IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 4651 of 2009

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE GITA GOPI

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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BHIKHIBEN MELSING VASAVA & ANR.

Versus

KARIMBHAI MALEK & ORS.

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Appearance:
MR MTM HAKIM(1190) for the Appellant(s) No. 1,2
MR MAULIK J SHELAT(2500) 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 : 16/04/2024

ORAL JUDGMENT

1. The claimants widow and son of the

deceased have challenged the judgment dated 25.07.2008 in MACP No.130 of 2001 by Motor Accident Claims Tribunal (Aux.) Vadodara.

2. Mr. M.T.M. Hakim, learned advocate for the claimants submitted that the deceased was working as a Senior Gangman in Indian Railway at Miyagam Karjan. Mr. Hakim stated that the salary slip would prove his income and the last salary slip, as could be proved, would be of September-October, 2000; while the death is of 03.11.2000, where the deceased was going by foot at Karjan National Highway near Choranda Fatak, and from the opposite side Truck No.GJ-16-T-9524 dashed the deceased, who was thrown down on the road and died on the spot.

2.1 Advocate Mr. Hakim submitted that according to the salary slip the total salary of the deceased was Rs.5,206/-. Mr. Hakim further submitted that after deducting the tax payable,

the income has to be considered and prospective rise in income has to be added in accordance to the judgment of **National Insurance Company Ltd. v. Pranay Sethi and Ors., AIR 2017 SC 5157.** Advocate Mr. Hakim further submitted that the deceased was 44 years at the time of his death and the multiplier, as per **Sarla Verma and Others vs. Delhi Transport Corporation and Another, reported in (2009) 6 SCC 121,** would be 14.

3. Countering the argument, Mr. Maulik Shelat, learned advocate for the Insurance Company submitted that the Tribunal has rightly considered the income by relying on the basic salary with Dearness Allowances. Advocate Mr. Shelat stated that on fact of year of retirement, the Tribunal has assessed the income, and, thus stated that the excess amount has been granted by the Tribunal, which requires consideration in accordance to the judgment of *Pranay Sethi and Ors.* (supra), as the compensation should be just

and reasonable and should be assessed in accordance to the standard formulated in the judgment of *Pranay Sethi and Ors.* (supra).

4. Considering the deductable amount, the income of Rs.5,000/- per month is required to be assessed. The deceased was in permanent job of being a Senior Gangman in the Indian Railway and aged about 44 years at the time of death, hence, as per the judgment of *Pranay Sethi and Ors.* (supra), 30% rise in income has to be assessed. Considering the dependency, 1/3rd deduction is required to be made for personal expenses; thus the yearly future loss would come as under:

Actual Income	5,000/-
Prospective Income	6,500/- [5,000 + 1,500 (30% rise)]
1/3rd Deduction	6,500 / 3 = 2166.67 (rounded off Rs.2167/-)
Yearly Future loss	51,996/- [6,500–2167 = 4,333 x 12]

5. The multiplier applied would be 14; hence, the loss of dependency would come to Rs.7,27,944/- (51,996 x 14). Thus, accordingly the claimants would be entitled to Rs.7,27,944/- as loss of dependency.

6. The Tribunal under the heads of loss to estate and funeral expenses granted Rs.20,000/- and Rs.5,000/- respective. However, as per the judgment of *Pranay Sethi and Ors.* (supra), Rs.15,000/- each under the heads of loss to estate and funeral expenses is granted.

6.1 As one of the claimant is widow of the deceased, hence, in accordance to the judgment of **Magma General Insurance Company Ltd. Vs. Nanu Ram Alias Chuhru Ram & Ors.**, reported in **(2018) SCC 130 [2018 ACJ 2782]**, under the head of consortium loss, Rs.40,000/- is granted.

7. In view of the above, compensation under the different heads would be:

Heads	Amount
Loss of Dependency	Rs. 7,27,944/-
Funeral Expenses	Rs. 15,000/-
Loss of Estate	Rs. 15,000/-
Consortium Loss	Rs. 40,000/-
Total	**Rs. 7,97,944/-**

8. The Tribunal has awarded total compensation as Rs.5,98,480/-. Now, the claimant would be entitled to get Rs.1,99,464/- (7,97,944 – 5,98,480) as enhanced compensation at the interest rate of 7.5%. Total amount be paid to claimant no.1.

9. In the result, the appeal is partly allowed. The impugned judgment and award dated 25.07.2008 passed by Motor Accident Claims Tribunal (Aux.) Vadodara in M.A.C.P. No.130 of 2001 stands modified to the aforesaid extent. No order as to costs.

10. Record & Proceedings be sent back to the concerned tribunal.

(GITA GOPI,J)

Pankaj