(2015) 07 GUJ CK 0015

In the Gujarat High Court

Case No : First Appeal No. 2341 of 2011

Ashwinsinh and Others — APPELLANT

Vs

Abdulkhaiyum Abdulgani and Others — RESPONDENT

Date of Decision : 06-07-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 173, 73

Citation : (2015) 4 ACC 328

Hon'ble Judges : K.S. Jhaveri and G.B. Shah, JJ.

Bench : Division Bench

Advocate : Harshit S. Tolia and Parth S. Tolia, Advocates, for the Appellant

Final Decision : Disposed Off

Judgement

K.S. Jhaveri, J.—This appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 for enhancement of compensation awarded vide judgment and order dated 29.4.2011 passed by the learned Motor Accident Claims Tribunal (Aux.), Surendranagar in MACP No. 309/1996 whereby, the appellants, original claimants, were awarded total compensation of Rs. 6,62,700 along with interest at the rate of 7% per annum from the date of application till the framing of issues and thereafter, at the rate of 9% per annum from 15.2.2006 till the payment is made. The facts in brief are that on 25.2.1996 at around 1800 hrs. while Ashwinsinh @ Harshveersinh Dilipsinh Jadeja was driving a Jeep bearing registration No. GJ-3-A-1212 on the Rajkot - Ahmedabad Highway, a public carrier bearing registration No. KA-272708, driven by respondent No. 1 in a rash and negligent manner, dashed the Jeep near Village Sapar. At the time when the accident occurred, respondent No. 4, who is the owner of the Jeep, was also travelling in the Jeep. In the said accident, Ashwinsinh sustained severe injuries and died on the spot.

2. The legal heirs of deceased filed claim petition before the Tribunal claiming total compensation of Rs. 36,00,000. After hearing both the sides, the Tribunal partly allowed the claim petition, by passing the impugned judgment and award.

Hence, this appeal under Section 73 of the Act.

3. Mr. Tolia, learned Counsel for the appellants, original claimants, submitted that the Tribunal has not awarded just and proper compensation to the claimants. It was submitted that while computing loss of dependency benefit, the Tribunal has not considered the issue of future rise in income, as propounded by the Apex Court in Vimal Kanwar and Others Vs. Kishore Dan and Others, . It was further submitted that the amounts awarded under the head of loss of consortium and funeral expenses are also on the lower side. He, therefore, submitted that the amount of compensation awarded to the claimants deserve to be enhanced appropriately.

4. Mr. G.C. Mazmudar, learned Counsel appearing on behalf of respondent No. 3 submitted that the compensation awarded by the Tribunal is just and proper and therefore, the present appeal deserves to be rejected.

5. We have heard learned Counsel for both the sides and perused the documents on record. Before the Tribunal, the claimants had produced several documentary evidence, including the Income Tax Returns of the deceased, to prove his income. While calculating the income, we find that the Tribunal has not considered the future rise in income since the Income Tax Returns of the deceased-assessee show a consistent rise in his income. Even otherwise, considering the principle propounded by the Apex Court in such cases, an addition of 50% has to be made to the annual income, in order to arrive at the figure for assessing the loss of dependency benefit.

6. The Income Tax Return (Exh. 141) shows the annual income of deceased at Rs. 50,800. Now, if the addition of 50 per cent is made, the annual income of deceased would come to Rs. 76,200. At the time of death, the deceased was survived by his parents, wife and a minor son, viz. four members. Therefore, by applying the principle laid down by the Apex Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , a deduction of 1/3rd, there being four dependents, has to be made towards personal living expenses of deceased and thereby, the actual income would come to Rs. 50,800 per annum. At the time when the accident occurred, the deceased was aged 30 1/2 years. Therefore, by applying the multiplier of 17, as propounded in Sarla Verma''s case (supra), the total amount under the head of loss of dependency would come to Rs. 8,63,600. The Tribunal has awarded Rs. 6,47,700 under the above head and, therefore, the claimants shall be entitled for additional amount of Rs. 2,15,900, which is rounded off to Rs. 2,16,000.

7. In an unreported decision rendered by the Coordinate Bench of this Court in F.A. No. 3894/2006 decided on 14.10.2014, the Bench considered the decision of Apex Court in Vimal Kanwar''s case (supra) and awarded a sum of Rs. 1,00,000 towards the combined heads of loss of consortium, loss of estate and loss of love and affection to children and another Rs. 10,000 towards funeral expenses.

8. Considering the facts of the case, we are inclined to adopt the principle

enunciated by the coordinate Bench in F.A. No. 3894/2006 and, accordingly, award a sum of Rs. 1,10,000 under the combined heads, as aforesaid. The Tribunal has already awarded an amount of Rs. 15,000 under the combined heads of loss of consortium, loss of estate and funeral expenses. Therefore, the claimants shall be entitled for additional amount of Rs. 95,000 under the above heads.

9. Insofar as the rest of the award is concerned, we do not find any reasons to interfere with the same. Therefore, in all, the claimants shall be entitled far additional compensation of Rs. 3,11,000 [2,16,000 + 95,000].

10. However, as regards the rate of interest awarded by the Tribunal is concerned, we find it to be on the lower side. In such cases, the Apex Court has awarded interest at the rate of 9% per annum in a catena of decisions. Therefore, on the additional amount, we hold that the claimants shall be entitled for interest at the rate of 09% per annum. For the foregoing reasons, the appeal is partly allowed. The impugned judgment and award passed by the Tribunal is modified to the extent that the appellants, original claimants, shall be entitled for additional compensation of Rs. 3,11,000 [Rupees three lacs eleven thousand only], over and above the compensation already awarded by the Tribunal, along with interest at the rate of 9% per annum from the date of application till its realization. Rest of the impugned judgment and award remains unaltered. The appeal stands disposed of accordingly. R & P be sent back forthwith.