

Ashvinbhai Jayantilal Modi vs Ramkaran Ramchandra Sharma & Anr on 25 September, 2014

Equivalent citations: 2014 AIR SCW 6507, 2015 (2) SCC 180, 2015 AAC 78 (SC), AIR 2015 SC (CIVIL) 265, (2015) 4 MAH LJ 36, (2014) 4 TAC 679, (2014) 11 SCALE 427, (2014) 2 WLC(SC)CVL 671, (2014) 4 RECCIVR 543, (2014) 4 ACJ 2648, (2014) 4 ACC 1, (2014) 6 ALL WC 6134, (2015) 3 CIVLJ 114, 2015 (1) SCC (CRI) 855

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Bench: Adarsh Kumar Goel, V.Gopala Gowda

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 8131-8132 OF 2014
(Arising out of SLP(C) NOS. 743-744 OF 2014)

ASHVINBHAI JAYANTILAL MODI

...APPELLANT

Vs.

RAMKARAN RAMCHANDRA SHARMA & ANR.

....RESPONDENTS

J U D G M E N T

V. GOPALA GOWDA, J.

These appeals have been filed by the appellant against the impugned common Judgment and order dated 18.6.2013 passed in First Appeal No. 1064 of 2005 with First Appeal No.1555 of 2005 by the High Court of Gujarat at Ahmedabad, wherein the High Court dismissed First Appeal No.1064 of 2005 which was filed by the claimant and allowed First Appeal No.1555 of 2005 which was filed by the Insurance Company.

The necessary relevant facts are stated hereunder to appreciate the case with a view to determine whether the appellant, Ashvinbhai Jayantilal Modi, the father of Raj (deceased) is entitled for relief as prayed in this appeal.

On 12.07.2002, Raj Ashvinbhai, the deceased was heading to Istampur from Uttamnagar on his two-wheeler. While on his way, near Bhadvatnagar bus stand, a truck bearing registration no. GQA 7215 belonging to the respondent, Ramkaran Ramchandra Sharma crashed into the two-wheeler on which Raj was riding. Due to the force created by this accident, Raj's two-wheeler slid for about 25 feet while Raj fell down and sustained grievous injuries. Thereupon he was taken to L.G. Hospital wherein he succumbed to his injuries. On the same day, a panchnama was filed before the Vatva Police Station, Ahmedabad.

The claimant-appellant filed a claim petition before the Motor Accidents Claims Tribunal (in short 'the Tribunal') at Ahmedabad, claiming Rs.28,73,000/- as compensation. The Tribunal ascertained the future income of the deceased at Rs.18,000/- per month. 1/3rd of the monthly income was deducted towards personal expenses. Therefore, Rs.12,000/- per month (Rs.1,44,000/- p.a.) was calculated for the loss of dependency to the parents of the deceased. Since the age of the deceased at the time of his death was 19 years, on applying the appropriate multiplier of 16, the total compensation towards loss of dependency was arrived at Rs.23,04,000/-. A sum of Rs.15,000/- was awarded towards love and affection and Rs.5,000/- towards funeral expenses and thus a total compensation of Rs.23,24,000/- was arrived at by the Tribunal. The Tribunal apportioned contributory negligence at 20% on the part of the deceased and 80% on the driver of the offending truck and thus, after making 20% deduction towards contributory negligence on the part of the deceased the Tribunal awarded an amount of Rs.18,59,200/- with interest at the rate of 9% per annum to the appellant. Being aggrieved by the judgment and award passed by the Tribunal, the appellant preferred First Appeal No.1064 of 2005 before the High Court for enhancement of compensation, whereas the 2nd respondent-Insurance Company preferred First Appeal No.1555 of 2005 for the reduction of the compensation awarded by the Tribunal.

After hearing the parties, the High Court affirmed the future income of the deceased at Rs.18,000/- per month as determined by the Tribunal and deducted 50% towards personal expenses. It further held that the Tribunal had erred in considering the age of the deceased at the time of his death rather than the age of the parents for determination of multiplier, since they are the claimants in the case on hand, as per the guidelines laid down in *Sarla Verma & Ors. v. Delhi Transport Corporation & Anr.*[1]. Therefore, by applying the appropriate multiplier of 13, the High Court determined the loss of dependency at Rs.14,04,000/- as against Rs.23,04,000/- as considered by the Tribunal. After examining the facts, evidence produced on record and circumstances of the case, the High Court was of the view that the contributory negligence on the part of the deceased was higher than 20%, however, it affirmed the contributory negligence as determined by the Tribunal. Therefore, after 20% deduction towards contributory negligence and addition towards other heads, the High Court, by its impugned Judgment and order awarded a compensation under all heads of Rs.11,39,200/- with 9% interest per annum. Aggrieved by the same, the appellant has filed these appeals.

It has been contended by the learned Senior Counsel for the appellant Mr. Fakriddin that the offending truck hit the two-wheeler from behind. As a result, the deceased fell down and his two-wheeler was dragged by the offending truck up to a distance of about 25 feet. Thus, the finding of the Tribunal as well as the High Court towards contributory negligence of the deceased at 20% is uncalled for. Further it was contended that the High Court has reduced the compensation from

Rs.18,59,200/- to Rs.11,39,200/- which is contrary to the principles laid down by this Court in Sanobanu Nazirbhai Mirza & Ors. Vs. Ahmedabad Municipal Transport Service[2].

On the other hand, the learned Counsel for the respondents contended that the High Court has rightly reduced the compensation by deducting 50% for personal expenses of the deceased since he was unmarried at the time of his death and adopted a multiplier of 13 by considering the age of the parents as per the guidelines laid down by this Court in the case of Sarla Verma (supra).

We have heard the learned counsel for the parties. In our considered view, the deceased was 19 years old and was pursuing his medical degree with good marks at the time of the accident. With respect to the future income of students pursuing professional courses we refer to Arvind Kumar Mishra v. New India Assurance Co. Ltd. and Anr.[3], wherein this Court held as under:-

“14. On completion of Bachelor of Engineering (Mechanical) from the prestigious institute like B.I.T., it can be reasonably assumed that he would have got a good job. The appellant has stated in his evidence that in the campus interview he was selected by Tata as well as Reliance Industries and was offered pay package of Rs. 3,50,000/- per annum. Even if that is not accepted for want of any evidence in support thereof, there would not have been any difficulty for him in getting some decent job in the private sector. Had he decided to join government service and got selected, he would have been put in the pay scale for Assistant Engineer and would have at least earned Rs. 60,000/- per annum. Wherever he joined, he had a fair chance of some promotion and remote chance of some high position. But uncertainties of life cannot be ignored taking relevant factors into consideration. In our opinion, it is fair and reasonable to assess his future earnings at Rs. 60,000/- per annum taking the salary and allowances payable to an Assistant Engineer in public employment as the basis....” The Tribunal and the High Court have not taken into proper consideration that the deceased was a student of medicine at the time of the accident while determining his future income. The courts below have wrongly ascertained the future income of the deceased at only Rs.18,000/- per month, which in our view is too less for a medical graduate these days. Therefore, the courts below have failed in following the principles laid down by this Court in this aspect in the above case. The deceased was a diligent and outstanding student of medicine who could have pursued his M.D. after his graduation and reached greater heights. Today, medical practice is one of the most sought after and rewarding professions. With the tremendous increase in demand for medical professionals, their salaries are also on the rise. Therefore, we have no doubt in ascertaining the future income of the deceased at Rs.25,000/- p.m. i.e. Rs.3,00,000/- p.a. Further, deducting 1/3rd of the annual income towards personal expenses as per Oriental Insurance Co. Ltd. v. Deo Patodi and Ors[4], and applying the appropriate multiplier of 13, keeping in mind the age of the parent of the deceased, as per the guidelines laid down in Sarla Verma case (supra), we arrive at a total loss of dependency at Rs.26,00,000/-[(Rs.3,00,000/- minus 1/3 X Rs.3,00,000/-)X 13].

Further, the Tribunal and the High Court have erred in not following the principles laid down by this Court in *M. Mansoor & Anr v. United India Insurance Co. Ltd.*[5] in awarding a meagre sum of just Rs.15,000/- under the heads of loss of love and affection. Accordingly, we award Rs.1,00,000/- to the appellant towards the same.

With regard to the apportionment made by the Tribunal and the High Court, we are of the view, after considering the facts, evidence produced on record and circumstances of the case on hand, that there was no negligence on the part of the deceased. The courts below have failed to examine the facts of the case on hand with respect to the opinion of this Court given in *Juju Kuruvila & Ors. v. Kunjamma Mohan & Ors.*[6] From the evidence produced on record, the two-wheeler of the deceased was dragged up to a stretch of about 20-25 feet on the road after the collision with the offending truck. We are of the considered view, that to be able to create this kind of enormous effect on the two-wheeler of the deceased, the offending truck must have been travelling at a fairly high speed and that its driver did not have sufficient control over his vehicle. The driver of the offending truck should have been aware that he was driving the heavy motor vehicle and taken sufficient caution. We do not see any direct evidence that shows negligence on the part of the deceased that led to the accident. Therefore, as per the principles laid down by this Court in the case referred to above in this aspect, the contributory negligence apportioned by the courts below on the part of the deceased is set aside.

The Tribunal and the High Court have further failed in awarding only Rs.5,000/- towards funeral expenses instead of Rs.25,000/- according to the principles laid down by this Court in *Rajesh & Ors. v. Rajbir Singh & Ors.*[7]. Hence, we award Rs.25,000/- towards the same. In the result, the appellant shall be entitled to compensation under the following heads:

| | | | |
|----|----------------------------|----------------|--|
| 1. | Loss of dependency | Rs.26,00,000/- | |
| 2. | Loss of love and affection | Rs.1,00,000/- | |
| 3. | Funeral expenses | Rs.25,000/- | |
| | TOTAL | Rs.27,25,000/- | |

Thus, the total compensation payable to the appellant by the respondent- Insurance Company will be Rs.27,25,000/- with interest at the rate of 9% p.a. from the date of filing of the application till the date of payment. Accordingly, we allow these appeals in awarding Rs.27,25,000/- with interest @9% p.a. The respondent-Insurance Company shall either pay by way of demand draft in favour of the appellant or deposit the same with interest as awarded before the Motor Accidents Claims Tribunal after deducting the amount already paid to the appellant, if any, within six weeks from the date of receipt of the copy of this judgment. No Costs.

.....J. [V.GOPALA GOWDA]
J. [ADARSH KUMAR GOEL] New

Delhi, September 25,2014

[2] (2009)6 SCC 121 [4] (2013) 9 SCR 882 [6] (2010) 10 SCC 254 [8] (2009)13 SCC
123 [10] 2013 (12) SCALE 324 [12] (2013)9 SCC 166 [14] (2013) 9 SCC 54

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