
(2000) 02 GUJ CK 0019
In the Gujarat High Court
Case No : F.A. No. 1227 of 1997

Bhikhup Agarwal

APPELLANT

Vs

Lilaben Laljibhai Vala and Others

RESPONDENT

Date of Decision : 09-02-2000

Acts Referred:

Citation : (2002) ACJ 1571

Hon'ble Judges : H.K. Rathod, J;D.C. Srivastava, J

Bench : Division Bench

Advocate : Ajay R. Mehta, for the Appellant; Shirish Joshi, for the Respondent

Judgement

D.C. Srivastava, J.—This is an appeal against the award of the Motor Accidents Claims Tribunal, Bhavnagar (Guj.) dated 24.9.1996, awarding a sum of Rs. 6,40,000 as compensation together with interest at the rate of 15 per cent from the date of application till realisation with proportionate costs.

2. Mr. A.R. Mehta, learned counsel for the appellant and Mr. Shirish Joshi, learned counsel for the respondent have been heard on admission of this appeal as well as its final hearing. The appeal is admitted. With consent of the learned counsel for the parties, the appeal is finally disposed of without summoning the record.

3. Deceased Laljibhai was a driver in Bhavnagar Jilla Sahakari Bank Ltd. and had served there for the last 15 years. On the date of accident, he was driving an Ambassador car No. GJ 4-9528 and was coming towards Ahmedabad. He was driving the car slowly and carefully. When he reached between Bhandhuka and Bago-dara, one oil tanker No. GJ 10-T 7952 was coming from behind. The opponent No. 2 in the Tribunal was the owner of the oil tanker and opponent No. 3 was the insurance company which had insured the tanker. It was alleged that the tanker was being driven rashly and negligently with full speed and without taking proper care, it overtook the car driven by the deceased. In this process, the tanker hit the Ambassador car as a result of which the deceased driver lost his life. The middle portion of the tanker had hit the front portion of the

Ambassador car. The deceased died on the spot. He was aged 45 years on the date of accident. He was earning Rs. 4,000 per month as salary and also bonus at the rate of 20 per cent of the salary in each year. Two months overtime in a year was also given to the deceased by the bank. In the claim petition, it was stated that income of the deceased was between Rs. 5,500 and Rs. 6,000 per month.

4. The claim petition was contested by the insurance company who is appellant before us on variety of grounds. Negligence of the driver of the tanker was repudiated. The claim raised by the claimant was said to be excessive and exorbitant. It was maintained that the accident did not happen due to the fault of the driver of oil tanker. It was alleged that the driver of the tanker was attempting to overtake the Ambassador car and after the driver received signal from the car driver he proceeded further, but in the meantime, the car suddenly took turn towards right and accident took place. It was, therefore, alleged that the accident occurred due to negligence and rashness of the deceased driver.

5. The Tribunal after considering the entire evidence on record came to the conclusion that the accident had happened only because of rash and careless driving by the driver of the tanker and the driver of the Ambassador car was not at all careless in driving his vehicle.

6. On the point of compensation the Tribunal came to the conclusion that the claimants are entitled to get compensation of Rs. 6,40,000 together with interest at the rate of 15 per cent from the date of application till its realisation with proportionate costs.

7. Mr. Mehta, learned counsel for the appellant has challenged this award of the Claims Tribunal. However, he remained unsuccessful in satisfying us that the findings of the Tribunal that the accident took place because of negligent, rash and careless driving of the oil tanker by its driver, is in any way erroneous. The driver of the Ambassador car expired immediately after the accident at the spot. The driver of oil tanker was not examined before the Tribunal nor he filed any written statement. The owner of the oil tanker also did not file any evidence. Consequently, the best eyewitnesses were not produced and as such the findings of the Tribunal holding that the accident took place due to rash and negligent driving by the driver of the oil tanker does not require any interference. It cannot be held that the driver of the Ambassador car was negligent or rash or careless in driving the car.

8. Now coming to the question of compensation, Mr. Mehta has argued that the monthly salary and prospective salary of the deceased was not correctly assessed by the Tribunal. From the evidence on record it is clear that the deceased was drawing his salary of Rs. 4,000 per month on the date of accident. He was also paid 20 per cent bonus per year. The deceased was also paid overtime for a period of two months in a year. Hence computing this calculation in mind, the Tribunal came to the conclusion that the monthly salary of the

deceased was at Rs. 5,500 to Rs. 6,000. The salary register was also considered by the Tribunal where in the year 1994 gross payment of Rs. 45,821 was recorded in the register. It was further found that in the year 1995 the deceased had worked for eight months and seven days. Thus, after considering the oral as well as documentary evidence, the Tribunal has rightly concluded that the deceased would have received total salary of Rs. 9,30,777. Hence, considering all the facts and circumstances of the case the Tribunal found that the prospective monthly income of the deceased could be considered at Rs. 7,750, which comes to Rs. 93,000 per year. On the basis of birth certificate, the Tribunal found that the age of deceased at the time of accident was 45 years. There is no evidence in rebuttal. As such it is apparent that multiplier of 10 was wrongly assessed by the Tribunal. It should have assessed the compensation at multiplier of 15. If this multiplier is taken then the total assessment of the Tribunal does not suffer from any error on the higher side. If we enhance the multiplier from 10 to 15 then the compensation worked out by the Tribunal at Rs. 6,20,000 cannot be said to be excessive. Over and above this, Rs. 20,000 was awarded as compensation for loss to estate. In this way, the figure of Rs. 6,40,000 worked out by the Tribunal does not seem to be excessive. The quantum of compensation, therefore, requires no interference.

9. Mr. A.R. Mehta, however, rightly contended that the interest at the rate of 15 per cent from the date of application till realisation is excessive. We agree with this contention. Interest of justice will be met if the interest is reduced at the rate of 12 per cent per annum from the date of application till the date of realisation.

10. No other contention was raised. The appeal, therefore, succeeds in part and while maintaining the compensation of Rs. 6,40,000 we reduce the interest to 12 per cent from the date of application to the date of realisation. The appellant shall deposit the amount so calculated within 6 weeks, less the amount already deposited before the Tribunal. The Tribunal has given certain other directions as to how the deposits are to be dealt with. Mr. Joshi states that 20 per cent amount directed by the Tribunal to be paid to the applicant by A/c payee cheque has already been received, Mr. Joshi, however, requests that other directions of the Tribunal should be modified. The claimants are not in a mood to raise any loan on the amount deposited with the bank. However, he states that the minor Sonal Lalji is aged about 16 years and is likely to be married shortly. As such, an application can be moved before the Tribunal on behalf of this minor as and when he is to be married and the Tribunal after considering the requirements shall pass appropriate order directing payment of such amount as it thinks fit for performing marriage of minor Sonal Lalji. The remaining amount deposited by the appellant now shall be deposited in the joint names of the applicants with some nationalised bank for a period of 10 years with liberty to seek part withdrawal for meeting marriage expenses of Sonal Lalji with permission of the Tribunal. The direction of the Tribunal prohibiting the bank from granting loan to the claimants is maintained.