

(2009) 08 GUJ CK 0025
In the Gujarat High Court
Case No : First Appeal No. 1625 of 1984

GSRTC

APPELLANT

Vs

Lalubha T. Servaiya and Others

RESPONDENT

Date of Decision : 27-08-2009

Acts Referred:

Citation : (2009) 08 GUJ CK 0025

Hon'ble Judges : H.K. Rathod, J

Bench : Single Bench

Advocate : M.D. Pandya, for the Appellant; Amita M. Shah, for Defendants 1 - 6, for the Respondent

Final Decision : Dismissed

Judgement

H.K. Rathod, J.—Heard learned Advocate Ms. Mayaben Desai for appellant GSRTC and learned Advocate Ms. Amita Shah for respondents claimants.

2. By filing this appeal, appellant has challenged award made by claims tribunal Ahmedabad Rural at Ahmedabad in claim petition No. 420 of 1981 dated 7.2.1984 wherein claims tribunal has awarded compensation of Rs. 77000.00 with proportionate costs and interest at rate of 6 per cent per annum if payment of compensation is made to claimants within three months and if they fail to pay said amount within said stipulated period, then, to pay same with interest at rate of 12 per cent per annum.

3. Learned Advocate Ms. Mayaben Desai for appellant submitted that claims tribunal has committed gross error in not appreciating evidence of driver Exh. 29. She also submitted that claims tribunal has committed gross error in relying upon evidence of Mansukhbhai Kanjibhai Exh. 24 who was having fruit lorry out side compound gate where accident had taken place. She also submitted that income of deceased has also been assessed wrongly and same is on higher side. She has submitted that deceased was aged 24 years, therefore, dependency is to be considered 1/3rd amount from income of deceased. She also submitted that

multiplier of 15 applied by claims tribunal is also on higher side. She further submitted that claims tribunal has committed gross error in not considering age of parents while applying multiplier. She submitted that according to apex court decisions, while applying multiplier, age of deceased or age of parents whichever is higher is to be considered but that principle has not been taken into consideration by claims tribunal while applying multiplier and, therefore, compensation awarded by claims tribunal is on its higher side.

4. Learned Advocate Ms. Shah appearing for respondents claimants supported award by submitting that claims tribunal has not committed any error in making such an award of Rs. 77000.00 for death of a young boy of 24 years.

5. Looking to facts as emerging from award, accident occurred on 23rd December, 1979. On that day, deceased Mahavirsinh Lalubha had gone to Dhandhuka and at about 9.30 a.m., he has been standing out side compound gate of Dhandhuka Bus Stand. ST Bus bearing No. GRS 7800 driven by opponent No. 1 rashly and negligently while taking his bus out side compound of ST Bus Stand and knocked down deceased by right hand side portion of the bus and deceased was immediately admitted in hospital but he succumbed to injuries and, therefore, based upon aforesaid facts, aforesaid claim petition was filed by claimants before claims tribunal claiming total compensation of Rs. 1,30,500.00.

6. Before claims tribunal, claim petition was resisted by GSRTC by filing written statement at Exh. 3 by denying averments made by claimants in their claim petition which written statement was adopted by opponent No. 1 by filing written statement Exh. 10. Issues were framed by claims tribunal at Exh. 4 and it was held by claims tribunal that there was negligence on part of driver of ST Corporation in driving offending vehicle and there was no contributory negligence on part of deceased for said accident and while deciding issue No. 2, claims tribunal held that claimants are entitled for total compensation of Rs. 77000.00 from opponents jointly and severally.

7. I have perused impugned award made by claims tribunal. I have also considered submissions made by learned advocates for parties. Question of negligence has been considered by claims tribunal while considering evidence of one Mansukhbhai Kanjibhai was examined at Exh. 24 as applicant No. 1 examined before claims tribunal was not having personal knowledge about accident. Witness examined at Exh. 24 Mansukhbhai was having fruit lorry near entrance of bus stand. He was selling fruits in his fruit lorry. He was belonging to village Kamalpur but he knew deceased because one girl from village was married to a boy who was related to maternal uncle of deceased. He stated that on date of accident, one bus from Dhandhuka Bus Stand had come out at about 9.00 a.m. and he was at a distance of about 10" from the entrance of ST Stand. According to said witness, as deposed by him, bus was coming out from bus stand and deceased was knocked down by that bus. It was specifically deposed by him that the front portion of driver side had knocked down deceased who was standing there. Evidence of said witness was cross examined by advocate for ST

Corporation wherein it was deposed by him that entire bus had come out from gate when accident had taken place and the deceased was lying ahead of the bus. Witness has of course deposed in his cross examination that he had not left his lorry in order to go to the actual scene of accident and from that, it was argued by the learned advocate for the opponent before claims tribunal that this conduct of witness is unnatural. It was admitted by him that his statement was not recorded by police. Evidence of said witness was appreciated by claims tribunal while bearing in mind that as specifically stated by said witness, accident took place just at a distance of 10" from gate of bus stand and fruit lorry of said witness was at a distance of just 10" away from the entrance of ST Bus Stand as considered by claims tribunal in para 7 of award. Considering evidence of said witness, it was observed by claims tribunal that it is quite natural that the witness might not have shown curiosity to go to the actual place where deceased was lying after sustaining injuries and witness was not appearing to be anyway related to deceased or claimants. Thereafter, claims tribunal has also considered evidence of driver of ST Bus at Exh. 29. After considering evidence on record as aforesaid, claims tribunal has come to conclusion in para 10 of award which is quoted as under:

10. Therefore, in view of the foregoing discussion, as also taking into consideration the nature of injuries, I am inclined to believe the say of the applicant's witness Mansubhai Kanjibhai Exh.24 which is to the effect that the bus which was coming out from the bus stand had knocked down the deceased from the front portion of the driver side, when the deceased was standing outside the compound gate and relying on the testimony of the witness Mansubhai Kanjibhai, I hold that the accident occurred due to rash and negligent driving of opp. No. 1. The issue No. 1 is therefore answered in the affirmative and issue No. 1A is answered in the negative.

8. Considering aforesaid conclusion of claims tribunal based on aforesaid evidence considered by claims tribunal, according to my opinion, claims tribunal has rightly examined matter and has rightly examined issue of negligence and contributory negligence and has not committed any error in answering issue No. 1 and 1A and has rightly held that there was sole negligence of driver of ST Bus for accident. Finding given by claims tribunal on issue of negligence is based on appreciation of evidence on record including FIR Panchanama of place of accident and oral evidence of witnesses as aforesaid which cannot be considered to be erroneous finding and, therefore, submissions made by learned Advocate Ms. Mayaben Desai in that regard cannot be accepted and same are, therefore, rejected.

9. While deciding issue No. 2, claims tribunal considered deposition of applicant No. 1 Lalubha Tapubha at Exh. 15 that deceased was his eldest son and he was serving in Vimal Textiles since last three years prior to his death and he was earning Rs. 500.00 per month. It was also deposed by him that his son was residing with his maternal uncle at Ahmedabad and, therefore, he could give him

Rs. 400.00 p.m. Claims tribunal has also considered Exh. 21, identity card which was showing that deceased was serving in Reliance Textile Industries Ltd. at Naroda since 27.3.77. Claims tribunal also considered Exh. 22, statement of salary paid to deceased for month of August, 1979 which was showing that deceased was drawing total emolument of Rs. 498.16. Considering such evidence as regards income of deceased of Rs. 498.16 p.m. at the time of accident, and considering future prospects of deceased, claims tribunal held that average monthly income of deceased can safely be put at Rs. 800.00 p.m. Thereafter, in para 13 of award, claims tribunal considered that deceased was an unmarried young boy of 24 years and, therefore, considering decision of this Court in case of Mangaldas Mohanlal Patel and Anr. v. Union of India and Anr. XXIII (2) (1982(2) GLR 116, held that 50 per cent thereof will have to be deducted as his own expenses and benefit that the dependents would get would be Rs. 400.00 p.m. , therefore, yearly datum figure would come to Rs. 4800.00. Thereafter, considering age of deceased 24 years, claims tribunal applied multiplier of 15 and held that total dependency would come to Rs. 72000.00 and then claims tribunal added Rs. 5000.00 to that figure towards compensation for loss to estate and awarded total compensation of Rs. 77000.00 to claimants.

10. After considering reasoning given by claims tribunal while deciding quantum, according to my opinion, compensation awarded by claims tribunal to claimants for death of their young son of 24 years old cannot be considered to be unreasonable, unjust or on higher side but same is quite just, reasonable and proper compensation awarded by claims tribunal because claims tribunal has also considered fact that deceased was unmarried boy and that is why claims tribunal deducted 50 per cent from income of deceased towards his personal expenses and thereafter determined dependency. In such cases, 1/3rd deduction can be considered to be enough but in this case, cross objection has not been filed by claimants and, therefore, in view of this back ground, contentions raised by learned Advocate Ms. Mayaben Desai for appellant GSRTC cannot be accepted and same are, therefore, rejected.

11. For reasons recorded herein above, there is no substance in this appeal and same is, therefore, dismissed with no order as to costs. Claims Tribunal Ahmedabad (Rural) at Ahmedabad is directed to pay whole amount of compensation to claimants with interest thereon, if any, by way of an account payee cheque immediately.