

(2015) 04 GUJ CK 0069
In the Gujarat High Court
Case No : First Appeal No. 4067 of 2007

Bharatkumar Chotubahai Patel and Others	APPELLANT
Vs	
Rajendrabhai Omkar Marathe and Others	RESPONDENT

Date of Decision : 21-04-2015

Acts Referred:

Citation : (2016) 1 AnWR 4

Hon'ble Judges : Jayant M. Patel, J;G.B. Shah, J

Bench : Division Bench

Advocate : Amit N. Patel, for the Appellant

Final Decision : Partly Allowed

Judgement

G.B. Shah, J.—Feeling aggrieved and dissatisfied with the judgment and award dated 22-11-2005 passed by the Motor Accident Claims Tribunal(Main),Vlsad, (hereinafter referred to as "the learned Tribunal" for short) in Motor Accident Claim Petition No. 169 of 2003 (Old No. 225 of 1998) by which the learned Tribunal has partly allowed the said claim petition and has awarded a total sum of Rs. 2,72,000/- towards compensation for the death of deceased-Kusumben Bharatkumar Patel, the appellants herein-original claimants have preferred present First Appeal for enhancement of compensation.

2. Short facts are that in a vehicular accident which took place on 29-11-1997, deceased-Kusumben was travelling in a jeep bearing registration No. MH-04Q-721 from Nandesh to Dahanu which was driven by opponent No. 1 and due to rash and negligent driving of opponent No. 1, the jeep turned turtle causing serious injuries to the deceased and thereafter she succumbed to the injuries. The original claimants, therefore, filed the claim petition before the learned Tribunal claiming Rs. 25,00,000/- towards compensation for the death of the deceased.

2.1 It was the case on behalf of the original claimants that at the time of accident, the deceased was aged 40 years and was earning Rs. 5,000/- per

month by doing agricultural work and Rs. 700/- by working as a Social Adviser in Nard Foundation at Vapi. The deceased was having the qualifications of B.Com., B.Ed. And also earning some amount by taking tuition classes.

2.2 The claim petition was opposed by the original opponent No. 3-National Insurance Company of the jeep involved in the accident by filing written statement at Exh. 43 denying the averments and allegation made in the claim petition. The learned Tribunal on appreciation of oral as well as documentary evidences has held that accident was caused due to rash and negligent driving of driver of jeep.

2.3 To prove the income of the deceased, the claimants have produced documents at Exhs. 27 to 32 to show that the deceased was getting income from Valsad Co.Op. Sugar Industrial Society Ltd. The learned Tribunal has considered income of the deceased at the time of accident at Rs. 2,100/- per month. After deducting one-third towards personal expenses of the deceased, dependency benefit was assessed at Rs. 1,400/- per month i.e. Rs. 16,800/- per annum. Thereafter applying the multiplier of 15, the learned Tribunal has awarded Rs. 2,52,000/- towards loss of dependency. Thereafter, further sums of Rs. 10,000/- towards loss of consortium and Rs. 10,000/- towards loss of estate were also awarded making a total sum of Rs. 2,72,000/- towards compensation to be paid to the original claimants with interest @ 9% p.a. upto 31-12-2000 and @ 6% per annum from 1-1-2001 till realization. Hence, present appeal is filed for enhancement of compensation.

3. Heard learned advocates, Mr. Amit N. Patel for the appellants-original claimants and Ms. Hingorani for Ms. Lilu K. Bhaya for the respondent No. 3. Respondent No. 1 was deleted during the pendency of claim petition.

4. Mr. Amit N. Patel, learned advocate appearing on behalf of the appellants-original claimants, has mainly submitted that the present appeal has been preferred by the appellants-original claimants for enhancement of amount of compensation awarded by the learned Tribunal. He has further submitted that it has come on record that the deceased-wife of the appellant No. 1 was not merely a housewife but was an earning member of the family and was also doing agricultural work by cultivating sugarcane and supplying sugarcane to the sugarcane factory situated at Valsad and the relevant documents in form of accounts maintained by Valsad Co.Op. Sugar Industrial Society Ltd. are forthcoming on record and it has been proved that the deceased was an active earning member of the family but while assessing the monthly income of the deceased, the learned Tribunal has considered imaginary figure of Rs. 2100/- per month only without considering the documentary evidence on record and also not considering the decision of the Hon'ble Supreme Court relied on by him. He has submitted that in a decision of the Hon'ble Supreme Court rendered in the case of Lata Wadhwa and Others Vs. State of Bihar and Others, (2001) 2 ACC 316 : (2001) ACJ 1735 : AIR 2001 SC 3218 : (2001) 91 FLR 705 : (2001) 6 JT 431 : (2001) 2 LLJ 1559 : (2001) 5 SCALE 286 : (2001) 8 SCC 197 : (2001)

AIRSCW 3086 : (2001) 6 Supreme 151 more particularly head note "C", the Apex Court has considered income of the deceased at Rs. 3,000/- per month as the deceased in that case was active in life. He has also drawn attention of this Court on the decision rendered by the Hon"ble Supreme Court in the case of Arun Kumar Agrawal and Another Vs. National Insurance Company and Others, (2010) ACJ 2161 : AIR 2010 SC 3426 : (2010) 7 JT 304 : (2010) 159 PLR 428 : (2010) 9 SCC 218 : (2010) 9 SCR 303 : (2010) 7 UJ 3564 : (2010) AIRSCW 5335 : (2010) 7 Supreme 641 wherein the Apex Court has considered Rs. 5,000/- per month as the income of the deceased. He has lastly submitted that the learned Tribunal has erred in considering the amount under the head of loss of consortium and loss of estate on the lower side.

5. Learned advocate, Ms. Hingorani for Ms. Lilu K. Bhaya, appearing on behalf of the original opponent No. 3-insurance company has submitted that the learned Tribunal has not committed any error in awarding compensation. In arriving at the conclusion, the learned Tribunal has appreciated oral as well as documentary evidence on record and hence, it is requested that the finding arrived at by the learned Tribunal is just and proper and is not required to be interfered with.

6. We have gone through paragraph 37 of the decision of the Hon"ble Apex Court in the case of Arun Kumar Agrawal (supra) and considering the fact that in the said case, it was categorically deposed that the deceased was earning Rs. 50,000/- per annum by painting and handicrafts and the respondents thereof had not led any evidence to controvert the same and the Tribunal as well as the High Court had altogether ignored the income of the deceased and accordingly, the Hon"ble Apex Court has assessed income of the deceased at Rs. 5,000/- per month as she was a homemaker of the family. The above ratio, in our view, is not applicable to the case on hand because the Tribunal has considered the relevant documents appearing on the record and after considering the same, it has been discussed at length that so far as revenue record of the relevant agricultural field is concerned, the evidence has not been produced by the claimants.

7. It appears that while awarding dependency loss, the learned Tribunal has considered the income of the deceased at the time accident at Rs. 2100/- p.m. considering the documentary evidence produced from Valsad Co.Op. Sugar Industrial Society Ltd. at Exhs. 27 to 32. However, considering the ratio laid down by the Hon"ble Supreme Court in the case of Lata Wadhva (supra), the learned Tribunal ought to have considered income of the deceased at Rs. 3,000/- per month. Adding 30% towards future rise in income, the prospective income would come to Rs. 3,900/- per month. Deducting one-third towards personal expenses of the deceased i.e. Rs. 1300/- p.m., the dependency loss can be considered at Rs. 2600/- per month i.e. Rs. 31,200/- per annum. As the deceased was aged 40 years of age at the time of death, as per the decision of Hon"ble Supreme Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, (2009) ACJ 1298 : AIR 2009 SC 3104 :

(2009) CLT 1055 : (2009) 6 JT 495 : (2009) 6 SCALE 129 : (2009) 6 SCC 121 : (2009) 5 SCR 1098 : (2009) 5 UJ 2280 : (2009) AIRSCW 4992 : (2009) 3 Supreme 487 , multiplier of 15 was required to be applied. Under the circumstances, the claimants shall be entitled to Rs. 4,68,000/- (Rs. 31200 x 15) per annum towards loss of dependency instead of Rs. 2,52,000/- as awarded by the learned Tribunal.

8. As far as the amounts awarded under the conventional heads i.e. loss of consortium and loss of estate are concerned, it appears that the learned Tribunal has awarded a sum of Rs. 10,000/- towards loss of consortium and Rs. 10,000/- towards loss of estate which, in our view, is on lower side and considering the facts and circumstances, an amount of Rs. 50,000/- could have been awarded under the joint heads of loss of estate, loss of love and affection and loss of life.

9. In view of the above, present First Appeal succeeds in part. The impugned judgment and award passed by the learned Tribunal is hereby modified to the aforesaid extent and it is held that the appellants shall be entitled to a total compensation of Rs. 5,18,000/- from the original opponents with interest as has been awarded by the learned Tribunal. The enhanced amount of compensation to be deposited by the respondent No. 3 herein-Insurance Company in the learned Tribunal within a period of eight weeks from today and thereafter, the learned Tribunal to pay 30% of the additional amount as enhanced by this Court in the present judgment to the original claimants by Account Payee Cheque on proper identification and verification and the remaining 70% of the aforesaid amount shall be invested by the Tribunal in FDR for three years with any nationalized bank but the original claimant shall be entitled to periodical interest as and when it becomes due. Appeal is disposed of accordingly. No order as to costs.