IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 3675 of 2018
With
R/CROSS OBJECTION NO. 175 of 2023
In
R/FIRST APPEAL NO. 3675 of 2018

FOR APPROVAL AND SIGNATURE :

HONOURABLE MS. JUSTICE GITA GOPI Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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GUJARAT STATE ROAD TRANSPORT CORPORATION THROUGH ITS DEPOT MANAGER

Versus

GITABEN BHUPENDRABHAI PARMAR HEIRS AND LEGAL REPRESENTATIVES OF DECD. BHUPENDRABHAI BABUBHAI & ORS.

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Appearance:
MS VASAVDUTTA BHATT with MR C S SHUKLA(7549) for the Appellant(s) No. 1
BHAVIN B THAKAR(9371) for the Defendant(s) No. 1,2,3,4

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CORAM:**HONOURABLE MS. JUSTICE GITA GOPI**

Date : 09/04/2024

ORAL JUDGMENT

1. By way of this Appeal, the Appellant – Gujarat State Road Transport Corporation has challenged the judgment and award dated 27.11.2017 passed by the learned Motor Accident Claims Tribunal (Main), Bhavnagar in M.A.C.P. No.894 of 2006.

2. The facts giving rise to the present Appeal can be put succinctly as under :-

   On 13.09.2006, the deceased who was working as Driver with the Gujarat Maritime Board was coming towards Bhavnagar by driving a Jeep bearing Registration No.GJ-4-D-4835 of the Gujarat Maritime Board. The jeep was being driven slowly and on the correct side of the road. When the Jeep reached near Gokulpara, at 7.30 pm, it met with an accident with a Bus bearing Registration No.GJ-18-V-9264. As a result of this accident, the deceased sustained serious injuries and succumbed to death.

3. Learned Advocate Ms. Vasavdutta Bhatt alongwith learned Advocate Mr. C.S. Shukla appearing for the appellant submitted that the learned Tribunal has

erred in considering the sole negligence of the driver of the State Transport Corporation Bus and has also failed to appreciate the First Information Report and Panchnama and has wrongly attributed 100% negligence to the Bus driver while the evidence on record suggests that the deceased jeep driver was also negligent in his driving.

4. Learned Advocate Mr. C.S. Shukla has relied on the decision of this Court in the case of **Legal Heirs of deceased Mohanbhai Shankarbhai Patel Arunaben Mohanbhai Patel v. Stiponiya Gulam Mohammedvali** reported in **2023 (O) AIJEL-HC 24273** and submitted that the Panchnama relied upon refers, that the position of the vehicle had been shifted and therefore, the same would not show the correct picture of the accident. It is further submitted that both the vehicles were damaged and hence, it was a case of head on collision and the evidence requires to be appreciated, considering the contributory negligence of the jeep driver.

5. Per contra, it is submitted by learned Advocate appearing for the claimants Mr. Bhavin B. Thakkar

that the evidence of the bus driver was noted at Exhibit 50, which was compared to the evidence of the eye witness who was travelling in the Jeep at Exhibit 42 and the learned Tribunal has believed the eye witness to the accident and has found that there was no reason to disbelieve his evidence. It is also submitted that the deposition of the bus driver did not disclose the fact that the truck was lying in a stationery position on the road on which the bus was going and while overtaking the truck, the bus driver had come on the side of the road where the jeep was coming from Gandhinagar and was going towards Bhavnagar and therefore, it is urged that there is no need to interfere with the judgment and award of the learned Tribunal.

6. Having heard the learned Advocates for the respective parties and on perusing the records of the case, it appears that the evidence of the witness – Tarachand R. Variani who had given the First Information Report on 13.09.2006 was examined by the claimants and the First Information Report was against the bus driver. The First Information Report noted that the accident had occurred in the evening at about 7.00

p.m. on the road near Ganesh Patia where the complainant had attributed rashness and negligence of the bus driver and had stated that because of the accident, all of them who were sitting in the Jeep sustained injuries. The panchnama was drawn on the next day in the morning between 8.00 – 8.45 hours, where reference of the Truck had been made and the place of accident is Bhavnagar – Tarapur Road, between Village Ganeshgadh to Gokulpara. The tar road was noted of 22 feet width and damage to the bus has been noted, which is on the driver side. The damage is from the head light and to the upper part of the glass. The route of the bus was Una, Mumbai and the rear side of the bus and the Truck bearing Registration No.GJ-18-T-1235 was noted to be in a stationery position at a distance of 10 ft., the driver side tyre of truck was found puncture and the driver and cleaner of the truck were not present at the place. From the side distance of the truck to the driver side of the truck in circular form, at a distance of 2 feet, the tyre marks of the ST Bus to the extent 30 feet were noted in the Panchnama.

7. The witness who had been examined by State Transport Corporation, the bus driver has not made mention of this truck which was found to be stationery on the road, owing to the puncture of the tyre of the truck. While the witness who is the complainant had examined himself at Exhibit 42 and according to his evidence, as the bus was overtaking the jeep on the road, and had come on the opposite side which was the wrong side of the bus, thereby had caused the accident with the jeep in which the complainant and the deceased and others were travelling. They were travelling in the Jeep after completing their office work. The deceased driver – Bhupendrabhai Babubhai was driving the Jeep. According to the witness, the incident had occurred because of the dash between the Jeep and the State Transport Bus which were in the opposite direction.

8. In light of the evidence of the First Information Report, the evidence of the Bus Driver and the witness – Tarachand R. Variani, who himself is the complainant in the First Information Report, the evidence suggests that the Truck was lying stationery on the road and the bus was behind the Truck and

while overtaking the Truck, the bus had come on the side of the road from where the jeep was coming. The brake marks on the side of the truck were found to be of the bus, which clearly proves that it was the bus which had entered the wrong side of the road where the jeep was heading towards Bhavnagar. The learned Tribunal has rightly believed the evidence of the eye witness – Tarachand R. Variani while the bus driver has not given any exact details about the accident and has denied his liability. There is no reason not to concur with the observations of the learned Tribunal with regard to the issue framed for deciding the negligence of the vehicle involved in the accident. The bus driver was absolutely and solely liable for the accident.

9. The learned Tribunal has considered the age of the deceased as 45 years, who was working as a Driver in the Gujarat Maritime Board earning Rs.9,051/- per month and the learned Tribunal relying on the decisions of the Hon'ble Apex Court in the cases of **National Insurance Company Limited v. Pranay Sethi and Others** reported in **2017 16 SCC 680** and **Sarla Verma and Others vs. Delhi Transport Corporation**

and Another reported in **AIR 2009 SC 3104,** has considered 30% prospective rise in income and applying the multiplier of 14, has assessed the dependency loss as Rs.13,35,600/-.

10. The amount under the heads of Loss of Estate and Funeral Expenses @ Rs.15,000/- each has been granted.

11. However, the consortium loss of Rs.40,000/- has been considered. The claimants herein are the widow and three minor children. Relying on the decision of the Hon'ble Apex Court in the case of **Magma General Insurance Co. Ltd vs Nanu Ram Alias Chuhru Ram** reported in **(2018) 18 SCC 130,** the consortium amount is to be granted to the minor children too. Hence, individually, Rs.40,000/- is required to be granted the minor children who were aged 17 years, 10 years and 8 years respectively at the time of the incident.

12. Hence, over and above, the compensation amount of Rs.14,05,600/-, Rs.1,20,000/- (Rs.40,000/- x 3 claimants) would be the amount under the head

of consortium loss for the 3 children, who were minors at the time of the incident, in context of the cross objection filed by the claimants.

13. In view of the above, this Court is of the view that there is no merit in the Appeal and hence, stands rejected, while the Cross-Objection is partly allowed.

14. The learned Tribunal has awarded an amount of Rs.14,05,600/- with rate of interest @ 9% per annum. The present appellant is directed to deposit the enhanced amount of Rs.1,20,000/- within a period of **TEN (10) WEEKS** from the date of receipt of writ of the order of this Court. It is further directed that the claimants would be entitled to receive the above amount of Rs.1,20,000/- with rate of interest @ 7.5% per annum from the date of the application till its realization.

15. At this stage, it is reported that the minor claimants have turned major. Hence, the total compensation be paid to all the claimants in the proportion as decided by the learned Tribunal in its

judgment and award. Record and proceedings, if any, be sent back to the concerned Court / Tribunal forthwith.

16. Direct Service is permitted.

Sd/-
(GITA GOPI, J)

CAROLINE