

Sanobanu Nazirbhai Mirza & Ors vs Ahmedabad Municipal Transport Service on 3 October, 2013

Author: V. Gopala Gowda

Bench: G.S. Singhvi, V. Gopala Gowda

IN THE SUPREME COURT OF INDIA
APPELLATE JURISDICTION

CIVIL

CIVIL APPEAL NO.8251 OF 2013 (Arising out of SLP (C)
No. 36602 of 2012)

SANOBANU NAZIRBHAI MIRZA & ORS. ... APPELLANTS

VS.

AHMEDABAD MUNICIPAL TRANSPORT SERVICE ... RESPONDENT

J U D G M E N T

V. GOPALA GOWDA, J.

Leave granted.

2. The legal representatives of the deceased Nazirbhai who died in a road accident on 30th May, 1998 were aggrieved by the judgment and order dated 11.01.2012 of the High Court of Gujarat at Ahmedabad in First Appeal No. 1549 of 2002 wherein the High Court had partly allowed the appeal of the respondent and reduced the compensation awarded in favour of the claimants by the Motor Accident Claims Tribunal (in short 'the Tribunal') at Ahmedabad in MACP No. 563 of 1998 dated 23.10.2001 from Rs.3,51,300/- to Rs.2,51,800/- with a direction to the appellants-claimants to refund the excess amount of Rs.99,500/- along with the interest at the rate of 9% per annum. The appellants-claimants have filed this appeal urging certain grounds and prayed for setting aside the

impugned judgment and award passed by the High Court.

3. The brief facts of this case are stated below to appreciate the rival claims of the parties:

On 30.05.1998, the deceased Nazirbhai was going on his bicycle to his contract work of polishing at about 10.30 a.m. at the house of one Rashidbhai Pathan in Haranwali Pole. While he was waiting for other labourers at Kalidas Mill Kachha cross road with a bicycle, at about 10.45 a.m., one Ahmedabad Municipal Transport Service (AMTS) bus bearing registration No. GJ-1-TT-8337 came with high speed in a rash and negligent manner in the one-way and hit him with its front portion and knocked him down and caused bodily injuries. He was crushed under the wheel of his bicycle and later succumbed to his injuries at 6.00 p.m on the same day. The legal heirs of the deceased - his widow, his minor children and his parents filed a claim petition before the Tribunal for awarding just and reasonable compensation wherein the Tribunal awarded a sum of Rs. 3,51,300/- along with interest @ 9% per annum from the date of application till realization. The respondent aggrieved by the judgment and award of the Tribunal filed an appeal in the High Court urging for reduction of compensation awarded in favour of the claimants on the ground that the Tribunal has committed an error on facts and in law in assessing the income of the deceased on the basis of the IIInd schedule to Section 163-A of the Motor Vehicles Act, 1988 (in short the M.V. Act) and that the accident being of the year 1998, income should have been assessed as Rs.15,000/- per annum. The High Court partly allowed the appeal of the respondent and reduced the compensation to Rs.2,51,800/- and ordered that the excess amount of Rs.99,500/- shall be returned to the respondent along with interest @ 9% per annum. Being aggrieved by this judgment and award passed by the High Court, the legal representatives of the deceased filed this civil appeal urging various grounds and legal contentions and requested this Court to set aside the impugned judgment and award and further, award just and reasonable compensation by modifying the judgment of the Tribunal.

4. It is urged by the learned counsel for the appellants, Ms. Saroj Raichura, that the Gujarat High Court in exercise of its appellate jurisdiction has modified the judgment and award passed by the Tribunal after a long lapse of 11-12 years, which is in violation of the right to life and natural justice and statutory rights of the appellants under the provisions of the M.V.Act. Another ground urged is that the High Court was not right in holding that the compensation awarded by the learned Members of the Tribunal is excessive and consequently, the direction issued to the appellants to refund an amount of Rs.99,500/- along with an interest of 9% interest after long lapse of 11 years is wholly unsustainable in law. It is submitted that at the time of death the deceased was aged 25 years and was hale and hearty and would have lived long, had he not met with the accident. Prior to the accident, he was engaged in the work of polishing and colouring and was earning Rs.4,000/- to Rs.5,000/- per month and he was good at his work and would have progressed in the future. It is urged that since the appellant No.3 was born after the death of the deceased, compensation under the head of loss of fatherhood should also be awarded. The further legal contention urged is that the High Court interfered with the judgment and award by reducing the compensation after 11 long

years even though the Tribunal after proper appreciation of facts and legal evidence on record has rightly awarded the compensation. The same should not have been interfered with by the High Court in the exercise of its appellate jurisdiction. Therefore, the appellants have approached this Court to set aside the impugned judgment and order of the High Court and prayed to pass an order awarding just and reasonable compensation.

5. We have carefully examined the correctness of the impugned judgment and award passed by the High Court of Gujarat in exercise of its appellate jurisdiction with a view to find out whether the interference of the High Court with the quantum of compensation awarded by the Tribunal in its judgment is legal, valid and justified and further, as to what amount the claimants are entitled to. We have also perused the judgment passed by the Tribunal on the basis of pleadings and evidence on record wherein it has recorded the categorical finding of fact holding that the deceased sustained bodily injuries in a road traffic accident on 30.05.1998 at about 10.30 a.m. while he was going to attend his contract work of polishing at the house of one Rashidbhai Pathan in Haranwali Pole. While he was waiting for the other labourers at Kalidas Mill Kachha cross road with a bicycle, at that point of time at about 10.45 a.m. one AMTS bus bearing registration No. GJ-1-TT-8337 came at high speed in a rash and negligent manner in the one-way and hit him with its front portion and knocked him down and caused grievous bodily injuries. He was crushed under the wheel of his bicycle and later succumbed to the injuries at 6.00 p.m. The finding is recorded by the Tribunal on the basis of legal evidence on record and held that the accident occurred on account of rash and negligent driving of the offending vehicle by its driver and the deceased sustained injuries and succumbed to them on the evening of the same day. The above said finding of fact has not been set aside by the appellate authority in exercise of its appellate jurisdiction.

6. The Tribunal has taken a sum of Rs. 15,000/- per annum as provided in the IIInd schedule to Section 163-A of the M.V. Act as notional income on the basis of ratio laid down by the Gujarat High Court in the case of Ritaben @ Vanitaben & Anr. Vs. Ahmedabad Municipal Transport Service & Anr.[1] wherein it has held that a datum figure is required to be taken into consideration for compensation in fatal cases. The same was applied to the case on hand by the Tribunal and further Rs.30,000/- was added to this figure which was then divided by 2 such that the net yearly income comes to Rs.22,500/- out of which 1/3rd amount was deducted towards personal expenses and maintenance of the deceased and thus the net awardable dependency was calculated at Rs.15,000/- per annum. The case of S.Chandra & Ors. Vs. Pallavan Transport Corporation[2], of this Court has also been referred to regarding the average life expectancy, wherein this Court has taken 20 as multiplier in case of the deceased aged 42 years. Adverting to the case of General Manager, Kerala State Road Transport Corporation, Trivendrum Vs. Susamma Thomas & Ors.[3], this Court discussed the method to be followed to determine the multiplier to the multiplicand and taken multiplier of 12 in a case where the deceased was aged 39 years. However, the Tribunal after referring to S. Chandra's case (supra) preferred to rely on the same for taking multiplier of 20 in the case of the deceased at the time of death as he was aged about 25 years as reflected in the post mortem report. Therefore, the future economic loss awardable to the appellants was calculated at Rs.3,00,000/-. Thereafter, following the decision in the case of Gujarat State Road Transport Corporation Vs. Suryakantaben D. Acharya & Ors.[4], wherein the Gujarat High Court ruled that the conventional amount was required to be raised to Rs.20,000/- from Rs.10,000/- having regard to

the rise in prices and higher rate of inflation which is a common phenomenon in Indian economy, the Tribunal awarded a sum of Rs.20,000/- towards loss of expectancy of life and Rs.500/- towards medical expenses. Since no evidence was produced before the Tribunal by the appellants to sustain the medical claim and attendant charges of Rs.2000/- therefore, the Tribunal has held that the claim was on the higher side and it has awarded a sum of Rs.500/- towards attendant charges. Further, Rs.300/- was awarded towards transportation charges since the appellants have not adduced evidence to show that Rs.2000/- was spent towards transportation of the dead body. The award has been interfered with by the High Court in the impugned judgment and the compensation was reduced to Rs.2,51,000/- taking only notional income of Rs.15,000/- per annum as provided in the IInd Schedule to Section 163-A of the M.V. Act and deducted 1/5th amount towards personal expenses. The dependency benefit is taken to Rs.12,000/- per annum and 18 multiplier was applied and awarded a sum of Rs.2,16,000 and another Rs.10,000/- was awarded towards loss of consortium, Rs.10,000/- towards loss to estate, Rs.5000/- towards funeral expenses, Rs.5,000/- towards pain, shock and suffering, Rs.500/- towards attendant charges and Rs.300/- towards transportation charges. The total compensation of Rs.2,51,800/- was awarded by the High Court by modifying the judgment and award of the Tribunal which has awarded a compensation of Rs.3,51,300/- and further the High Court directed the appellants to refund an excess amount of Rs.99,500/- with interest at the rate of 9% per annum to the respondent. The same was rightly challenged by the appellants before this Court by filing this appeal urging various grounds.

7. In our considered view, the approach of both the Tribunal as well as the High Court in taking notional income of the deceased at Rs.15,000/- per annum to which Rs.30,000/- was added and divided by 2 bringing it to a net yearly income of Rs.22,500/- which has been interfered with by the High Court by taking Rs.15,000/- as notional income on the basis of the IInd Schedule to the Section 163-A of the M.V. Act is an erroneous approach to determine just and reasonable compensation in favour of the legal representatives of the deceased who was the sole earning member of the family. It is an undisputed fact that the deceased was working as a polisher, which is a skilled job. This important aspect of the case of the appellants was not taken into consideration by both the Tribunal as well as the High Court, thereby they have gravely erred by taking such low notional income of the deceased though there is evidence on record and the claim petition was filed under Section 166 of the M.V. Act. The High Court taking Rs.15,000/- per annum as the notional income and deducting 1/5th towards personal expenses which would come to Rs.12,000/- is not only an erroneous approach of the High Court but is also vitiated in law. The finding of fact recorded by the Tribunal in the absence of any rebuttal evidence to show that the deceased was not working as a polisher and it is not a skilled work is also an erroneous finding for the reason that both the Tribunal and the High court have not assigned reason for not accepting the evidence on record with regard to the nature of work that was being performed by the deceased. The State Government in exercise of its statutory power under Section 3 of the Minimum Wages Act, 1948 must issue a notification for fixing the wages of a polisher. Even in the absence of such a notification, both the Tribunal as well as the High Court should have at least taken the income of the deceased as Rs.40,000/- per annum as per the table provided in the IInd Schedule to Section 163-A of the M.V. Act for the purpose of determining just, fair and reasonable compensation under the heading loss of dependency of the appellants, though the said amount is applicable only to the claims under no fault liability. If 1/5th amount is deducted out of the above annual income the resultant multiplicand

would be Rs.32,000/- per annum. Both the Tribunal and the High Court should have proceeded on the aforesaid basis and determined the compensation under the heading loss of dependency of the appellants.

8. In view of the aforesaid fact, we have to hold that it would be just and proper for this Court to take a sum of Rs.5000/- as the monthly income of the deceased having regard to the nature of job that the deceased was performing as a polisher, which is a skilled job, wherein the annual income would come to Rs.60,000/-. This Court in judgment of Santosh Devi V. National Insurance Co. Ltd.& Ors.[5], has held that an addition of 30% increase must be applied for increase in total income of the deceased over a period of time if he had been alive. Further, in the recent decision in Rajesh & Ors. V. Rajbir Singh[6], this Court while referring to the case of Santosh Devi (supra) held that in the case of self-employed persons or persons with fixed wages, in case the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects of the deceased. Keeping in view the five dependants of the deceased in the case on hand, 1/5th amount is to be deducted towards personal expenses. Having regard to the age of the deceased as 25, as mentioned in the post mortem report, which age is taken by both the Tribunal as well as the High Court, and keeping in mind the life expectancy of the deceased, multiplier of 20 must be applied to the multiplicand for the purpose of quantifying loss of dependency. Further, following the decision of this Court in Rajesh V. Rajbir Singh (supra), Rs.1,00,000/- must be added under the head of loss of consortium and Rs.1,00,000 under the head of loss of care and guidance for minor children. Further, it was held by this Court in the case referred to supra that Rs.25,000/- must be awarded for funeral expenses as this Court has made observations in the case referred to supra that the tribunals have been frugal in awarding the compensation under the head 'funeral expenses' and hence, we award Rs.25,000 under the head of funeral expenses to the claimants/legal representatives .

Hence, the total compensation has to be assessed under the various heads as follows:

Sl No.	HEADS	CALCULATIONS
(i)	Income	Rs.5,000/- p.m.
(ii)	50% of above to be added as future prospects	[Rs.5,000+Rs.2,500] =Rs.7,500/- p.m.
(iii)	1/5th of (ii) to be deducted as personal expenses of the deceased	[Rs.7,500-Rs.1,500/-] =Rs.6,000/- p.m.
(iv)	Compensation after multiplier of 20 is applied	[Rs.6,000/-x12x20] =Rs.14,40,000/-
(v)	Loss of consortium	Rs.1,00,000/-
(vi)	Loss of care and guidance for minor children	Rs.1,00,000/-
(vii)	Funeral and obsequies expenses	Rs.25,000/-
(ix)	Pain, loss and suffering	Rs.25,000/-
(x)	Medical expenses	Rs.3,000/-
(xi)	Attendant charges and transportation expenses	Rs.3,000/-
	TOTAL COMPENSATION AWARDED	Rs. 16,96,000/-

The amount of Rs.16,96,000/- as calculated above, under the various heads of losses, should be awarded in favour of appellants-claimants, though there is no specific mention regarding enhancing of compensation as in the appeal it has been basically requested by the appellants to set aside the judgment and order passed by the High Court in the appeal filed by the respondent. We must follow the legal principles of Nagappa Vs. Gurudayal Singh & Ors.[7] at para 7, wherein with respect to the provisions of the M.V. Act, this Court has observed as under:

“There is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In an appropriate case, where from the evidence brought on record if the Tribunal/court considers that the claimant is entitled to get more compensation than claimed, the Tribunal may pass such award. The only embargo is – it should be “just” compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable from the evidence. This would be clear by reference to the relevant provisions of the MV Act. Section 166 provides that an application for compensation arising out of an accident involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both, could be made (a) by the person who has sustained the injury; or (b) by the owner of the property; or (c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or (d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be.” In view of the aforesaid decision of this Court, we are of the view that the legal representatives of the deceased are entitled to the compensation as mentioned under the various heads in the table as provided above in this judgment even though certain claims were not preferred by them as we are of the view that they are legally and legitimately entitled for the said claims. Accordingly we award the compensation, more than what was claimed by them as it is the statutory duty of the Tribunal and the appellate court to award just and reasonable compensation to the legal representatives of the deceased to mitigate their hardship and agony as held by this Court in a catena of cases. Therefore, this Court has awarded just and reasonable compensation in favour of the appellants as they filed application claiming compensation under Section 166 of the M.V. Act. Keeping in view the aforesaid relevant facts and legal evidence on record and in the absence of rebuttal evidence adduced by the respondent, we determine just and reasonable compensation by awarding a total sum of Rs. 16,96,000/- with interest @ 7.5% from the date of filing the claim petition till the date payment is made to the appellants.

10. Accordingly, the appeal is allowed on the above said terms. The respondent is directed to pay the enhanced compensation in this appeal with interest awarded, in favour of the appellants in the following ratio. 75% of the awarded amount shall be paid equally in favour of appellant Nos. 1 to 3 and the remaining 25% must be in the name of appellant Nos. 4 and 5 in equal proportion with proportionate interest. Out

of the 75%, each of appellant Nos. 1 to 3 will get 25% and further, 10% of the share of appellant No.2 and 10% of the share of appellant No.3 must be deposited with proportional interest payable to each one of them in any Nationalized Bank of their choice and the rest 15% of each of their award amounts, with proportionate interest to be paid to them. The appellant Nos. 2 and 3 are at liberty to move the Tribunal to release the money so deposited for their welfare and developmental purpose. The above said direction regarding the payment and deposit shall be made within six weeks by depositing it in the Bank and disburse the amount by way of demand draft drawn in the name of each one of them as directed above. There will be no order as to costs.

.....J. [G. S.
SINGHVI]

.....J.
[V. GOPALA GOWDA]

New Delhi,

October 3, 2013

ITEM NO.1A
(For Judgment)

COURT NO.13

SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CIVIL APPEAL NO(s). 8251 OF 2013
SANOBANU NAZIRBHAI MIRZA & ORS. Appellant (s)
VERSUS

AHMEDABAD MUNICIPAL TRANSPORT SERVICE Respondent(s) Date:
03/10/2013 This Appeal was called on for pronouncement of Judgment today.

For Appellant(s) Mr. Haresh Raichura,Adv.

For Respondent(s) Mr. H.S. Parihar,Adv.

UPON hearing counsel the Court made the following O R D E R Hon'ble Mr. Justice V. Gopala Gowda pronounced the judgment of the Bench comprising Hon'ble Mr. Justice G.S. Singhvi and His Lordship.

Leave granted.

The appeal is allowed with no order as to costs in terms of the signed reportable judgment.

[Neeta]

Sr. P.A.

[Usha Sharma]

Court Master

(Signed Judgment is placed on the file)

[1] 1998 (2) GLH 670

[2] (1994) 2 SCC 189

[3] (1994) 2 SCC 176

[4] 2001 (2) GLR 1777

[5] (2012) 6 SCC 421

[6] 2013 (6) SCALE 563

[7] (2003) 2 SCC 274
