

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO. 1316 OF 2024

- 1) Parvatiben Rajeshbhai Radiya
Aged about 35 years
- 2) Yogesh Rajeshbhai Radiya
Aged about 21 years
- 3) Nitixaben Rajeshbhai Radiya (Minor)
Aged about 16 years
- 4) Ajaybhai Rajeshbhai Radiya (Minor)
Aged about 11 years

Applicant No.1 for self and natural guardian
of minor Applicants No.3 and 4 as next friend
All R/o. 11, Khadkipada, Kilvani, Morkhal,
Randha, Dadra & Nagar Haveli.

..... Appellants

Vs.

- 1) Babasaheb S.o. Sahebrao More
R/o. Baliram Govind Amnare,
Pradipbhai Solanki Chawl,
Room No.2, Vad Faliya, Naroli, Silvassa,
Dadra & Nagar Haveli – 396230.
- 2) Baliram Govind Amnare
R/o. Pradipbhai Solanki Chawl,
Room No.2, Vad Faliya, Naroli, Silvassa,
Dadra & Nagar Haveli – 396230
- 3) The Divisional Manager,
Cholamandalam MS General Ins. Co. Ltd.,
Plot No.209, 2nd floor, Girnar Khushboo Plaza,
2nd Phase, Shop No.35, GIDC Vapi,
Tal. Vapi, Dist. Valsad, Gujarat State

..... Respondents

Mr. T.J. Mendon for the Appellants.
Mr. Sarthak S. Diwan for Respondent No.3.

CORAM : SHYAM C. CHANDAK, J.

DATED : 30th APRIL, 2025.

JUDGMENT :-

. Present Appeal under Section 173 of the Motor Vehicles Act, 1998 (**“the Act”**) is directed against the Judgment and Award dated 15/06/2024, in M.A.C.P. No.44 of 2021 (**“claim”**), passed by the Motor Accident Claims Tribunal, Dadra & Nagar Haveli, at Silvassa (**“Tribunal”**) thereby said claim filed by the Appellants (**“Claimant”**) under Section 166 of the Act was partly allowed and Respondent Nos.1 to three held jointly and severally liable to pay the claimants a sum of Rs.6,44,120/- as compensation along with interest at the rate of 6% per annum from the date of the claim/petition till realisation of the amount.

2) Mr. Mendon, the learned Advocate for the Appellants, at the outset, stated that the Appellants have challenged the said Judgment and Award on the premise that no compensation has been awarded towards the future prospects, by the Tribunal. Mr. Diwan, the learned Advocate for Respondent No.3 stated that, he is defending the Appeal on the ground of negligence. Respondent Nos.1 and 2, who were the driver and owner of the offending vehicle, appeared before the Tribunal, but did not file their Written Statement

nor they have filed a separate Appeal or a Cross-objection challenging the said Judgment and Award or the finding of 'rash and negligent' driving recorded against Respondent No.1-driver. Therefore, the notice to Respondent Nos.1 and 2 has been dispensed with. The Appellants are economically poor. In this background, both the learned Advocate submitted that the Appeal may be finally heard for which compilation of documents is submitted by Mr. Mendon.

3) Hence, heard Mr. Mendon, the learned Advocate for the Appellants and Mr. Diwan, the learned Advocate for Respondent No.3-Insurance Company. Perused the record.

4) The Appellants filed the said claim wherein they averred that on 02/02/2021, at about 01:00 a.m., opposite farm of Adit Noons, late Shri. Rajeshbhai Soniabhai Radiya was walking on *Kilvani* to *Morkhal* road. At that time, a Tata Motor Tempo bearing registration No.DD-01-A-9386 ("**tempo**") came there driven at a high speed, rashly and in a negligent manner by Respondent No.1. As a result, the tempo gave a dash to the deceased. Due to said impact, the deceased sustained serious injuries and died on the spot. Consequently, FIR No.24/2021 was registered with Silvassa Police Station for offences punishable under Sections 279 and 304-A of the Indian Penal Code and Sections 134, 184 and 177 of the Act, against Respondent No.1.

4.1) It was averred that, the deceased was aged 38 years, he was doing labour work and thereby he was earning Rs.15,000/- per month. All the Appellants were dependent on the income of the deceased. Therefore, the Appellants prayed to award a sum of Rs.30,00,000/- along with interest @ 12% p.a.

5) Respondent No.3 filed the Written Statement (Exh.73) and opposed the claim. Respondent No.3 denied the accident occurred due to rash and negligent driving of the tempo. It was denied that the deceased was working and earning as above. It was contended that at the time of accident, the deceased was drunk and he was crossing the road, but all of a sudden, the deceased came in front of the tempo and therefore the accident occurred. In this background, Respondent No.3 prayed to dismiss the claim with costs.

6) Hence, the Tribunal framed the issues. To prove the claim, Appellant No.1 adduced her evidence on affidavit (AW1/18) and relied upon various documents in evidence. In rebuttal, Respondent No.3 examined OW-1 Rameshbhai Ramubhai Dadhav, the then Head Constable, who carried out the investigation in the crime.

7) On appreciating the oral and the documentary evidence on record, the Tribunal held that the accident occurred due to rash and negligent driving of the tempo. The deceased was aged 38 years and his notional monthly income was Rs.9,735/- per month as per the

Minimum Wages Act prevailing at the time of accident. The Appellants were dependent on the income of the deceased. Therefore, the Tribunal awarded the compensation with interest, as stated above.

8) Mr. Mendon, the learned Advocate submitted that the Tribunal has rightly held that the accident occurred due to rash and negligent driving of the tempo. He submitted that the deceased was doing labour, therefore, the Tribunal did not err in treating his monthly income at Rs.9,735/-, notionally. However, the Tribunal did not add the future prospects as per the settled law. He submitted that the Appellant No.1 had no income, No.2 was was a student, aged 18 years and Nos.3 & 4 are still minor. Thus, the Appellants-claimants were dependent on the income of the deceased. However, by mistake, the Tribunal deducted $\frac{3}{4}$ th of the annual income towards personal and living expenses of the deceased instead of $\frac{1}{4}$ th such permissible deduction. This resulted in awarding inadequate compensation.

9) Mr. Diwan, the learned Advocate for Respondent No.3, on the other hand, submitted that Appellant No.1 did not witness the accident. According to him, the evidence of DW1 indicates that as per statement of Respondent No.1 recorded by DW1 and the conclusion of the investigation, at the relevant time, the deceased was in drunken state and he suddenly came in front of the tempo. Consequently, the

deceased sustained fatal injuries and died. Mr. Diwan, therefore, submitted that considering the evidence on record, the compensation awarded is sufficient. As such, there is no merit in the Appeal.

10) AW1 clearly deposed that the accident occurred due to rash and negligent driving of the tempo. This evidence is supported with the FIR and the Spot Panchnama. Even though DW1 tried to impress upon the Tribunal that the accident occurred due to fault of the deceased, in the cross-examination, he admitted that the FIR was registered against Respondent No.1, whom he finally chargesheeted. He admitted that at the time of the accident, the deceased was standing at the edge of the road, however, he was thrown away by the tempo. Therefore, the Tribunal has rightly held that the accident occurred due to rash and negligent driving of the tempo. Said finding of facts is not challenged by the Respondents filing an Appeal or Cross-Objection.

11) The deceased was maintaining the family of 5 members including himself. There is nothing on record indicating that the Tribunal erred in taking the notional monthly income of the deceased as Rs.9,735/-, which annually comes to Rs.1,16,820/-. The deceased was aged 38 years and he was not in permanent employment. Therefore, in view of the settled law, 40% of the net annual income should be added towards the future prospects of the deceased.

Accordingly, the actual annual income of the deceased comes to Rs.1,63,548/-. Since the dependents were four, 1/4th of the actual income should be deducted towards the personal and living expenses of the deceased. On such deduction, the annual loss of the dependency comes to Rs.1,22,661/-. The applicable multiplier is '15'. As a result, the Appellants are entitled to receive total Rs.18,39,915/- for the loss of dependency. Additionally, the claimants are entitled to get Rs.1,76,000/- towards the loss of the 'spousal' and the 'parental' consortium, Rs.16,500/- as the 'funeral expenses' and Rs.16,500/- as the 'loss of estate'. Thus, the Appellants are entitled to get total compensation of Rs.20,48,915/-. Having had regard to the facts and circumstances of the case, the interest granted by the Tribunal is on lower side, which is hereby increased to 7.5% p.a.

12) In view of the infirmities noted above, the impugned Judgment and Award warranted an interference by this Court to enhance the compensation and modify the Award, accordingly. Thus, the Appeal partly succeeds.

13) Hence, following Order is passed :-

(i) Appeal is partly allowed with proportionate costs.

(ii) The impugned Judgment and Award dated 15/06/2024, in M.A.C.P. No.44 of 2021, passed by the Motor Accident Claims Tribunal, Dadra & Nagar Haveli,

at Silvassa, is modified.

(iii) The Respondents shall jointly and severally pay a sum of Rs.20,48,915/- (inclusive of NFL amount) together with interest thereon at the rate of 7.5% per annum from the date of the Claim Petition till realisation of the amount.

(iv) The Respondents are directed to comply with this Judgment and Order within a period of four months from today, by depositing the amount in the Tribunal.

(v) On deposit of the amount, the Tribunal shall immediately inform about the deposit to the Appellants.

(vi) The deposited amount shall be apportioned, paid and invested as directed by the Tribunal, subject to payment of a deficit Court fee, if any.

(vii) Respondent No.3-Insurance Company will be entitled to the adjustment of the amount against the already paid, if any, under the impugned Award.

14) Appeal is disposed of in aforesaid terms.

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(SHYAM C. CHANDAK, J.)