
(2011) 12 GUJ CK 0045
In the Gujarat High Court
Case No : First Appeal No. 696 of 2004

Bhimji Ramji Hirani and 2

APPELLANT

Vs

Paschim Gujarat Vij Co. Ltd. and 1

RESPONDENT

Date of Decision : 02-12-2011

Acts Referred:

Citation : (2011) 12 GUJ CK 0045

Hon'ble Judges : R.M. Chhaya, J; Jayant Patel, J

Bench : Division Bench

Advocate : Mehul S Shah - 2, for the Appellant; Dipak R Dave for Defendant : 1,
Rule Served for Defendant : 2, for the Respondent

Final Decision : Allowed

Judgement

Honorable Mr. Justice R.M. Chhaya

1. The present appeal arises out of the judgment and decree dated 28.02.2003 passed in Special Civil Suit No.43 of 1998 by Civil Judge (S.D.), Bhuj- Kachchh. For the sake of convenience, the parties shall be referred to as per their original status in the lower court.

2. The brief facts arising in the present appeal are summarized as under:

3. That father of the plaintiffs, Shri Ramji Shivji Hirani, while working in the agriculture field, situated at Village Surajpur on 06.10.1997 at about 2:00 p.m. came in contact with live high tension electric wire, which was dislocated from the main electric pole, and died due to electrocution.

4. The plaintiffs filed the present suit and claimed compensation of Rs. 24 lacs along with interest and cost. It was contended before the trial Court that the deceased was working in the field belonging to the grandfather of the plaintiffs and was earning Rs. 10,000/- p.m. It was the case of the plaintiffs that because of the tortuous act, the plaintiffs lost their father and taking into consideration the age and the state of health of the deceased estimated yearly loss at Rs.

96,000/-, with expectation of 25 years, claimed compensation of Rs. 24 lacs. The trial Court framed issues at (Exh.20) and after considering the evidence adduced by both side came to the conclusion that the deceased came in contact with the live wire and died because of electrocution. The trial Court also came to the conclusion that it was the responsibility and duty of the defendant-electricity company to maintain adequate safety and it was because of negligence on the part of the defendant- company, that the accident had occurred. After considering the evidence on record, the trial Court came to the conclusion that the plaintiffs were not able to prove that the deceased was earning Rs. 10,000/- p.m. but on the basis of the evidence on record has recorded that the age of the deceased was not 30 years on the date of the accident, as averred in the plaint by the plaintiffs, but 37 years and taking into consideration the dictum figure of Rs. 2,000/- p.m. deducted 1/3 towards personal expenses and considered Rs. 1,200/- p.m. towards dependency benefit, after following the mathematical formula of multiplier came to the conclusion that as the age of the deceased was 37 years at the time of the accident multiplier of 12 would be proper and accordingly came to the conclusion that future loss would be Rs. 1,72,800/-. The trial Court also awarded Rs. 10,000/- towards the loss of estate and solatium and by the judgment impugned in the present appeal awarded total compensation of Rs. 1,82,800/-, along with interest @ 12% p.m. from the date of filing of the suit till realization of the decretal amount with proportionate cost. Being aggrieved by the said judgment and decree, the original plaintiffs have preferred the present appeal for enhancement of the compensation. However, the plaintiffs have restricted this appeal for enhancement of compensation by Rs. 5 lacs.

5. At the out set it may be noted that the suit was filed when the plaintiffs were minor and, therefore, the suit was preferred through their natural guardian-uncle. At the time of filing of the present appeal plaintiff No.1 had attained majority and from the record it transpires that as on today all the three plaintiffs have attained majority.

6. Heard Mr. Shah, learned advocate for the appellants and Mr. Dave, learned advocate for the defendant-electricity company. We have also perused the record and proceedings of the case.

7. Mr. Shah candidly pointed out that the present appeal is directed only on the ground of quantum of the compensation awarded. It was pointed out that the trial Court has erred in coming to the conclusion that the age of the deceased was 37 years even though the plaintiffs have been able to prove that the age of the deceased was 32 years on the date of the accident. It was further pointed out that even if the dictum figure of income as awarded by the trial Court is kept as it is, i.e. Rs. 2,000/- p.m. the trial Court has erred in applying the multiplier of 12. Relying upon the judgment of the Apex Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, it was pointed out that as decided by the Apex Court, the trial Court ought to have applied multiplier of 15 and ought to have taken into consideration prospective income.

Further relying upon the judgment of Sarla Varma (supra) it was contended that the trial Court has awarded only Rs. 10,000/- towards the loss of estate and solatium, whereas the trial Court ought to have awarded at least Rs. 50,000/- under the said head. It was further contended that the trial Court has not awarded any amount towards funeral expenses, which is awarded in every case as the compensation. No other contention is raised on behalf of the appellants.

8. As against this, Mr. Dave has supported the impugned judgment. It was contended that the trial Court, after appreciating the evidence on record, has rightly come to the conclusion that the plaintiffs have failed to prove their case to the extent that the monthly income of the deceased was Rs. 10,000/- and, therefore, the trial Court has rightly come to the conclusion that the monthly income of the deceased was Rs. 2,000/- p.m. It was submitted that the plaintiffs have not been able to prove the age of the deceased on the date of the incident as 32 years and as per evidence on record the trial Court has correctly come to the conclusion that the age of the deceased on the date of the accident was 37 years. It was further submitted that taking into consideration the ratio laid down by the Apex Court in the case of Lata Wadhwa and Others Vs. State of Bihar and Others, as well as in the case of Sarla Varma (supra), the trial Court taking into consideration the facts of the present case has correctly come to the conclusion that in the instant case the multiplier of 12 has to be applied. It was therefore, submitted that the appeal is devoid of any merits and the same deserves to be dismissed.

9. It may be noted that the defendant- electricity company has not preferred any appeal against the impugned judgment and has in fact accepted the order passed by the trial Court.

10. Upon appreciating the evidence on record we find that the trial Court has rightly come to the conclusion that the age of the deceased was 37 years as would be evident from the postmortem notes (Exh.68) wherein the doctor, who performed the autopsy upon the deceased, has clearly stated that the age of the deceased was 37 years.

11. We also find that after taking into consideration the oral deposition of plaintiff No.1-Bhimjibhai Hirani (Exh.63-C), except the bare words that the income of the deceased was Rs. 10,000/- p.m. from the agricultural work that he undertook in the field belonging to the grandfather of the plaintiffs, no other evidence is produced on record to prove the income of the deceased as averred in the plaint. We, therefore, find that the trial Court is right in coming to the conclusion that monthly income of the deceased in absence of any other evidence on record as aforesaid would be Rs. 2,000/- p.m.

12. Having regard to the future prospects and age of the deceased the monthly income of the deceased would come to Rs. 3,000/-. Applying the ratio laid down by the Apex Court in the case of Sarla Varma (supra) 1/3 of the said income should be deducted towards personal and living expenses of the deceased, which

would come to Rs. 1,000/- p.m. and, therefore, the dependency loss to the plaintiffs would come to Rs. 2,000/- p.m. i.e. Rs. 24,000/- p.a. As observed by the Apex Court in the case of Sarla Varma (supra) as the age of the deceased was 37 years on the date of the accident, multiplier of 15 would be applicable and, therefore, future dependency loss would come to Rs. 3,60,000/-. The plaintiffs will be entitled to sum of Rs. 20,000/- as loss of estate and solatium and Rs. 5,000/- towards funeral expenses. The plaintiffs therefore, shall be entitled to the total compensation of Rs. 3,85,000/- and after deducting Rs. 1,82,800 / - awarded by the trial Court the enhancement would be Rs. 2,02,200. However, the plaintiffs would be entitled to interest @ 12% p.m. on Rs. 1,82,800/- (as awarded by the trial Court) and interest @ 9% p.m. on the enhanced amount.

13. The appeal, therefore, stands partly allowed and the decree stands modified accordingly. There shall be no order as to costs.

14. The defendant- electricity company is directed to deposit the amount of compensation awarded as above within a period of 08 (eight) weeks from the date of receipt of a copy of the judgment of this Court.

15. Record and proceedings be sent forthwith.