BEFORE MOTOR ACCIDENT CLAIM TRIBUNAL (Auxi.), AHMEDABAD[R]

Motor Accident Claim Petition No. 1112/2011

Exh.........

Applicant : **Heirs of Decd. Piyush Hasmukhbhai Panchal**
Hasmukhbhai Kalidasbhai Panchal (Father of Deceased)
Aged about - 45 years, Occupation : Service,
Resident of : Prayag Park Society, Vastral gam,
Ahmedabad.

VERSUS

Opponents :

Loading Rickshaw No.GJ-1-CT-4882

1. **Kukabhai Vihabhai Bharwad (Driver)**
   Resident of : Bharwad Vas, Deriyapura,
   Vatva Gam, Ahmedabad.
2. **Jayeshbhai Malabhai Bharwad (Owner)**
   Resident of : Bharwad Vas, Deriyapura,
   Vatva Gam, Ahmedabad.
3. **United India Insurance Co. Ltd.,**
   Address : Hub, 6th Floor, Pushpak building,
   Khanpur, Ahmedabad.

APPEARANCE

Learned Advocate for the applicant.	:	Mr. B. S. Solanki

Learned Advocate for the opponent No.1&2:	Mr. S. S. Patel
Learned Advocate for the opponent No.3. :	Mrs. S. H. Patel

: JUDGMENT ::

[1] The Present petition has been preferred by the applicant initally under Section 163-A of the Motor Vehicles Act, 1988 for compensation of Rs.4,99,500/- which was converted to the application under Section 166 of M.V.Act vide order below application at Exh.26 and claim amount is enhanced to Rs.15,00,000/- along with interest @ 18% vide order below application Exh.27, and costs against the opponents for the death of deceased **Piyush Hasmukhbhai Panchal** and the losses suffered by the applicant in a vehicular accident occurred on 31/05/2011 involving Loading Rickshaw bearing Registration No.GJ-1-CT-4882.

[2] The *factual matrix* involved in the case are as under :

2.1 It is the case of the applicant that, on 31/05/2011 the son of the applicant Piyush Hasmukhbhai Panchal along with Rajeshkumar Kailashbhai Chauhan were going on Eterno Scooter No.GJ-1-EF-6974 which was owned by his employer and driven by the deceased with due care and caution, and when they reached at the site of accident i.e. Ramol Khanwadi, at the same time one Loading Rickshaw bearing Registration No.GJ-1-CT-4882 driven by opponent No.1, owned by opponent no.2, insured by opponent No.3 came in very rash, negligent and in a manner endangering human life and dashed with the Eterno Scooter of the deceased, as a result of which the deceased had sustained severe injuries on his head, right leg etc. and died during the treatment on 09/06/2011.

2.2 It is the case of the applicant that, the accident in question has occurred due to negligence of driver of Loading Rickshaw bearing Registration No.GJ-1-CT-4882 in respect of which an offence has been registered at Ramol Police Station vide I CR No.150/2011 under section 279, 337 of the Indian Penal Code and sections 177, 134 & 184 of the Motor Vehicles Act.

2.3 It is also the case of the petitioners that the deceased was aged about 24 years at the time of accident and was earning Rs.5,000/- per month by working at Deesha Steel Factory. On account of his untimely death the petitioners are deprived of his income and have suffered great mental shock. Hence, on above facts the applicant has filed a Claim Petition to get the amount of Rs.15,00,000/- towards compensation, from all the opponents as compensation.

[3] Summons/ Notice of the Petition have been duly served upon the Opponents and Opponents no.1 & 2 appeared through their Ld. Advocate before the Tribunal and has filed their written statement vide Exh.14 objecting the claims of petitioner. Wherein denied all the facts of the claim-petition. On behalf of Opponent No. 3 Insurance Company has filed his written statement vide Exh.15. It is contended by the Insurance Companies in his reply that, the claim petition of the claimant is not tenable. Hence, the same needs to be dismissed. It has denied the age, occupation and income of the deceased. It is also pleaded by Insurance Company that driver of the offending vehicle i.e Loading Rickshaw GJ-1-CT-4882 was not holding valid and effective driving license to drive the said vehicle at the time of accident and hence the insurance company is not liable to pay the compensation to the claimant. Further, submitted that deceased being driver of the Eterno Scooter No.GJ-1-EF-6974 was also negligent for the occurrence of accident. On all the above grounds it has prayed to dismiss the claim petition of the claimant against them with costs.

[4] **ARGUMENTS:-**

[4.1] The Learned Advocate for the applicant has submitted arguments vide Exh.40, contending that the deceased was 24 years old at the time of the accident, and his income should be calculated at the rate of Rs. 5,000/- per month. It was further submitted that the driver of the offending vehicle, bearing registration No. GJ-1-CT-4882, was driving in a rash and negligent manner, which resulted in a collision with the deceased’s Eterno Scooter. Therefore, the driver of the offending vehicle is solely responsible for the accident. In conclusion, the learned advocate has requested the Hon’ble Court to grant an award of Rs. 22,67,000/- by considering the prospective income and other relevant heads of compensation.

[4.2] The Learned Advocate for Opponent No.3 has argued the matter orally and submitted that there are no eyewitnesses to the accident, and it was a case of a head-on collision between both vehicles. Therefore, the principle of composite negligence should be applied. Further, it is argued that the applicant has not produced any income proof of the deceased; hence, a notional income of Rs. 3,000/- per month should be considered. Referring to the ***Pranay Sethi judgment***, the learned advocate submitted that 40% prospective income should be added for the deceased, who was unmarried, and accordingly, compensation of Rs. 4,83,600/- should be awarded. Additionally, the learned advocate for the insurance company strongly argued that the applicant is not entitled to interest for the period from 2011 to 2014, and the interest rate should not exceed 6% per annum.

[5] Considering the pleadings of parties, the Hon'ble Tribunal has at Exhibit-31 framed following issues:-

I S S U E S

(1) Whether the petitioner proves that the deceased died due to

the injuries sustained by him in a vehicular accident due to rash and/or negligent driving of the driver of the vehicle involved in the accident ?

(2) Whether the petitioners are entitled to get the compensation ? If yes, what amount and from whom ?

(3) What award ?

My **FINDINGS** to above issues are as under :-

(1) In affirmative.

(2) In affirmative.

(3) As per final order.

REASONS

[6] ISSUE NO.1

[6.1] Here, the petitioners have to prove that the deceased died due to the rash and negligent driving made by the driver of opponent No.2. The petitioner Hasmukhbhai Kalidasbhai Panchal has entered into the witness box and give his testimony vide Exh.29. He has reiterated the facts of the incident and deposed that accident occurred due to the rash and negligent driving made by the driver of Loading Rickshaw bearing registration No.GJ-01-CT-4882. He has produced copy of FIR vide Exh.34, copy of Panchnama for the scene of offence vide Exh.35, copy of inquest Panchnama vide Exh.36 as well as copy of post-mortem report of deceased vide Exh.37, treatment book of deceased vide Exh.38, Charge-sheet vide Exh.39 and also produced other relevant documents pertaining to the vehicle. The witness was cross-examined by the insurance company. Where the witness has admitted that he has not seen the accident. It means the information with the applicant is based on the documentary evidence produced on record. Upon examining the FIR, it is evident that the deceased was riding on Eterno Scooter and Loading Rickshaw bearing registration number GJ-01-CT-4882 came in full speed and dashed to the vehicle of deceased. Here the insurance company has argued that perusal of Panchnama and FIR clearly establish the fact that the accident was the result of head-on collision. In that case, the negligence has to be decided on the basis of composite negligence. On the basis of this argument, if we perused the FIR then it clearly establish the fact that the FIR does not specify the exact position of accident but the perusal of

Panchnama suggests that both the vehicles dashed with each other on head-on position. Now if we consider the other description of Panchnama then it appears that the accident took place on the side where the Eterno Scooter was going on. It means the offending vehicle had occupied undue space on the part of Eterno Scooter. Hence the negligence is 100% established on the part of offending vehicle means opponent. Accordingly the driver of the Loading Rickshaw bearing registration number GJ-01-CT-4882 is held 100% negligent. Accordingly, I decide Issue No.1 is in "Affirmative".

[7] ISSUE NO.2 :

[7.1] Entitlement of compensation:

Once it is established that accident in question has occurred and it is also proved that deceased lost his life in the accident. Here, the legal heirs of deceased Piyush Hasmukhbhai Panchal have applied for compensation. Further, applicants are dependent on deceased. In this context, I have considered the guiding principle laid down by Hon'ble Supreme Court of India in cases of ***National Insurance***

Company Limited Versus Birender and Ors and Manjuri Bera (Smt) v. Oriental Insurance Co. Ltd. & Anr. According to the ratio laid down in this judgments even though the petitioners are major and earning member of the family, they are entitled for compensation. Accordingly, applicants are entitled for compensation.

[7.2] Quantum of the compensation:

The cardinal principle for awarding the compensation in the accident cases is that the compensation to be awarded must not be inadequate nor must be exorbitant but the same must be JUST COMPENSATION. Here, the applicants have relied upon various judgments. Which I have considered. Further, Hon'ble Apex court has in case of ***National Insurance Co. Ltd. V/s Pranay Sethi & Others.*** **SLP (Civil) No. 25590/2014 dated 31/10/2017** provided guidelines for awarding JUST COMPENSATION to the victims and accordingly in the present case JUST COMPENSATION is worked out as under.

[7.3] Claim for Future Loss of Income- Loss of Dependency :

The claim for future loss of income can be computed by considering the income and age of the deceased and hence it is ***sine qua non*** to determine first the age and income of the claimant. The said aspects are discussed below.

[7.4] **<u>Age :</u>**

The applicants have submitted that age of the deceased was 24 years at the time of accident. The applicants have produced the School leaving certificate of deceased at Exh.40. Looking to the same, the date of birth of deceased is shown as 13/09/1988. Hence, at the time of accident age of deceased was around 24 years.

[7.5] **<u>Income:</u>**

(a) It is submitted by applicant in his Affidavit produced at Exh.29 that at the time of accident, deceased was earning Rs.5,000/- per month by working at factory. But the applicant has not produced any cogent evidence for the same. Here the accident took place in the year 2011 and thus looking to the notional income of unskilled person at the time of accident, it comes to Rs.4,540/- per month. Hence, yearly income of deceased be calculated as Rs.4,540/- x 12 = Rs.54,480/- per year.

As per guiding principles laid down in case of ***National insurance Co. Ltd. V/s Pranay Sethi & Others,*** the income in question has to be increased for prospective rise up to 40% as the deceased was below 40 years. Hence, 40% amount of yearly income of deceased i.e. Rs.54,480/- x 40% = Rs.21,792/- added to calculated yearly income with prospective rise. Hence, yearly income of the deceased including prospective rise come up to Rs.54,480/- + Rs.21,792/- = Rs.76,272/-.

[7.6] <u>Dependents:</u>

For arriving at the JUST COMPENSATION in terms of future loss of income it is necessary to reduce the yearly income of the deceased by adjusting to the proportion of the income that would be used by the deceased had been alive. And for deciding said proportion the guidelines have been issued in the decision of the Hon'ble Supreme Court in case of ***National Insurance Co. Ltd. V/s Pranay Sethi & Others. SLP (Civil) No. 25590/2014 dated 31/10/2017.*** According to which the proportion for personal expenditure deductions have to be made by considering the number of dependents. In the present petition, as deceased was unmarried, hence, 1/2 proportion of the income of deceased has to be deducted from the yearly income of deceased to be considered for deciding the loss of dependency. Hence, Rs.76,272/- - Rs.38,136/- = **Rs.38,136/-** would be considered as loss of dependency.

[7.7] <u>Multiplier:</u>

As the age of deceased is determined as 24 years, the multiplier of 18 will be applicable.

[7.8] <u>Loss of dependency:</u>

Thus, the applicant is entitled to the claim of future loss of income i.e Loss of dependency to the tune of Rs.38,136/- p.a. X 18 years = **Rs.6,86,448/-.**

[7.9] <u>General & Non-pecuniary Damages.</u>

Here, for general and non-pecuniary damages, Hon'ble Apex court has in the decision of ***National Insurance Co. Ltd. V/s Pranay Sethi & Others. SLP (Civil) No. 25590/2014 dated 31/10/2017*** provided that the applicant is also entitled for compensation under the following heads : Loss of Consortium, Funeral expenses, Loss of estate. The aforesaid amounts should be enhanced at the rate of 10% in every three years.

Loss of Dependency	Rs. 6,86,448/-
Loss of Parental Consortium	Rs. 48,400/-
Funeral estate	Rs. 18,150/-
Loss of estate	Rs. 18,150/-
Total	**Rs. 7,71,148/-**

[8] Interest :-

The applicants have claimed Rs.15,00,000/- with 18% interest from the opponents. Here the Insurance company has strongly argued that the opponents were served with the process in year 2011 and after that the claimant did not preferred to proceed with the claim. Due to such action, the claim prolonged for nearly 13 years and that too for no fault on the part of insurance company. In that case, the rate of interest must be counted at 6% per annum, otherwise it will cause unnecessary financial burden on insurance company. I have considered this argument and the record supports the argument of the insurance company. But here the issues were framed in year 2022 and that point suggest that the claimant may be given adequate rate of interest on just compensation. As per guiding principle laid down in various judgment of Hon'ble the High Court of Gujarat and Supreme Court the rate of interest should be considered at general rate of interest of nationalized banks on loans and deposits, and accordingly, the applicant is entitled to get simple interest @ 9% per annum on the amount of compensation, from the date of filing of this application, till actual realization thereof.

[9] <u>Liability:</u>

As per the copy of Insurance policy of Loading Rickshaw No.GJ-1-CT-4882 vide Exh.38 and perusal of the same it transpires that at the time of accident the insurance policy of the vehicle was in force and the opponent No.2 was the owner and opponent no.3 was the insurance company of the Loading Rickshaw No.GJ-1-CT-4882. Hence, all the opponents No.1 to 3 are jointly and severally liable to pay compensation. Hence, Issue No.2 is decided accordingly and following final award is passed.

[10] In view of above findings, I pass the following final order:

:: O R D E R ::

1. The petition is hereby partly allowed in favour of petitioner with proportionate costs and interest against the opponents No.1 to 3.

2. The petitioner do recover **Rs.7,71,148/- (Rupees Seven Lakhs Seventy One Thousand One Hundred Forty Eight Only)** from the opponents No.1 to 3, jointly and severally together with running interest at the rate of **9% p.a.** from the date of petition till realization of the amount along with proportionate costs of the petition.

3. On depositing the above amount of award by the opponents in this Tribunal, the amount of Court Fee Stamp, if recoverable on the awarded amount, be recovered from the awarded amount and the same be taxed as the costs of the petition.

4. After above deductions, Out of the share, **40%** amount

of compensation be paid to the petitioner by direct transfer to the credit of the bank account of the petitioner as given below by NEFT or RTGS after proper verification and rest of the **60%** be invested as Fixed Deposit in the name of the applicant in any nationalized Bank named by the applicant, for a period of Five (5) years, subject to the condition that, neither any pre-mature withdrawal of the said FD be allowed by the concerned bank without prior permission of this Tribunal nor any loan or advance against the said FD be granted.

5. The claimants are directed to submit the following details within one week from today:-

   1. Name of the claimants with address.
   2. Name of the Bank & Branch, Bank IFSC Code, Account Number of the claimants.
   3. The first page of the bank passbook, which will compulsorily contain the photograph of the claimants, duly attested by the Bank concerned, should be made

available.

4. Wherever the claimants are impleaded as Respondents before the claims tribunal, their account details, as above, will have to be furnished.

6. The insurance companies and transport corporations and such other entities shall deposit the amount as directed in Circular No. 08/2022 dated 01/02/2022 in Account Name:-Principal District Judge, Ahmedabad (Rural) MACP, Account No. 00000040722625356, IFSC Code: SBIN0000301 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, Ahmedabad (Rural) 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. 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.

8. 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.

9. Award be drawn accordingly in the above claim petition.

Signed & Pronounced in the open Court today on this 26th day of September, 2024.

Date : 26/09/2024.
Place: Ahmedabad.

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(Mr. Advait Surendra Vyas)
M.A.C. TRIBUNAL (AUXI)
(Unique ID Code: GJ00709)

R.R.Dave, PS