Rameshchandra Vadilal Sheth & Ors. Versus Vs Bhavinkumar Hareshkumar Jayswal & Anr.

Court: Gujarat High Court

Date of Decision: Jan. 13, 2025

Acts Referred: Motor Vehicles Act, 1988 â€" Section 166, 173
Indian Evidence Act, 1872 â€" Section 114

Hon'ble Judges: J. C. Doshi, J

Bench: Single Bench

Advocate: N V Solanki, Vibhuti Nanavati

Final Decision: Partly Allowed

Judgement

,

J. C. Doshi, J",

1. The present First Appeal, under Section 173 of Motor Vehicles Act, 1988, has been preferred by the appellants Ã¢â‚¬" original claimants, being",

aggrieved and dissatisfied with the judgment and award dated 16.03.2010 passed by the Motor Accident Claims Tribunal, Surendranagar in Motor",

Accident Claim Petition No.57 of 2000.,

2. Brief facts of the case are as under:,

2.1 On ill fated day of 22.12.1999, deceased Rameshchandra and one Manojbhai were going on motorbike to Village Mahudi for darshan and when",

they reached near place of accident, luxury bus came in rash and negligent manner from opposite side and dashed with motorbike, as a result,",

deceased Rameshchandra having received fatal injuries died on the spot.,

2.2 FIR of incident was registered before the concerned Police Station.,

2.3. The claimant filed claim petition under section 166 of MV Act being MACP No.57 of 2000 claiming compensation of Rs.15,00,000/- along with",

interest jointly and severally from the opponents.,

2.4. After appreciating evidence on record, learned Tribunal was pleased to pass judgment and award in tune of Rs.6,98,000/-with 9% interest from",

the date of claim petition.,

2.5. Being aggrieved and dissatisfied with impugned judgment and award dated 16.03.2010, the legal heirs of deceased has filed present appeal.",

3. Learned advocate Mr. Solanki for the appellant - claimants made two fold submissions. Firstly, he submits that learned Tribunal in absence of",

evidence, erroneously, contributed 15% negligence to deceased - Rameshchandra in causing road accident. Taking this Court through facts of the",

case, he would submit that width of road was 23 feet 8 feet. Deceased at the relevant time was riding motorbike. Luxury bus dashed with motorbike,",

resulting into death of Rameshchandra. He would submit that police record demonstrate that luxury bus driver fled from the spot and persons who,

were on motorbike died. It is submitted that all this indicates that driver of luxury bus was fully negligent in causing road accident, but learned Tribunal",

for no reason attributed 15% negligence to the deceased - Rameshchandra, who was motorcycle driver. It is also submitted that luxury bus driver who",

was served with process did not enter to contest the proceedings or to contest claim petition by filing written statement nor has entered into witness,

box to discharge burden upon him, yet learned Tribunal contributed 15% negligence to the deceased. Such finding is erroneous on the face and",

required to be quashed and set aside.,

3.1. Secondly, it is submitted by learned advocate for the appellant / claimants that learned Tribunal though believed that deceased was earning",

Rs.7405/- demonstrated from salary certificate, it has taken Rs.4500/- to compensate monthly loss of dependency and no compensation for loss of",

future prospects has been granted. It is also argued that learned Tribunal erred in granting compensation under loss of estate and loss of consortium,

and also for funeral expense. They are on lower side. It is submitted that such compensation is not in congruence with judgment of Hon'ble Apex,

Court in the case of National Insurance Company Ltd. v/s. Pranay Sethi [2017 (16) SCC 680], later on explained in the case of Magma General",

Insurance Company Limited v. Nanu Ram @ Chuhru Ram & Ors. [2018 (18) SCC 130] and reiterated in the case of United India Insurance Co.,

Ltd., versus Satinder Kaur @ Satwinder Kaur reported in [(2021) 11 SCC 780].",

3.2. Mainly, on above submissions, it is submitted to allow the appeal and quash and set aside finding of learned Tribunal with regard to 15%",

contributory negligent to the deceased and to enhance compensation by adopting income of Rs.5000/- per month and also to grant loss of future,

prospects and to rationalize compensation under non pecuniary heads.,

4. On the other hand, learned advocate Mr.Vibhuti Nanavati for the Insurance Company to sustain impugned judgment supports reasons assigned by",

the learned Tribunal and submits that accident took place in head on collusion manner and nature of accident is self indicative to show that deceased,

was also negligent in causing road accident. It is also submitted that learned Tribunal applied two point theory to attribute negligence on the part of,

driver of offending vehicles. It is submitted that learned Tribunal believed that luxury bus was on full speed and it is bigger vehicle but deceased was,

negligent to some extent in causing road accident. It is submitted that considering all this aspects, learned Tribunal has not committed any error in",

assessing 15% negligence to the deceased Rameshchandra in causing road accident.,

4.1. It is submitted by learned advocate Mr.Nanavati for the Insurance Company that learned Tribunal while adopting monthly income of Rs.4500/- of,

the deceased to compensate loss of dependency referred to factor that deceased was serving with private employer as Machine Operator in technical,

division having no permanent continuous source of income. It is submitted that there is not need to interfere with such findings. Therefore, it is",

submitted to assess compensation as judgment of Hon'ble Apex Court in the case of Pranay Sheti (supra).,

5. Having heard learned advocates for the parties and paying anxious consideration to the rival submissions as well as minutely appreciating evidence,

on record, noticeably, driver of the offending vehicle though served with process of claim petition did not chose to contest claim petition by entering",

into defence or by filing written statement. Further, he did not enter appear in witness box nor Insurance Company has examined him by adopting any",

procedure available under law. Insurance company ought to have examined driver to discharge burden of disproving assertion of negligence in causing,

road accident not only made in the pleadings but also in the chief examination of claimant (Exh.31 PW-1 - claimant). Perusing cross examination of,

the witness, it is missing necessary suggestion / question which help Insurance Company to earmark negligence on the part of the deceased -",

Rameshchandra in causing road accident.,

6. In the case of ICICI Lombard General Insurance Co. Ltd. v/s. Rajani Sahoo & Ors. [2025 Law Live SC 9], Hon'ble Apex Court after referring",

Mangla Ram v. Oriental Insurance Co. Ltd. and Ors. [2018 (5) SCC 656] held that documents collected by the police during investigation in motor,

accident case can be relied to decide the issue of negligence. In para 8 and 9, it is held as under :-",

8. It is true that the Tribunal had looked into the oral and documentary evidence including the FIR, final report and such other documents",

prepared by the police in connection with the accident in question. The Tribunal had also taken note of the fact that based on the final,

report, the driver of the offending truck was tried and found guilty for rash and negligent driving. The High Court took note of such",

aspects and found no illegality in the procedure adopted by the Tribunal and consequently dismissed the appeal. In the contextual situation,

it is relevant to refer to a decision of this Court in Mathew Alexander v. Mohammed Shafi & Anr., this Court held thus:-",

Ã¢â‚¬Å“12Ã¢â‚¬Â¦.A holistic view of the evidence has to be taken into consideration by the Tribunal and strict proof of an accident caused by a,

particular vehicle in a particular manner need not be established by the claimants. The claimants have to establish their case on the,

touchstone of preponderance of probabilities. The standard of proof beyond reasonable doubt cannot be applied while considering the,

petition seeking compensation on account of death or injury in a road traffic accident. To the same effect is the observation made by this,

Court in Dulcina Fernandes vs. Joaquim Xavier Cruz, (2013) 10 SCC 646 which has referred to the aforesaid judgment in Bimla Devi.Ã¢â‚¬â€‹",

9. Thus, there can be no dispute with respect to the position that the question regarding negligence which is essential for passing an award",

in a motor vehicle accident claim should be considered based on the evidence available before the Tribunal. If the police records are,

available before the Tribunal, taking note of the purpose of the Act it cannot be said that looking into such documents for the aforesaid",

purpose is impermissible or inadmissible.""",

7. In the present case, FIR (Exh.35) undoubtedly is filed against luxury bus driver, which is given by Arjanbhai. He is third party. He was standing",

near the place of accident. He has been examined by claimant as PW-3 at Exh.64. He has supported his submission made in the FIR. Learned,

advocate Mr.Nanavati for the Insurance Company submitted that according cross examination, this witness was in temple at the time of accident and",

came to spot of accident having heard noise from road accident and therefore, he cannot be treated to be eye witness. The submission of learned",

advocate Mr.Nanavati fails to substantiate on the ground that he is first person who has seen road accident and he has supported FIR, which is never",

challenged by Insurance Company. The temple in which witness came to offer darshan at the time road accident was barely 200 feet from the spot of,

accident. This distance cannot be treated long to say that he was not eye witness of road accident and therefore, his deposition is reliable and",

admissible and can be taken to decide issue of negligence. Panchnama recorded post accident is produced at Exh.36. Learned Tribunal has referred,

panchnama and discussed same in its judgment in para 12, which reads as under :-",

12.On careful reading of panchnama, it would appear that the accident had occurred of the road. Width of the road 16 23 almost in",

middle and 8 inch. and Wheel marks of dragging vehicle is found extended upto 11 ft. to south... from the corner of the road which goes,

north If this reading of panchnama then it would be clear ould be clear that strictl vehicles were is correct. that strictly speaking both the,

not on their correct side perhaps both the vehicles were slightly away from corner of the road from their respective side. Two points lead us,

to believe substantial negligence on the part of luxury bus. One full speed of luxury bus and second, luxury bus being fairly bigger vehicle,",

compared other vehicle, involved in the accident. reasonable to believe more negligence on the luxury bus. As to It is part of to former point",

as to full speed of luxury bus, facts support this view, is driver of the luxury bus fled away on occurrence of the accident had it been",

otherwise, then the driver would have proceeded to lodge complaint. Secondly, after scooter hooked with the bus, the bus had dragged",

scooter the road and and dragging of the vehicle had caused on marks on the road that stretches upto few feets. This cannot happen except,

driver fails to stop the bus. is reasonable to presume that bus driver must It have noticed from reasonable distance that scooter is coming,

from the opposite direction. Upon noticing the oncoming scooter from that moment, he would have (...or ought to have) tried to slower down",

the pace of the bus, so much so that if the accident is not possible to avoid totally on occurrence of the after Tow seconds same the",

controlable motion of the bus would have enabled him to stop moment. In short the bus at that and in other words, dragging of scooter in",

absence of speed, would not have occurred. On this basis the infer. """,

8. Perusal of above discussion, it appears that learned Tribunal has thoroughly examined panchanama on record and also believed that luxury bus",

being bigger vehicle was plying at excessive speed in the middle of road having width of 23 feet and 8 inch and also believed that driver of luxury bus,

fled from the spot left two persons in dreadful and dying condition, where, one of them lost his life on the spot. Noticeably, learned Tribunal also",

observed that scooter was hooked with the bus and it dragged scooter for long. It is also observed that this cannot happen except driver fails to stop,

the bus. Reasonable presumption was also applied by the learned Tribunal that driver of luxury bus must have noticed from reasonable distance that,

scooter is coming from opposite direction. Learned Tribunal also believed that driver of luxury bus ought to have tried to slow down the speed of the,

bus, so that accident could be avoided. Having noted all this aspects, learned Tribunal in para 13 of the impugned judgment went to hold contributory",

negligent of 15% to the deceased for no reasons.,

9. In the case of Smt. K.Anusha v/s. Regional Manager, Shriram General Insurance Co. Ltd. in Civil Appeal No.6237 of 2021, the HonÃ¢â‚¬â„¢ble Apex",

Court in para 13, it is held as under :-",

Ã¢â‚¬Å“13. Therefore, the entire reasoning of the High Court on Issue No.1 is riddled with inherent contradictions. To establish contributory",

negligence, some act or omission, which materially contributed to the accident or the damage, should be attributed to the person against",

whom it is alleged. In Pramodkumar Rasikbhai Jhaveri vs. Karmasey Kunvargi Tak and Others this Court quoted a decision of the High,

Court of Australia in Astley v. Austrust Ltd. to hold that Ã¢â‚¬Å“Ã¢â‚¬Â¦where, by his negligence, one party places another in a situation of danger,",

which compels that other to act quickly in order to extricate himself, it does not amount to contributory negligence, if that other acts in a",

way which, with the benefit of hindsight is shown not to have been the best way out of the difficultyÃ¢â‚¬. In fact, the statement of law in",

Swadling v. Cooper, that Ã¢â‚¬Å“Ã¢â‚¬Â¦the mere failure to avoid the collision by taking some extraordinary precaution, does not in itself constitute",

negligenceÃ¢â‚¬Â¦Ã¢â‚¬, was also quoted with approval by this Court. Therefore, we are compelled to reverse the finding of the Tribunal and the",

High Court on the question of contributory negligence.Ã¢â‚¬â€‹,

10. Undoubtedly, driver of luxury bus as stated herein above did not enter into witness box. Adverse inference is required to be drawn against him.",

11. In Ishwarbhai C. Patel v/s. Harihar Behera [1999 (3) SCC 457], the HonÃ¢â‚¬â„¢ble Apex Court in para 17 held as under :-",

Ã¢â‚¬Å“17.Admittedly defendant No.1 had an account in the Central Bank of India Limited, Sambalpur Branch which his father, namely,",

respondent No.2, was authorised to operate. It is also an admitted fact that it was from this account that the amount was advanced to the",

appellant by respondent No.2. It has been given out in the statement of respondent No.2 that when the appellant had approached him for a,

loan of Rs.7,000/-, he had explicitly told him that he had no money to lend whereupon the appellant had himself suggested to advance the",

loan from the account of respondent No.1 and it was on his suggestion that the respondent No.2 issued the cheque to the appellant which,

the appellant, admittedly, encashed. This fact has not been controverted by the appellant who did not enter the witness box to make a",

statement on oath denying the statement of defendant (respondent) No.2 that it was at his instance that respondent No.2 had advanced the,

amount of Rs. 7,000/- to the appellant by issuing a cheque on the account of defendant (respondent) No.1. Having not entered into the",

witness box and having not presented himself for cross-examination, an adverse presumption has to be drawn against him on the basis of",

principles contained in illustration (g) of Section 114 of the Evidence Act.Ã¢â‚¬â€‹,

12. Needless to state that claimant has established their case on applying preponderance of probability that on ill fated day, deceased Ramchandran",

has left his life on account of rash and negligent driving of driver of luxury bus and principle of standard of proof beyond reasonable doubt cannot be,

applied while considering the petition under section 166 of MV Act seeking compensation of amount on account of death or injury in the road,

accident.,

13. Hon'ble Apex Court in the case of Mathew Alexander v. Mohammed Shafi & Anr. [2023 (13) SCC 510] held thus:-,

Ã¢â‚¬Å“12....A holistic view of the evidence has to be taken into consideration by the Tribunal and strict proof of an accident caused by a,

particular vehicle in a particular manner need not be established by the claimants. The claimants have to establish their case on the,

touchstone of preponderance of probabilities. The standard of proof beyond reasonable doubt cannot be applied while considering the,

petition seeking compensation on account of death or injury in a road traffic accident. To the same effect is the observation made by this,

Court in Dulcina Fernandes vs. Joaquim Xavier Cruz, (2013) 10 SCC 646 which has referred to the aforesaid judgment in Bimla Devi.Ã¢â‚¬â€‹",

Particulars,Amount (Rs.)

Future dependency Loss Rs.6000/- per month + 40% rise =

Rs.8400/- and deducting 1/4 (Rs.2100/-) = Rs.6300/-, and

applying 14 multiplier, the total amount would be Rs.10,58,500/-

(Rs.6300/- x 12 x 14.","10,58,400/-

Consortium Rs.48400/- x 4,"1,93,600/-

Funeral expenses.,"18,150/-

Loss of estate,"18,150/-

TotalÃ¢â‚¬Â¦,"12,88,300/-

Less: compensation to be awarded by Tribunal,"6,98,000/-

Additional amount which is awarded,"5,90,300/-