

**Gujarat State Road Transport Corpn. Vs. Sugrbanu W/O ImamuddIn Sultanabhai and ors.**

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**Court :** Gujarat

**Decided On :** Feb-21-1985

**Reported in :** 1(1985)ACC513

**Judge :** S.A. Shah and M.B. Shah, JJ.

**Appellant :** Gujarat State Road Transport Corpn.;sugrabanu and ors.

**Respondent :** Sugrbanu W/O ImamuddIn Sultanabhai and ors.;gujarat State Road Transport Corpn.

**Judgement :**

S.A. Shah, J.

1. The Gujarat State Road Transport Corporation, Ahmedabad (hereinafter referred to as 'the Corporation') has filed First Appeal No. 282 of 1978 against the judgment and order dated 31-8-1977 passed by the Motor Accidents Claims Tribunal. Sabarkamha District at Himatnagar in Motor Accidents Claims Tribunal Application No. 7 of 1975 and the original claimants also being aggrieved by the said judgment and order of the Tribunal have filed cross appeal, being First Appeal No. 337 of 1978, claiming higher compensation.

2. The short facts leading to the present appeals are that on 17-2-1975 at about 5.15 p.m. on Modasa Dhansura road a bus bearing No. G.T.D. 6301 of the Corporation, going from Modasa to Bayad, and a motor cycle bearing No. G.J.I. 1046 driven by Islamuddin Ramjanbhai with Imamuddin Sultanbhai as a pillion-rider, coming from the opposite direction, met with an accident, as a result of which, both, Islamuddin and Imamuddin died. The widow and heirs of said deceased Imamuddin, therefore, filed the aforesaid application claiming compensation of Rs. 1,20,000/-. The Tribunal in all awarded by way of compensation an amount of Rs. 52,500/- plus interest thereon at the rate of 6 per cent per annum from the date of the application till realisation with proportionate costs to the claimants.

3. The Corporation as well as the original claimants being aggrieved by the said judgment and order of the Tribunal have respectively filed the aforesaid appeals. The original claimants have claimed Rs. 67,500/- as additional amount of compensation. Both these appeals arise out of the same judgment and therefore, they are being disposed of by this common judgment.

4. Mr. P.G. Desai, learned Advocate for the Corporation, has vehemently argued that there was no negligence on the part of the bus driver and that the accident took place on account of the negligent driving of the motor-cycle by deceased Islamuddin. Mr. Desai took us through the evidence of the eye witnesses who were passengers in the said bus which was admittedly going from Modasa to Bayad, i.e. from North to South. The panchnama of the scene of incident has been produced at Ex. 66. It clearly shows that the accident took place on the right side of the road by which the bus was travelling. Apart from this, the eye-witnesses have supported the story of the claimants. The Tribunal on appreciation of their evidence has come to the conclusion that it was proved beyond doubt that the bus was driven rashly and negligently, and further that the bus was not in a road-worthy condition and that factor had also contributed to this unfortunate incident

resulting into the death of two human lives. The Tribunal has observed that the bus was driven not on the left hand side of the road, but to some extent on the right side of the road. Deceased Islamuddin and Imamuddin were going on the motorcycle, and it appears that after the impact the motor-cycle got entangled into the bus and was dragged upto a distance of about 110 feet. The two bodies were thrown at a distance of about 57 to 64 feet respectively. Accordingly to the Tribunal, these facts leave no doubt about the rashness and negligence of the driver of the bus. Mr. Desai has not been able to point out before us as to how the conclusion reached by the Tribunal was not in accordance with the evidence on record. We, therefore, hold that the Tribunal has rightly held that the accident in question was the result of rash, and negligent driving of the bus by the driver.

5. Now, so far as the income of deceased Imamuddin is concerned, his widow has stated in her evidence that he was giving her Rs. 600 to Rs. 700/- per month for household expenses. But in her application she had shown his income to be Rs. 500 to Rs. 600 per month. The claimants, in order to prove the income of deceased Imamuddin, have examined witnesses Vishram Mohanbhai Ex. 60 and Akhaibhai Pethabhai Ex. 61. Both of them are agriculturists and they have stated that they used to get their oil engines repaired either from deceased Islamuddin or deceased Imamuddin. They have also stated that deceased Imamuddin had a lathe machine at his Luhar shop, and they used to pay him Rs. 50 to Rs. 60 for repairing the oil engine for the day's work. They have also stated that if the machine required heavy repairs, it was taken to Ahmedabad. From the evidence of these witnesses, it is proved that deceased Imamuddin was doing the work of repairing oil-engines, and that fact has also been accepted by the Tribunal. However, considering the argument that deceased Imamuddin was a good mechanic and had a good future ahead, the Tribunal observed that it was true that there was a possibility of the earning of deceased being increased, but there was also a possibility of there being competition or slump in the business. Therefore, according to the Tribunal, from the evidence on record deceased Imamuddin was a simple mechanic doing some repairing work, and even taking a most charitable view his income could not have been more than Rs. 400/- per month.

6. In our opinion, the finding of the Tribunal that deceased Imamuddin was earning Rs. 400/- per month is not supported by any evidence on record. It is true that deceased Imamuddin might not be such an expert that he could do any type of repairing and that he might be getting work for all the 30 days in a month. But there is evidence of witnesses themselves that they were paying him Rs. 50 to 60 per day whenever they used to get their engines repaired by the deceased. In the instant case, no doubt, there is no evidence that deceased Imamuddin was getting work everyday, and there is also no clear evidence regarding his monthly income. We have, therefore, to assess his monthly income by taking into consideration the following factors:

- (1) The deceased was knowing the work of repairing oil-engines and was, therefore, a skilled worker.
- (2) Agriculturists of his village and neighbouring villages used to get their engines repaired by deceased.
- (3) He used to get Rs. 50 to Rs. 60 per day whenever he used to repair the oil engines.

It is possible that there might be some exaggeration in the figure. However, considering the above factors, in year 1975 a skilled worker like deceased Imamuddin might be easily earning Rs. 20 to 25 a day. It is in evidence that oil engines were being installed by the agriculturists at their wells, and therefore, it is possible that deceased Imamuddin might be getting repairing work often, and on conservative assessment he must at least be getting work for 10 to 15 days in a month. Furthermore, he was having a shop with lathe machine, and therefore, he must be earning by doing other petty works. Considering the circumstance that he might be spending something for conveyance for going for repairing work at the fields, his monthly income, in our opinion, cannot be less than Rs. 450/-. Out of the said amount he must be spending about Rs. 125/- per month for his personal requirement. Deducting that amount, the net income that would be available to the family would be Rs. 325/- per month. Therefore, the yearly dependency family benefit would come to Rs. 3,900/-. Multiplying the same by 15 years' purchase, the total amount would come to Rs. 58,500/-, and adding Rs. 3,000/- as conventional amount, as awarded by the Tribunal, the total amount of compensation to which

the family of deceased Imamuddin would be entitled comes to Rs. 61,500/-. We, therefore, hold that the claimants would be entitled to Rs. 61,500/-, i.e. Rs. 9,000/- in addition to Rs. 52,500/- awarded by the Tribunal.

7. In the result, First Appeal No. 282 of 1978 filed by the Corporation is dismissed, with costs, and First Appeal No. 337 of 1978 filed by the original claimants is partly allowed. The claimants will be entitled to Rs. 61,500/- by way of compensation with interest at the rate of 6 per cent per annum from the date of application till realisation, with proportionate costs. The additional amount of Rs. 9,000/- awarded by us will be invested for a period of five years in any Scheduled Bank, and thereafter the amount will be apportioned in the same proportions as directed by the Tribunal. The Judgment and order of the Tribunal to modified accordingly.

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