(2019) 07 GUJ CK 0077

In the Gujarat High Court

Case No : R/First Appeal No. 1434 Of 2013

Bajaj Allianz General Insurance Company Limited Through — APPELLANT

Vs

Bagadusing Rav Bahadursingji And 3 Other(S) — RESPONDENT

Date of Decision : 10-07-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2019) 07 GUJ CK 0077

Hon'ble Judges : R.M.Chhaya, J;B.N. Karia, J

Bench : Division Bench

Advocate : Vibhuti Nanavati, Mihir H Pathak, Vijay N Raval

Final Decision : Partly Allowed

Judgement

,

1. Feeling aggrieved and dissatisfied with the judgment and award dated 11th January 2013 passed by the Motor Accident Claims Tribunal (Main),",

Narmada at Rajpipla (hereinafter referred to as â??the Tribunalâ?) in Motor Accident Claim Petition No. 29 of 2010, the appellant-Insurance",

Company has preferred this Appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as â??the Actâ? for the sake of",

brevity).,

2. Following facts emerge from the record of the appeal :-,

2.1 That, an accident took place on 22.01.2010 between Truck, bearing registration No. RJ-27-AA-2075 and Jeep, bearing registration No. GJ-05-",

AR-5348. As per the evidence, because of head on collision between two impeading vehicles, deceased Ishwarbhai sustained serious injuries and",

succumbed to the same. An FIR was lodged with jurisdictional Police Station at

Exh. 43 and the respondents No. 4.1 to 4.6-original claimants,

preferred a claim petition under Section 166 of the Act before the Tribunal and claimed compensation of Rs. 30,00,000/=.",

2.2 It was the case of respondents No. 4.1 to 4.6-original claimants that deceased Ishwarbhai was working as a Government Servant in the State of,

Gujarat and was earning Rs. 13,425/- per month. The respondents No. 4.1 to 4.6-original claimants also relied upon documentary evidence, such as,",

panchnama of place of occurrence at Exh. 44, copy of the P.M. Note Ex. 46, School Leaving Certificate of the deceased at Ex. 47; salary slip of the",

deceased at Exh. 41 along with other documentary evidence in form of RC Book and insurance policy of the truck. The Tribunal, upon appreciation of",

the evidence on record, determined income of the deceased at Rs.20,000/- per month and gave benefit of prospective income of 100%. After",

deducting 1/3rd towards personal expenses and applying multiplier of 13, the Tribunal awarded Rs. 41,59,896/- (rounded to Rs. 41,60,000/-) as",

compensation under the head of â??dependencyâ?. Over and above the same, the Tribunal further awarded a sum of Rs. 25,000/- as compensation",

under different conventional heads, and thus, awarded total compensation of Rs. 41,85,000/- to the original claimants with interest @ 9% per annum",

from the date of filing of the claim petition till its realization. Being aggrieved by the said award, the present Appeal is preferred by the Insurance",

Company.,

3. Heard learned advocate Mr. Vibhuti Nanavati for the appellant-Insurance Company, learned advocate Mr. Mihir H. Pathak for the respondents",

No. 4.1 to 4.6-original claimants, and also perused the original record and proceedings.",

4. Mr. Vibhuti Nanavati, learned advocate for the appellant has contended that the Tribunal has committed an error in granting 100% prospective",

income. Relying upon a judgment of the Apex Court in case of National Insurance Company Limited Vs. Pranay Sethi & Ors., reported in (2017) 16",

SCC 680, it was contended by Mr. Nanavati that as the deceased was 46 years old on the date of the accident and was a Government Servant, the",

claimants would be entitled to prospective income only to the tune of 30%. On the aforesaid ground, Mr. Nanavati has contended that the appeal",

deserves to be allowed and the impugned judgment and award deserves to be modified.,

5. Mr. Mihir H. Pathak, learned advocate for the respondents No. 4.1 to 4.6-original claimants has contended that a purshish was filed before the",

Tribunal vide Ex. 58, wherein, it is clearly mentioned that if the Tribunal comes to a conclusion that the driver of Jeep was negligent to the same",

extent, the claimants would forgo the equal amount. Mr. Pathak also further contended that the Tribunal has awarded excessive interest at the rate of",

9% per annum, which should be sliced down to 7.5% per annum. On the aforesaid ground, it was contended by Mr. Pathak that the appeal be allowed",

and the impugned judgment and award be modified accordingly.,

6. Mr. Mihir Pathak, learned advocate for the respondents No. 4.1 to 4.6-original claimants has supported the impugned award and submitted that the",

learned Tribunal has rightly assessed the income of deceased and has correctly calculated the prospective income, which does not require any",

modification. Mr. Pathak has further contended that as the number of dependents was more than four, at the time of accident, the learned Tribunal",

ought to have deducted 1/4th amount towards personal expenses from the income of deceased; instead of 1/3rd. It was further contended by learned,

advocate Mr. Pathak that as per the judgment of Apex Court in case of National Insurance Company Limited Vs. Pranay Sethi & Ors., reported in",

(2017) 16 SCC 680, the original claimants would be entitled to Rs. 70,000/- as compensation under different conventional heads; including funeral",

expenses instead of Rs. 25,000/- as awarded by the learned Tribunal. Mr. Pathak, referring to purshish Exh. 58 contended that the learned Tribunal",

has rightly not deducted amount towards 15% negligence, and therefore, no amount towards negligency of the driver of Jeep deserves to be deducted,",

as it is a case of contributory negligence. Mr. Pathak also contended that the learned Tribunal has also awarded interest @ 9% per annum and the,

same does not require any modification by this Court. Mr. Pathak further contended that as the appeal being meritless, it also deserves to be",

dismissed.,

7. No other or further contentions and/or submissions are made by the learned advocates appearing for the respective parties.,

8. Considering the submissions made to be appropriate to the judgment of Apex Court in case of Pranay Sethi (Supra), it is held in para 59 that:",

â??59. In view of the aforesaid analysis, we proceed to record our conclusions:-",

(i) The two-Judge Bench in Santosh Devi should have been well advised to refer the matter to a larger Bench as it was taking a different view than,

what has been stated in Sarla Verma, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a",

contrary view than what has been held by another coordinate Bench.,

(ii) As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding",

precedent.,

(iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased",

had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to",

50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less",

tax.,

(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the",

deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the,

deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the,

income minus the tax component.,

(v) For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30",

to 32 of Sarla Verma which we have reproduced hereinbefore.,

Rs. 20,000/-",Income per month

+ Rs. 6,000/-",30% Prospective Income.

= Rs. 26,000/-",Income per month

-Rs. 6,500/-",One fourth towards personal expenses of the deceased

= Rs.19,500/-",Income per month

X 12,Yearly

= Rs. 2,34,000/-",Yearly Income

X 13,Multiplier

= Rs. 30,42,000/-",Total Compensation