(2023) 01 GUJ CK 0063

In the Gujarat High Court

Case No : R/First Appeal No. 2624 Of 2019

Fatesinh Bhagwandas Alias Bahgwansinh Parmar APPELLANT

Vs

Jitendrakumar Munnalal Saroj RESPONDENT

Date of Decision : 11-01-2023

Acts Referred:
Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2023) 01 GUJ CK 0063

Hon'ble Judges : Dr? Ashokkumar C. Joshi, J

Bench : Single Bench

Advocate : Sabir B Saiyyad, Maulik J Shelat

Final Decision : Allowed

Judgement

Dr. Ashokkumar C. Joshi, J

1. This is an appeal under Section 173 of the Motor Vehicles Act, 1988 (MV Act) filed at the instance of the appellants – original claimants against the judgment and award dated 15.12.2018 passed by the learned Motor Accident Claims Tribunal (Auxiliary), Rajpipla, Dist.: Narmada (Tribunal) in Motor Accident Claim Petition No. 296 of 2015 (claim petition), which was preferred under Section 166 of the MV Act, whereby, against a claim valued at Rs.8 lakh for the fatal accident that had occurred on 24.08.2015, the Tribunal has awarded a sum of Rs.4,75,000/- with interest at the rate of 9% per annum from the date of claim petition till realization, holding liable the opponents therein to pay the compensation to the appellants – original claimants. Hence, grieved claimants have filed this appeal on the point of quantum.

2. Since, the facts of the accidents are not in dispute, the same are not detailed here.

3. The respondent No. 1 is already deleted by virtue of an order dated 28.08.2019 passed by the coordinate Bench. The respondent No. 2 is the owner of the offending vehicle. Accordingly, the Court proceeded with the final hearing

of the matter. Heard, learned advocate Mr. Sabir B. Saiyyad for the appellants – original claimants and learned advocate Mr. Maulik J. Shelat for the respondent No. 3 – insurance company.

3.1 The only contention that has been raised by the learned advocate for the appellants is that the Tribunal has materially erred in awarding the compensation under the conventional head of loss of consortium, without considering the ratio laid down in the decision rendered by the Apex Court in National Insurance Co. Ltd. v. Pranay Sethi and Others, MANU/SC/1366/2017. It is submitted that the Tribunal has awarded only an amount of Rs.25,000/- under the said head, which as per the aforesaid decision ought to have been Rs.40,000/- and considering the number of claimants i.e. 3, as per the settled legal position, the Tribunal ought to have awarded Rs.1,20,000/- under the head of loss of consortium. Accordingly, it is urged that this Court may allow this appeal considering the said aspects of the matter and thereby, to enhance the award suitably.

4. As against this, the learned advocate for the respondent No. 3 – insurance company, while heavily opposing this appeal and supporting the impugned judgment and award, submitted that the impugned judgment and award being just and proper, no interference is required at the hands of this Court. It is submitted that the amount awarded under different heads are rightly awarded by the Tribunal and accordingly, he requested that this appeal being bereft of any merits, deserves to be dismissed.

5. Regard being had to the submissions made and considering the averments made in the appeal as well as a perusal of the record reveal that in an unfortunate fatal accident that had occurred on 24.08.2015, the deceased had died for which a claim petition was filed claiming compensation to the tune of Rs.8 lakhs against which, the Tribunal has awarded an amount of Rs.4,75,000/- with 9% interest holding the respondents – opponents jointly and severally liable to pay the compensation. The sole contention that has been raised by the learned advocate for the appellants – claimants is with regard to the amount awarded under the conventional head of loss of consortium, which is Rs.25,000/- only. The learned advocate for the appellants – claimants has, relying upon a decision of the Apex Court in Pranay Sethi (supra), submitted that the amount under the head of loss of consortium should be Rs.40,000/- per claimant.

5.1 In the aforesaid backdrop, if the ratio of the decision in Pranay Sethi (supra) is referred to, it is held as under:

"61. 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.

(vi) The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.

(vii) The age of the deceased should be the basis for applying the multiplier.

(viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years."

5.2 Thus, as per the aforesaid decision, an amount of Rs.40,000/- under the conventional head of loss of consortium is required to be awarded.

Further, in view of the decisions of the Apex Court in Magma General Insurance Co. Ltd. v. Respondent: Nanu Ram and Ors., MANU/SC/1012/2018 and The New India Assurance Co. Ltd. and Others v. Somwati and Others, (2020) 9 SCC 644, the compensation under the conventional heads of loss of consortium, loss of estate and funeral expenses is required to be granted to each claimant. Therefore, this appeal, is required to be allowed to that extent and the impugned judgment and award is required to be modified accordingly.

6. In the aforesaid backdrop, this appeal succeeds and is allowed accordingly. The impugned judgment and award is modified to the aforesaid extent and it is held that the appellants – claimants shall be entitled for the following towards compensation:

Head

Award of Tribunal (Rs.)

Modified Amt. (Rs.)

Dependency loss

4,20,000/-

4,20,000/-

Loss of Estate

15,000/-

15,000/-

Loss of consortium

25,000/-

1,20,000/- (Rs.40,000 x 3)

Funeral Charges

15,000/-

15,000/-

Total

4,75,000/-

5,70,000/-

Difference

95,000/-

6.1 The difference amount shall be deposited within a period of 08 (eight) weeks.

6.2 The appellants – claimants shall be entitled to interest at the rate of 6% per annum on such enhanced amount of compensation, from the date of petition till realization.

6.3 The rest of the impugned judgment and award is not disturbed.

6.4 R&P, if received, be sent back forthwith.