

(2008) 12 GUJ CK 0078
In the Gujarat High Court

Case No : First Appeal No. 2019 of 1997 with Civil Application No. 5595 of 1997
in First Appeal No. 2019 of 1997 in First Appeal No. 2019 of 1997

GSRTC

APPELLANT

Vs

Ramaben Manubhai Pancholi

RESPONDENT

Date of Decision : 02-12-2008

Acts Referred:

Citation : (2009) 1 GLH 277

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

Bench : Single Bench

Advocate : Dipen A. Desai, for the Appellant; Shakeel A. Qureshi for Defendants 1.2.1, 1.2.2, 1.2.3, for the Respondent

Final Decision : Dismissed

Judgement

H.K. Rathod, J.—Heard learned Advocate Mr. Dipen A. Desai for appellant Gujarat State Road Transport Corporation and learned Advocate Mr. Shakeel A. Qureshi for respondents claimants. By way of this appeal, appellant ST Corporation has challenged award passed by MACT Bhavnagar in MACP No. 411/96 Exh. 27 dated 4.11.96 wherein claims tribunal has awarded Rs. 2,38,500.00 being 50 per cent responsibility of Corporation with 15 % interest thereon in favour of respondents claimants. Accident occurred on 20.4.96 at about 2.30 p.m. on the main road of Mahuva Rajula Savarkundla between Bhadara and Dudhala, near village Bhadia between Tempo and ST Bus. Deceased, husband of the claimant namely Manubhai Dahyabhai Pancholi expired in the said vehicular accident.

2. Learned Advocate Mr. Desai raised various contentions while challenging award made by claims tribunal. He, submitted that before claims tribunal, except widow, no other person was examined to prove negligence of either of drivers. No eye witness was examined. No driver of tempo as well as ST Bus were examined and, therefore, in absence of any direct evidence, claims tribunal has committed gross error in deciding negligence of both the drivers. He submitted that claims tribunal has committed gross error in assessing quantum of

compensation in absence of cogent evidence as regards income of deceased. He submitted that in absence of cogent evidence, claims tribunal has committed gross error in assessing monthly income of deceased at Rs. 3500.00 p.m. He submitted that multiplier of 18 adopted by claims tribunal is on higher side considering age of deceased 28 years. He also raised contention that as per evidence of widow, an amount of Rs. 15000.00 was spent for medical treatment but claims tribunal awarded Rs. 25000.00 for medical treatment. He also submitted that deceased was doing diamond cutting work and from such cutting of diamond, whether deceased was receiving Rs. 3500.00 income or not, for that, no cogent evidence was produced by claimant and certificate was given by employer Exh.22 but author of such certificate namely employer was not examined before claims tribunal and, therefore, claims tribunal ought not to have relied upon such certificate and therefore, claims tribunal has committed gross error in assessing income of deceased. Except that, no other submission was made by learned Advocate Mr. Desai before this Court and no decision was cited by him in support of the contentions raised by him before this Court.

3. On the other hand, learned Advocate Mr. Qureshi appearing for claimants has made submissions supporting award in question.

4. I have considered submissions made by both learned Advocates. I have also perused impugned award made by claims tribunal. As stated earlier, accident occurred on 20.4.96 at about 2.30 p.m. on the main road of Mahuva Rajula Savarkundla between Bhadara and Dudhala, near village Bhadia between Tempo and ST Bus. Deceased, husband of the claimant namely Manubhai Dahyabhai Pancholi expired in the said vehicular accident. On the date of accident, husband of claimant was travelling in tempo from village Khijda, going to Mahuva which tempo was being driven by Hasambhai slowly on moderate speed. When tempo had reached near village Bhadaya, ST Bus coming from back side dashed with tempo which resulted into death of husband of claimant. Tempo had turned turtle because of dash given by ST Bus. On 24.4.96, husband of claimant expired during the course of treatment. Police case means FIR was registered in respect of said accident at Mahuva Police Station by Mr. Manjaria, Police Constable on 13.6.96 and thereafter prosecution was lodged against ST Bus Driver. In police record, necessary entry was made for death of deceased and thereafter, claim petition was filed by claimant. According to claimants, deceased was aged 28 years, having income of Rs. 3500.00 p.m. while doing diamond cutting work and deceased had married three years prior to accident and was having 24 days old child at the time of accident.

5. Before claims tribunal, written statement was filed by ST Corporation at Exh. 11. Driver, owner and insurance company of the Tempo involved in accident was not joined as a party to claim petition by claimants before claims tribunal. In reply filed by ST Corporation, averments made by claimants in their claim petition as regards age of deceased, income of deceased and compensation were denied by ST Corporation. It was also alleged by ST Corporation that the accident

has occurred because of negligence and carelessness on the part of driver of Tempo and complaint of incident was lodged belatedly. It was also contended that the driver and owner of tempo has paid Rs. 200.00 for the damage caused to ST Bus and, therefore, in such circumstances, ST Corporation is not at all responsible for any amount of compensation.

6. Issues were framed by claims tribunal at Exh. 13. Before claims tribunal, claimant widow was examined at Exh. 26 who produced complaint Exh. 18, copy of panchanama of scene of incident Exh. 19, certificate from Mahuva Hospital Exh. 20, PM Note Exh. 21, certificate of employer, owner of diamond cutting factory Exh. 22, birth date certificate of deceased Exh. 23 birth certificate of claimant No. 2 Exh. 24 and card of diamond cutting Exh. 25.

7. After examining evidence on record, claims tribunal came to conclusion that looking to police case filed against driver of bus owned by ST Corporation, he ought to have remained present before claims tribunal by remaining present and he ought to have given evidence whether he is responsible or not but driver of bus of ST Corporation had not stepped into witness box before corporation though police prosecution - FIR is filed against driver of ST Corporation. Necessary entry was made in police station Exh. 18 and thereafter, claims tribunal has considered that looking to evidence on record which includes evidence of widow that accident occurred, no doubt, widow is not an eye witness but claims tribunal has considered panchanama and PM Report and came to conclusion that accident occurred because of rash and negligent driving of both drivers namely driver of ST Bus and driver of tempo both had failed to take reasonable care and caution while driving their respective vehicles. According to claims tribunal, looking to, Exh. 18 complaint an entry made in police station, accident has taken place only because of negligence on the part of drivers of both vehicles and accordingly claims tribunal has also considered Exh. 19 panchanama where width of road is shown 24 ft. therefore, two vehicles could easily pass through road and thus, examining evidence on record, claims tribunal held that drivers of ST Bus and tempo both are equally responsible for accident in question and, therefore, issue No. 1 and 2 were answered accordingly by claims tribunal.

8. As regards contention of learned advocate Mr. Desai that claims tribunal has committed an error in deciding negligence on the part of driver of ST Bus while relying upon evidence of widow who was not an eye witness, from perusal of award, it appears that this is not so. From perusal of award, it appears that claims tribunal has not only considered evidence of widow but has also considered panchanama of scene of accident which was throwing light on the situation at the scene of accident. Further, in Motor Vehicles Act, it is not necessary for the victim of a vehicular accident to establish that he suffered because of negligence on the part of driver of offending vehicle. While claiming compensation under the Motor Vehicles Act, it is not necessary for victim/claimant to establish that there was negligence on the part of driver of offending

vehicle. Claimant/victim has to establish that injury and/or death occurred due to vehicular accident and that is enough and no further evidence is necessary. Here in case before hand, as discussed above, there was enough material on record before claims tribunal to consider aspect of negligence namely panchanama of scene of offence that the width of road was 24 ft. enough for passing of two vehicles from opposite side to each other as well as Exh. on the basis of Exh. 15 as well as complaint complaint Exh. 18 which were establishing involvement of tempo and ST Bus in accident. Therefore, according to my opinion, claims tribunal has rightly examined matter while considering panchanama Exh. 19 and complaint Exh. 18 as well as necessary entry made in police station and has rightly come to conclusion that there was sufficient width of road 24 ft. and yet accident occurred which suggests that there is negligence on the part of drivers of both the vehicles. Some time, it happen that nobody survive in a vehicular accident to give evidence about accident. Some time, nature of accident is such that the principles of res-ipsa-lequitor will apply and in that case also, specific evidence of eye witness is not necessary, therefore, contention raised by learned Advocate Mr. Desai cannot be accepted. According to my opinion, claims tribunal has rightly examined matter on the basis of aforesaid documents while deciding question of negligence and has rightly come to conclusion that there was negligence of both drivers and in doing so, no error has been committed by claims tribunal, therefore, contentions raised by learned Advocate MR. Dipen Desai in that regard are rejected.

9. As regards contention raised by learned Advocate Mr. Desai about compensation and assessment of income of deceased, claims tribunal has rightly relied upon evidence of widow who know better income of her deceased husband. According to widow, her deceased husband was doing diamond cutting work and was earning Rs. 3500.00 p.m. which is supported by Exh. 22 certificate and Exh.25 card of diamond cutting given by employer to deceased and, therefore, documents Exh.22 and 25 were supporting oral version of widow about earning of deceased from diamond cutting work. Therefore, it cannot be said that claims tribunal has decided income of deceased without any evidence. It is necessary to note that a poor person in society who is earning his livelihood by doing petty labour work would generally not be having any exact proof about his exact income and a poor person working in private establishment would also generally not be having documentary evidence like pay slip or income tax return or something like that which are generally available with persons doing white color job or persons engaged in trade and business. So, such claimant would not be able to give evidence by producing salary slip or income tax return for establishing that he was earning this much amount by doing petty labour work or working in private establishment. After taking work from such person belonging to lowest strata of the society, his employer would obtain his signature on some vouchers and such vouchers would thereafter remain in custody of employer and in such circumstances, such poor claimant would not be possessing any document to prove income by way of salary or for doing petty labour work from

place to place which is not the situation in the case before hand. Therefore, same yard stick will not apply in case of an employee those who are working in private establishment and not having any evidence about their income. In the case before, there was enough evidence not controverted by ST Corporation for deciding income of deceased as stated above. Therefore, contention raised by learned Advocate Mr. Desai in that regard cannot be accepted and same is, therefore, rejected because deceased was working in diamond cutting industry private establishment and employer of that private establishment issued certificate showing income of deceased of Rs. 3500.00. Employer was not examined to prove that certificate but that does not mean that the certificate is wrong or incorrect because it is supported by oral evidence of widow of deceased who could know better what is the income of her deceased husband. Therefore, contention raised by learned Advocate Mr. Desai in that regard cannot be accepted in view of the fact that such poor person working in diamond cutting factory receiving Rs. 3500.00 p.m. from private employer would not be having exact proof but court can gather facts from evidence on record and there is material on record which can be considered to be relevant piece of evidence for working out income of deceased, therefore, claims tribunal has rightly relied upon Exh.22 and Exh.25 as well as oral version of widow Exh. 26 and in doing so, no error has been committed by claims tribunal.

10. From perusal of award, it appears that claims tribunal has fixed prospective income of deceased at Rs. 3000.00 and held that the dependency of claimants could be considered Rs. 2000.00. Here, claims tribunal has committed gross error because income of Rs. 3500.00 per month is proved by claimants and then, prospective income cannot be lesser than the existing monthly income at the time of death of victim. Prospective income of victim would always be higher than the existing income but claims tribunal fixed prospective income of deceased which is lesser than existing income of deceased, so, this is the basic error committed by claims tribunal against claimants and not against Corporation. No doubt, claimants have not challenged this award but question remains that basic error has been committed by claims tribunal while working out prospective income of deceased, original salary must increase or enhanced but it cannot be reduced. After considering prospective income lesser than existing income, claims tribunal deducted Rs. 1000.00 from Rs. 3000.00 towards his personal expenses and fixed dependency of Rs. 2000.00 and looking to age 28 years of deceased, applied multiplier of 18 and awarded compensation accordingly by adding Rs. 20,000.00 towards loss of estate and Rs. 25000.00 towards expenditure incurred for treatment. In regard to that, contention raised by learned Advocate Mr. Desai is that according to widow of deceased, an amount of Rs. 15000.00 was spent for medical treatment and yet claims tribunal awarded Rs. 25000.00 on that count and in doing so, claims tribunal has committed an error. Claims tribunal has considered that after accident, deceased was brought in hospital at Mahuva as well as Bhavnagar for treatment and he expired four days after accident and, therefore, awarded Rs. 25000.00 towards

treatment. While considering this aspect, it is also required to be considered that no amount has been awarded by claims tribunal towards funeral charges and transportation charges, therefore, considering the amount spent by claimant for treatment of deceased and also keeping in view expenses for transportation from Mahuva and Bhavnagar and funeral expenses, according to my opinion, award of Rs. 25000.00 could be considered to be reasonable and proper for all such aspects as a whole and, therefore, contention raised by learned Advocate Mr. Desai in that regard also cannot be accepted and same is, therefore, rejected.

11. Considering award as a whole, claims tribunal has held drivers of both offending vehicles equally responsible for accident and accordingly directed appellant to pay compensation to claimants with interest thereon as stated above which cannot be considered to be on higher side in any manner but same appears to be reasonable and proper. In compensation cases, there is no any exact measurement available with claims tribunal and there cannot be any straight jacket formula for working out compensation but it always depends upon guess work with application of mind while exercising reasonable care and therefore, submissions made by learned Advocate Mr. Desai cannot be accepted. Entire award passed by claims tribunal is reasonable which cannot be considered to be on higher side and, therefore, there is no substance in this appeal and same is required to be dismissed.

12. It is necessary that this first appeal of 1997 has remained pending before this Gujarat High Court for admission for a period of about 11 years and now after 11 years, this court has examined matter and merits of appeal and according to my opinion, claims tribunal has rightly decided claim petition and therefore, no interference of this court is required and, therefore, this appeal is dismissed with no order as to costs. Since first appeal has been dismissed by this court, no order is required to be passed on civil application, therefore, civil application also stands disposed of accordingly. Amount if any deposited by appellant in registry of this Court be transmitted to claims tribunal immediately.