

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/FIRST APPEAL NO. 57 of 2022

With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2021
In R/FIRST APPEAL NO. 57 of 2022

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RELIANCE GENERAL INSURANCE COMPANY LIMITED
Versus
ASHABEN VIKRAMBHAI CHAUHAN

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Appearance:

MR CHIRAYU A MEHTA(3256) for the Appellant(s) No. 1
for the Defendant(s) No. 1,2,3,4,5

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CORAM: HONOURABLE MR. JUSTICE UMESH A. TRIVEDI

Date : 08/03/2022

ORAL ORDER

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 challenging the judgment and award passed by the Motor Accident Claims Tribunal (Main), Bhavnagar dated 27.07.2021 in Motor Accident Claim Petition No.70 of 2019 whereby the claimants came to be awarded compensation of Rs.25,28,000/- from the opponents before the Tribunal jointly and severally together with running interest at the rate of 9% per annum from the date of petition till payment along with proportionate cost of the petition, for death of Vikrambhai Manjibhai Chauhan caused in vehicular accident who happened to be the husband of original claimant No.1 and son of claimant Nos.2 and 3.

Brief facts of the case, as narrated in the impugned judgment and award, are as under.

It is asserted in the Claim Petition that on 22.02.2019, at about 6.00 p.m. on Bhavnagar - Rajkot highway while the deceased - Vikrambhai Manjibhai Chauhan was driving the Hero Honda Motorcycle bearing registration No.GJ-04-CN-2117 in a moderate speed and on his correct side, the opponent No.1 drove the Taurus Truck bearing registration No.GJ-03-AT-2999 in a rash and negligent manner endangering human life and dashed with the Motorcycle driven by the deceased. Because of the said accident, deceased sustained serious injuries and succumbed to the said injuries. It is for the death of deceased the original claimants as aforesaid has filed a Claim Petition.

Since deceased was earning Rs.11,760/- per month serving as Assistant Production Manager in the Sarvottam Dairy at the time of his death, after elaborate discussion and consideration of the evidence led before it, Tribunal considered Rs.11,379/- as monthly income of the deceased for awarding just compensation. After going through the monthly earning, 50% of it was added towards prospective earning and thereby the earning of the deceased per month came to Rs.17,069/- and multiplying by 12, it came to Rs.2,04,820/- per annum. Since deceased was within the age group of 21 to 25 years, after applying appropriate multiplier of 18, the Tribunal has reached the compensation towards future loss of income to be Rs.24,57,936/- adding loss to the estate, funeral expenses and as loss of consortium, total amount awarded as compensation, rounded to Rs.25,28,000/-, as aforesaid.

Mr.Chirayu Mehta, learned advocate for the appellant drawing attention of the Court to a statement of driver of the offending vehicle, which is produced by a separate list of

documents submitted that it is only the deceased who can be said to be negligent on a highway crossing the road in between the divider and if not solely responsible at-least contributory negligence be also considered to be attributed to the deceased himself. In support of the aforesaid contention, which is raised even in the written arguments, he further drew attention of the Court to the statement of the first informant, which is recorded pursuant to First Information Report, that accident occurred while crossing road from the divider. Therefore, he has submitted that at-least some portion of contributory negligence is required to be attributed to the deceased which will reduce the burden of the appellant.

Though no other submission is canvassed, except the contributory negligence, which could be attributed reading the First Information Report as also the statement of the driver, he has fairly conceded that for rest of the award, there is no room for argument.

After going through the judgment in detail as also the documents produced by the learned advocate for the appellant by a separate compilation, it emerges that the copy of charge-sheet filed against the driver of the offending vehicle - Truck and the fact that he is prosecuted in the Court of law, if at all, charge-sheet is filed against the driver, his own statement recorded in the said criminal case would never form a part of charge-sheet as it cannot be used against him during the course of trial. Therefore, there is no merit in the contention that statement of the driver, which is read by the learned advocate for the appellant is forming part of the charge-sheet. Over and above that, even considering the same, in absence of driver being

examined before the Tribunal, the evidence led before it with regard to sole negligence of the driver cannot be disputed by the Insurance Company. If at all, the alleged accident took place in the manner in which it is argued before the Court, no one has prevented the Insurance Company to examine the driver of the offending vehicle before the Tribunal so that claimants could have cross-examined him to support their assertion in the claim petition.

After examining the evidence led before it, the Tribunal has correctly concluded in paragraph No.11 holding the driver of offending vehicle -Truck to be solely responsible and negligent in driving it, which caused the death of the deceased.

Neither from the statement nor from the judgment, Mr.Mehta, learned advocate for the appellant could make out a case for interference on the ground of attributing any contributory negligence to the deceased and therefore, there is no substance in this appeal as it is the sole point raised to assail the impugned judgment and award. Therefore, the appeal is liable to be dismissed and it is hereby dismissed.

Order in Civil Application.

In view of dismissal of appeal, this Civil Application also stands disposed of.

ASHISH M. GADHIYA

(UMESH A. TRIVEDI, J)