

(2016) 01 GUJ CK 0179
In the Gujarat High Court
Case No : First Appeal No. 3648 of 2009.

Guddidevi Harendrakumar Jasval and Others

APPELLANT

Vs

Dayaram Ramdas Yadav and Others

RESPONDENT

Date of Decision : 29-01-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 168

Citation : (2016) AAC 1074

Hon'ble Judges : M.R. Shah, J.

Bench : Single Bench

Advocate : Amit N. Patel, Advocate, for the Appellant; Gc Mazmudar, Advocate and Hg Mazmudar, Advocate, for the Respondent

Final Decision : Allowed

Judgement

M.R. Shah, J. (Oral) - Feeling aggrieved and dissatisfied with the impugned judgment and award dated 30.08.2008 passed by the learned Motor Accident Claims Tribunal (Main), Valsad (hereinafter referred to as "Tribunal") in Motor Accident Claim Tribunal No.269/2006 by which the learned Tribunal has partly allowed the said claim petition and has awarded a total sum of Rs.1,85,000/- with interest at the rate of 8% thereon from the date of claim petition till realization, the original claimants have preferred the present First Appeal to enhance the amount of compensation awarded by the learned Tribunal.

2. Shri Amit Patel, learned advocate appearing on behalf of the original claimants has vehemently submitted that the learned Tribunal has materially erred in awarding Rs.1,40,000/- only under the head of future loss of income/loss of dependency assessing the notional income of the deceased at Rs.15,000/- per annum.

2.1 It is submitted that the learned Tribunal ought to have assessed the income of the deceased notionally at Rs.36,000/- per annum.

2.2 It is further submitted by Shri Amit Patel, learned advocate appearing on

behalf of the original claimants that even the learned Tribunal has materially erred in applying the multiplier of 14. It is submitted that as the deceased was aged 26 years of age, the learned Tribunal ought to have applied the multiplier of 17, as per the decision of the Hon^{ble} Supreme Court in the case of Sarla Verma and Ors. v. Delhi Transport Corporation and Anr. reported in (2009)6 SCC 121. It is further submitted that even the learned Tribunal has erred in awarding the interest at the rate of 8% per annum. It is submitted that as the accident occurred in the year 2003, considering the catena of decisions of the Hon^{ble} Supreme Court as well as this Court, the learned Tribunal ought to have awarded interest at the rate of 9% per annum.

2.3 It is further submitted by Shri Amit Patel, learned advocate appearing on behalf of the original claimants that instead of Rs.40,000/- the learned Tribunal ought to have awarded a total sum of Rs.50,000/- under the conventional heads.

Making above submissions, it is requested to modify the impugned judgment and award passed by the learned Tribunal to the aforesaid extent.

3. Shri H.G. Mazmudar, learned advocate appearing on behalf of the respondent ? insurer ? insurance company has tried to oppose the present First Appeal, however has failed to satisfy the Court how assessing the income of the deceased notionally at Rs.15,000/- per annum can be said to be just and proper. Therefore, he has ultimately left it to the Court, however has submitted that in the facts and circumstances of the case, notional income of the deceased can be considered at Rs.30,000/- per annum. It is submitted that no error has been committed by the learned Tribunal in awarding interest at the rate of 8% per annum.

4. Heard learned advocates appearing on behalf of the respective parties at length.

At the outset it is required to be noted that the accident occurred in the year 2003 and deceased at the time of accident was a vegetable vendor. Even considering the minimum wage applicable in the year 2003, if the income of the deceased is notionally assessed at Rs.30,000/- per annum (Rs.2500 per month i.e. Rs.83.33 per day), it will meet the ends of the justice. As the deceased was aged 26 years of age, multiplier of 17 is required to be applied considering the decision of the Hon^{ble} Supreme Court in the case of Sarla Verma (Supra). Looking to the number of dependents, 3rd is deducted towards personal expenses of the deceased, which is rightly deducted. Under the circumstances, loss of dependency would come to Rs.3,40,000/-.

4.1 The original claimants shall also be entitled to a total sum of Rs.50,000/- under conventional heads i.e. loss of estate, loss of consortium and loss of love and affection. The original claimants shall also be entitled to Rs.5000/- towards funeral expenses.

4.2 As the accident occurred in the year 2003, as per the catena of decisions of

the Hon^{ble} Supreme Court as well as this Court, the learned Tribunal ought to have awarded interest at the rate of 9% per annum from the date of claim petition till realization. To the aforesaid extent, the impugned judgment and award passed by the learned Tribunal is required to be modified.

5. In view of the above and for the reasons stated above, present First Appeal succeeds in part. Impugned judgment and award dated 30.08.2008 passed by the learned Motor Accident Claims Tribunal (Main), Valsad in Motor Accident Claim Tribunal No.269/2006 is hereby modified to the extent and it is held that the original claimants shall be entitled to Rs.3,95,000/- with 9% interest thereon from the date of claim petition till realization. The balance enhanced amount be deposited by the respondent No.3 ? insurer with the learned Tribunal within a period of eight weeks from today and on deposit of balance enhanced amount, the learned Tribunal to pay the same to the original claimants by Account Payee Cheque on proper identification and verification. Present First Appeal is allowed to the aforesaid extent. No costs.