 years old and applicant has not produced birth date certificate of the deceased and opponents have not given any evidence to rebuttal this fact. Hence, I assessed age of the deceased between 55 to 60 years old at the time of accident. Hence, as per Schedule-II of the Act multiplier '8' is required to be applied.

13. As per the II schedule of M.V.Act, Rs.2,28,800/- comes and this amount is reduced by $1/3^{\text{rd}}$ in consideration of the expenses, which the victim would have incurred towards maintaining himself had he been alive. Hence, $1/3^{\text{rd}}$ amount of Rs.2,28,800/- come to Rs.76,266.66 ps., which is required to be deduced therefore, dependency of the applicant comes to Rs.1,52,533.34 ps. The dependency of the applicant is assessed at Rs.1,52,533.34 ps. Therefore, considering schedule II of M.V.Act 163-A Rs.1,52,533.34 ps. (in round figure Rs.1,52,533/-) as Loss of Dependency. As per the Second Schedule, applicant is also entitled for Rs.2,000/- as funeral expenses, and Rs.2,500/- as loss of estate.

14. In view of above, I award the following amount as compensation :-

Rs.1,52,533/-	:	Future loss of income.
Rs. 2,000/-	:	Funeral Expenses.
Rs. 2,500/-	:	Loss of Estate.
Rs.1,57,033/-	:	Total Compensation.

15. Liability:~

So far as liability of compensation is concerned, and It is also pertinent to note that the deceased was third party. But, the applicant has filed the present claim petition U/s 163-A of M.V.Act as "No Fault Liability". The opponent No.1 is deleted vide Exh.19 and as per the R.C.Book at Exh.41, the opponent no.2 is owner of truck No.GJ-12-Y-6753 and said truck was insured with the opponent no.3, and the Insurance policy is produced vide Exh.42, and the period was from 22/11/2006 to 21/11/2007 and the accident was occurred on 28/12/2006 and therefore, looking to the insurance policy, the insurance was in existence at the time of accident, and opponents have not given any evidence to rebuttal this fact on oath. Therefore, the opponents No.2 & 3 are jointly and severally liable to pay the total compensation to the applicant.

16. **INTEREST**:~ In the case of **New India Assurance Company v. Rajkumar Dharamsing, First Appeal**

No.73/2014 dated 18-02-2014, the Hon'ble High Court has granted 9% interest, and considering fact and circumstances of this case, I award simple interest at the rate of 9% per annum from the date of the application till realization. In view of above discussion I decide **Issue No.2** is accordingly **partly in affirmative** and following is the order in the interest of justice for **Issue No.3**.

-: O R D E R :-

17. The claim petition is allowed against opponents No.2 & 3.
18. The applicant is entitled to recover **Rs.1,57,033/-** (Rs.One lac Fifty Seven Thousand Thirty Three only) from the present opponents No.2 & 3. The opponents No.2 & 3 are jointly and severally liable to pay awarded amount to the present claimants with the proportionate cost and with simple interest at the rate of 9% per annum, from the date of the claim petitions till realization.
19. The opponents No.2 & 3 are hereby directed to deposit awarded amount within 30 days of the order.
20. Deficit court fees stamp, if any, be recovered

from the awarded amount and interim amount if paid be adjusted.

21. Thereafter, out of the awarded amount of Applicants, 70% amount be invested as fixed deposit in any nationalized bank for period of five years. The remaining 30% amount be paid to the applicants by account payee cheque forthwith.
22. The applicant will not be entitled to get any loan, advance or withdrawal or can create any in encumbrances on the aforesaid fixed deposit receipt without prior permission of this Tribunal. However periodical interest accrued from time to time on the fixed deposits be paid to claimant.
23. Opponents to bear their own costs.
24. Award be drawn accordingly.

Signed and pronounced in the open Court today.

Date:16.10.2019
Place: Radhanpur

(Hitesh Harilal Gandhi)
M.A.C.T. [Aux.2]
Patan at Radhanpur
Code No :GJ 00659

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