IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 3927 of 2023

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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SHARDABEN BABUBHAI SATASIYA & ORS.

Versus

SUDHIRKUMAR UDESINGBHAI CHAUDHARI & ORS.

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Appearance:
NISHIT A BHALODI(9597) for the Appellant(s) No. 1,2,3
MR VC THOMAS(5476) for the Defendant(s) No. 3
RULE SERVED for the Defendant(s) No. 1
RULE UNSERVED for the Defendant(s) No. 2

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

Date : 26/04/2024

ORAL JUDGMENT

1. The appeal is filed by the heirs of the deceased as claimants challenging the judgment and decree dated 11-04-2023 passed by the Motor Accident Claims Tribunal at Surat in MACP No.391 of 2021.

2. Learned Advocate Mr. Nishit Bhalodi for the claimants has submitted that the Tribunal has erred in not considering Income Tax Returns, which are statutory documents and submitted that income was required to be assessed in accordance with ITR of the deceased, who was Diamond Agent at Surat.

3. Learned Advocate Mr. Nishit Bhalodi has submitted that consistent Returns for assessment year of 2019-2020, 2020-2021 and 2021-2022 had been produced at Exh-42, 43 and 44. It is submitted that there is typing error on Page No.14, though in the same paragraph, assessment year has been rightly noted and stated that net income of the deceased is accordingly to the observation, net income has to be considered correspondingly to the assessment year of Exh-42, 43 and 44.

4. Learned Advocate Mr. Nishit Bhalodi has submitted that date of accident is 21-09-2021. Hence, if previous year income is considered, then for the assessment year 2020-2021, yearly income of the deceased is Rs.3,15,530/-.

5. Learned Advocate Mr. Nishit Bhalodi has submitted that in spite of ITR on the record, the Tribunal has assessed income as per Minimum Wages. This is contrary to the evidence, which has been evidence on record and further stated that Bank Statements were also produced at Exh-45 to substantiate the earnings.

6. Countering the arguments, learned Advocate Mr. V. C. Thomas for the Insurance Company has submitted that the ITR were required to be supported by the Books of Accounts to show the actual earnings and hence, has submitted that in absence, the Tribunal has rightly considered income on the basis of Minimum Wages.

7. The deceased met with accident on 21-09-2021. According to claimants at about 7.00 am, deceased was going on the road opposite to Kapodra Police Station by driving Access Moped No. GJ-05-KF-1842 in slow speed on the left side of the road, at that time, the opponent No.1 came driving Luxury Bus No. GJ-33-T-8000 at full speed, in rash and negligent manner, dashed behind the moped of deceased and dragged him along with moped for about 10 feet. Because of fatal injuries the deceased sustained, he death on the spot.

8. The claimants have produced ITR for the assessment Year of 2019-2020, 2020-2021, 2021-2022. In case of ***Malarvizhi v/s. United India Insurance Co. Ltd. reported in 2020 (4) SCC 228,*** it has been noted by the Apex Court that Income Tax Returns is the statutory documents on which reliance will be placed to determine the annual income of the deceased. The deceased was working as Diamond Agent in Kiran Diamond Company.

9. In view of the same, future loss of income assessment was required to make on the basis of ITR produced; relevant ITR would be of the year 2020-2021 and annual income of year is Rs.3,15,530/-.

10. With age of the deceased as 55 years, 10% prospective rise of income is to be added to the annual income of Rs.3,15,530/-, thus, with the addition, income would be Rs.3,47,083/-. Considering the dependency, 1/3 amount would be deducted as personal expenses, which would be Rs.1,15,694/-. Hence, annual dependency would come to Rs.2,31,389/- as per age, multiplier of 11 would be applicable, and future dependency loss would be Rs.25,45,279/-.

11. The Tribunal has granted compensation of Rs.14,52,000/- under the said head. Hence, difference of Rs.10,93,279/- is required to be paid by

the Insurance Company. Rest of the amounts under other heads are according the Hon'ble Apex Court judgment. In the result, the claimants would be entitled to the enhanced amount of compensation of Rs.10,93,279/- with interest at the rate of 7.5% per annum from the date of filing of the claim petition till its realization. The enhanced amount is directed to be deposited within eight weeks from the date of receipt of writ of this Court.

12. From the said amount, 50% of the amount be given to the claimants on verification of the identity in proportion as declared by the Tribunal and rest of 50% be invested in a fixed deposit with any nationalized bank for a period of three years. Interest accruing on such Fixed Deposit shall be accumulated. After two years, total amount be given to the claimants without any reference to the court in the proportion as declared by the Tribunal.

13. The impugned judgment and award be modified accordingly. ***The appeal is partly allowed.*** Registry is directed to send the record and proceedings back to the Tribunal, if received.

Sd/-

(GITA GOPI,J)

PARESH SOMPURA