

(2016) 03 GUJ CK 0121
In the Gujarat High Court
Case No : First Appeal No. 5010 of 1999

Bhartiben Nayabha Ker and Others

APPELLANT

Vs

Sidabha Pethabha Manke and Others

RESPONDENT

Date of Decision : 15-03-2016

Acts Referred:

Income Tax Act, 1961 — Section 143(1)
Motor Vehicles Act, 1988 — Section 166

Citation : (2016) 03 GUJ CK 0121

Hon'ble Judges : Kaushal Jayendra Thaker, J.

Bench : Single Bench

Advocate : A.R. Thacker, Advocate, for the Appellant;

Final Decision : Partly Allowed

Judgement

Kaushal Jayendra Thaker, J.—1. The present First Appeal is filed at the instance of the claimant, for proceedings under Section 166 of the Motor Vehicles Act and is directed against the award passed by the MACP Tribunal (Main), whereby, the Tribunal partly allowed the claim petition and awarded the sum of Rs. 7,78,000/-. The claimants by way of prayer has prayed the amount with interest as claimed in the original claim petition from the date of filing of application till realization.

2. The claimants have felt dissatisfied with the same, therefore, this appeal for enhancement is filed.

3. Nor the owner of the vehicle has preferred any appeal or cross objection and they have accepted the judgment as per the records. The only question which arises for consideration in this appeal is, whether the Tribunal below was justified in awarding sum of Rs. 7,78,000/- as against the claim of Rs. 13,00,000/- on the death of predecessor in interest of the claimant.

4. The short facts and background as it emerges from the record is that on 18.07.1993, deceased Nayabha Mapbha Ker was traveling in Jeep No. GBI-7896 alongwith other persons and the said jeep was being driven by opp No. 4; that

the said jeep was proceeding towards Mithapur. That at about 3-00 A.M., opponent No. 1 came driving truck No. GJ-10-T-747 from Mithapur side with full lights, in rash and negligent manner and with full speed and dashed with the oncoming jeep - car and caused the accident, as a result of which the persons sitting in the jeep car were seriously injured and deceased Nayabhai Mapbha was firstly removed to Tata Hospital, Mithapur where his condition became worst and therefore, he was advised to take to Ashok Gondhiya Hospital, Rajkot, where Nayabha Mapbha Ker died soon. The deceased was 41 years old at the time of accident. He had studied upto B.A.B. Ed. And since last 7 years, he was serving as President of Taluka Panchayat. He was a member of Taluka Panchayat, Dwarka since 13 years. The deceased had agricultural land and his income was Rs. 50,000/- to 60,000/- per annum. He was also working as contractor in different fields and was getting income from that business also. That, due to sudden accidental death of Nayabha Mapbha, his family has lost love and affection of the deceased and they have become support-less. That taking into consideration the progressive career of the deceased and his income, the claimants have claimed the aforesaid amount.

5. Mr. Thakkar, the learned advocate appearing for the applicants submitted that there was an evidence on record to indicate that the deceased was earning the amount which has been awarded, but the same is on the lower side as the agricultural income given as per the income tax return is Rs. 55,000/-. The learned Tribunal has erred on three counts. That, it has not considered the prospective income of the deceased. Either from the agricultural auction or from his work or his honorarium which he was getting and the employer is not as per the decision rendered by the Apex Court in the case of Sarla Verma and others v. Delhi Transport Corporation and Anr., reported in , 2009 (6) SCC 121 and has submitted that the multiplier should have been of 14. Relying on the other judgments of the Apex Court, he has further submitted that the consortium amount is also on lower side compared to what is awarded to the claimants.

6. As against this, learned advocate Mr. Vibhuti Nanavati appearing for New India Assurance Company with which both the vehicles were insured has submitted that compensation given is just and proper and there is no need to interfere with the same. According to him, on the death of the deceased, the agricultural activities remained the same as even as per the oral testimony of the widow of the deceased. As the deceased was the President of the Taluka Panchayat, was normally outside and was not doing agricultural work himself, but was getting it done through other persons. Therefore, he has submitted that as per the catena of decisions, only 1/3rd Supervision charges are admissible from Rs. 55,000/- which has been considered by the Tribunal on the higher side and considering the prospective aspect, instead of 1/3rd of Rs. 55,000/- the Tribunal has considered it on a higher side. According to him, as a Tribunal has considered the personal expenses on only basis of unit method, it is even less than 1/4th that also does not requires to be reconsidered. According to him, the multiplier given in those days based on the earlier judgments was just and proper and therefore, nothing

more requires to be given.

7. Learned advocate Ms. Bhaya has adopted the submissions made by learned advocate Mr. Vibhuti Nanavati and has contended that finding of fact that her Insurance Company is liable to pay Rs. 55,000/- is just and proper and requires no interference.

8. I have heard both the learned counsels. It is an admitted position of fact that the income of the deceased at the time of accident was Rs. 55,000/- plus from the agricultural income. The finding of fact by the Tribunal in paragraph No. 12 is reproduced herein under:

"12. Now, on going through the documentary evidence produced on record as regards income of the deceased, Xerox copies of Intimation U/s. 143(1) of I.T. Act, 1961 issued by Income Tax Department, Ward-2, Jamnagar, for the assessment years 1991-92, 1992-93 and 1993-94 produced at Exh. 30, 31 and 32 reveal that the income received by the deceased Nayabha as Honorarium from Panchayat and salary from Ker & Company is shown as Rs. 36,800/- every year. Now, as regards agricultural income, the aforesaid three documents show that it was Rs. 55,197/-, 56,987/- and 53,875/- respectively during assessment years 1991-92, 1992-93 and 1993-94. It is true that applicant Bhartiben, widow of the deceased has admitted that her husband was getting the land cultivated through other persons and he himself was also doing the said work. Now, it is urged on behalf of the opponents that as the deceased was an educated person and he was getting the land cultivated, only value of his services should be assessed. But, as per the latest settled position, it is not enough to evaluate the managerial services of such deceased persons who were getting income from agricultural lands, but their income from their lands also has to be taken into consideration while assessing the loss of dependency benefit. Therefore, even if it is considered that the deceased was a person having Bachelor's degree with B.Ed. Training, rich career as a sportsman as can be seen from a number of certificates produced at Ex. 25, and also an active social worker, and therefore, he would not plunge himself in manual labour work of agricultural nature, as held in XXI GLR P.400 by our High Court, only his services as a manager of agricultural land is not to be taken into consideration but his net agricultural income has to be taken into consideration. Now, agricultural products cannot be expected in fixed income every year. It may increase or decrease or there may be loss in some years also due to less rain fall and other natural aspects. Moreover, it cannot be overlooked that the land, even after the death of the deceased, has remained intact, and therefore, the claimants must be getting it cultivated through other persons and there must be some income from the land, though may be less due to loss of personal attention of the deceased. Under the circumstances, I propose to assess the income from agricultural land at Rs. 44,200/-. Therefore, there would be loss of total income of Rs. 81,000/- (36,800/- from Taluka Panchayat and Ker & Company plus Rs. 44,200/- from agriculture). Now, after ascertaining the income of the deceased as above for the

support of himself and his dependents, the amount which the deceased used to spend upon himself with regard to his self-maintenance and pleasure, has to be deducted and the balance figure will be the datum figure which the deceased used to spend on his dependents and that datum figure has to be capitalized by applying a suitable multiplier which is to be selected considering the age of the deceased and that of the dependents and other various imponderable factors such as early natural death of the deceased, his incapability to support his family due to illness or other natural handicap or calamity. In the present case, there is no evidence showing the personal expenses of the deceased. In absence of any such evidence on the point, it will be reasonable to fix the Units of the family expenditure and deduct the units consumed by the deceased for his personal expenditure. Normally an adult member of the family would consume double the units than that consumed by the minor, except those minors who are taking education in college for whom it will be appropriate to take 2 units. Hence, if a minor consumes one unit, an adult member should be taken to be consuming two units. In the instant case, the family of the deceased consisted of "6" members at the time of his accidental death, out of which three were minor members, that is the deceased himself, his wife, his minor children and his mother. It is true that Bhartiben has stated that her father-in-law is still alive and he is living with her. But, it appears that at the time of accidental death of the deceased, his mother who has died pending petition and who has been joined as claimant No. 5, must be living with the deceased and his father must be living with other sons and after claimant No. 5, mother-in-law of Bhartiben expired pending petition, her father-in-law must have gone to reside with her to look after the family and minor children of the deceased. It is so inferred because if the father-in-law of the deceased was being maintained by the deceased and was living with the deceased, his name would have been mentioned as claimant in the petition. It is also possible that due to loss of an energetic young son, the Old father would have denied to receive any amount as compensation on the death of his son, and therefore, his name has not been joined as petitioner. There is nothing on record why he has not been joined on record as petitioner. As he has not been joined as petitioner, his units have not been considered. Therefore, there would be total "9 units in the family of the deceased (2 for the deceased, 2 for his wife, 2 for his mother and 1 each for three minor children of the deceased). If, therefore, the total expenditure of the family is Rs. 81,000/- per annum, the personal expenditure of the deceased would come to Rs. 18,000/- (2 units, each of Rs. 9,000/-) per annum. Now, if this personal expenditure of the deceased is sliced down from the total expenditure of the whole family, the total value of dependency would be Rs. 63,000/- per annum. Considering the age of the L.Rs. And dependents and other various imponderable factors, as already stated above, I propose to adopt "12" as multiplier. On that basis, the amount will work out at Rs. 7,56,000/- (63000X12). To that, I will add Rs. 10,000/- as compensation on account of loss of life's expectancy and Rs. 10,000/- on account of conventional amount awardable on account of death of husband of claimant No. 1. The claimants are also entitled to get Rs. 2,000/- towards

expenses for after death ceremony. Thus, the total amount of compensation awardable to the claimants would work out as under:

Rs. 7,56,000/- loss of dependency benefit

Rs. 0,10,000/- loss of life's expectancy

Rs. 7,56,000/- Consortium

Rs. 7,56,000/- Expenses for after death Care.

Rs. 7,78,000/- Total"

9. The learned Tribunal has held that the income of Rs. 55,197/-, then Rs. 56,987/- and Rs. 53,875/- respectively. For the years 1991-92, 1992-93, 1993-94 and the honorarium to the tune of Rs. 36,800/- from Taluka Panchayat and Ker & Company cannot be found fault with. However, the amount of Rs. 44,200/- which has been collected by the learned Tribunal is a gesture and therefore, I hold that the amount of Rs. 55,000/- should be considered as an amount which comes to Rs. 92,000/- (Rs. 36000/- + Rs. 55000/-) out of which, 1/4th has to be deducted for his personal expenses.

10. Mr. Thacker has vehemently relied upon paragraph No. 24 of Sarla Verma judgment and contended that 30% prospective income should be given. I cannot accept the said suggestion. In spite of considering 1/3rd as Supervision charges shall be called as future income and that would be the detinue. Hence, in the facts and circumstances of the present case, the observations that the father must be living with somebody else, mother must be living with somebody else is based on surmises and conjunctures. Instead of 1/4th, I substitute the unit as system by 1/4th as per Sarla Verma as the unit system is absolute now and considering age of the deceased and the legal representation 12 could not have been multiplier as per the chart as per Sarla Verma and 14 would be the multiplier based on the general principles instantiated by the decision in Sarla Verma, 1/4th has to be deducted. The family would be entitled to Rs. 70,000/- multiplied by 14. Hence, the additional figure of Rs. 33,000/- under the head of loss of life expenses, consortium and after death would be added and hence, the award is modified to the aforesaid extent. However, the learned Tribunal in the year 1992 was more generous in awarding the rate of interest as 12% on the additional amount, the interest will be 9%. The amount to be deposited within a period of 12 weeks from today.

11. In the result, the appeal partly succeeds. It goes without saying that the appellant cannot be given any amount as they are not the legal representatives of the deceased and they have their own household the legal representatives can be said to be appellant No. 1 to 4 only. After these instructions, he has instructions for 5/1, 5/2, to 5/6 and 6. R & P to be sent forthwith to the Tribunal.