

(2008) 09 GUJ CK 0045
In the Gujarat High Court
Case No : F.A. No. 1113 of 2008

Gujarat State Road Trans. Corpn.

APPELLANT

Vs

Bhavnaben R. Shah (deleted) and Others

RESPONDENT

Date of Decision : 16-09-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2009) ACJ 1999

Hon'ble Judges : Z.K. Saiyed, J; J.R. Vora, J

Bench : Division Bench

Advocate : Hardik C. Rawal, for the Appellant; J.B. Pardiwala, for the Respondent

Judgement

J.R. Vora, J.—The present first appeal is preferred by the original opponent Gujarat State Road Transport Corporation of Motor Accident Claim Petition No. 167 of 2003, against the judgment and award delivered by Motor Accidents Claims Tribunal (Auxiliary), Valsad on 17.6.2006, wherein the Tribunal was pleased to award, in all, compensation of Rs. 15,63,500 to the claimants-present opponents with running interest at the rate of 7.5 per cent from the date of application till realization, for the death of Rameshchandra Shah, caused by accident, who happens to be the father of present respondent Nos. 2 and 3.

2. As to the brief facts of the case, Rameshchandra Shah, on 29.8.1997, was travelling from Dahej to Ankleshwar in his Maruti car, which dashed near village Bhesli with S.T. bus bearing No. GJ 1-Z 1265, driven by driver of the original opponent present appellant-Gujarat State Road Transport Corporation and on account of head-on collision, death of Rameshchandra Shah was caused.

3. Claim petition was preferred by the widow-applicant No. 1 Bhavnaben, daughter Hiral Rameshchandra Shah and son Ronak Rameshchandra Shah respondents herein-original applicant Nos. 2 and 3, for compensation of Rs. 1,00,00,000 and as above stated, the Tribunal was pleased to award the above stated amount by way of compensation to the claimants through its judgment

and award impugned in this appeal. Being aggrieved by the said judgment and award passed by the Tribunal, the present appeal is filed by the original opponent Gujarat State Road Transport Corporation u/s 173 of the Motor Vehicles Act, 1988.

4. The learned advocate Mr. Hardik C. Rawal for appellant and learned advocate, Mr. J.B. Pardiwala for opponents-original claimants were heard in detail.

5. It is required to be noted here that widow of deceased Rameshchandra Shah, i.e., Bhavnaben died during the proceedings before the Tribunal and, therefore, she was deleted as party and now the son and daughter of the deceased continued as claimants and they are opponents herein.

6. So far as the issue of negligence is concerned, there is no dispute between the parties and, therefore, what is decided by the Tribunal in respect of negligence to the effect that the deceased was negligent to the extent of 50 per cent and the driver of the S.T. Corporation was negligent to the extent of 50 per cent in causing accident appears to have been accepted by the parties.

7. What is vehemently contested is the assessment of compensation. It appears that after perusing the evidence and by proper assessment of the same, learned Tribunal came to the conclusion that from Rachna Thin Mark Exim Co. Ltd., where the deceased was serving, he was paid salary of Rs. 7,333 per month. The learned Tribunal has placed reliance on Exh. 80 for the conclusion. It appears that so far as this conclusion is concerned, there is no dispute amongst the parties. From salary income, dependency benefits is assessed by the learned Tribunal after considering the prospective income by recognized method and the income of the deceased was assessed by Tribunal to the extent of Rs. 10,999 as base to award dependency benefits. Thereafter, the learned Tribunal deducted 1/3rd portion of salary, which was the pocket expenses of the deceased and learned Tribunal assessed clear dependency benefits to the claimants at Rs. 7,333 monthly and Rs. 87,996 yearly. The deceased was aged 45 years vide Exh. 54, certificate of date of birth produced and, therefore, the Tribunal applied multiplier of 13 and the dependency benefits were assessed by the Tribunal at Rs. 11,43,948 and in round figure, Rs. 11,44,000. In addition to this, Tribunal also assessed the income of the deceased from the business of the deceased. The evidence was assessed by the Tribunal in this respect about the income from Hirsha Corporation and Kamal Corporation, both belonging to H.U.F. of the deceased and from this, having regard to four partners, who were in both companies, the profit part of the deceased was assessed by the Tribunal to the extent of Rs. 1,50,000 per annum. Considering the prospective income of the deceased in this respect also, learned Tribunal came to the conclusion that the dependency benefits of the claimants from the income of the deceased was about Rs. 1,50,000 annually and applying multiplier of 13 the dependency benefits was assessed at Rs. 19,50,000. Thus, considering the dependency benefits from salary income and income of business, Tribunal awarded in all Rs. 30,94,000 towards loss of dependency benefit. In addition to this, the Tribunal

also awarded Rs. 26,000 for loss of expectancy of life, Rs. 7,000 towards transportation and funeral expenses, totalling to Rs. 31,27,000. However, since the Tribunal held that the deceased was contributory negligent to the extent of 50 per cent, the amount of compensation also was slashed down to 50 per cent and, therefore, the Tribunal held that the claimants were entitled to Rs. 15,63,500 towards compensation.

8. This assessment is vehemently challenged by the S.T. Corporation-appellant herein, firstly, on the ground that income from business has not been properly assessed by the Tribunal and that multiplier awarded by the Tribunal is on the higher side. It is submitted by learned advocate for the appellant that except salary income, the Tribunal ought not to have considered the income from business of the deceased and that in facts and circumstances of the case, when the deceased was 45 years of age and since the widow of the deceased also died during the proceedings, multiplier of 13 appears to be on quite higher side. While on the other hand, learned advocate for the claimants, i.e., opponents herein, submitted that in fact Second Schedule to the Motor Vehicles Act allows multiplier of 15 for the age of 40 to 45. The Tribunal, in fact, applied less multiplier than the claimants were entitled to. It is submitted that the deceased was hale and healthy and was likely to live long life and in the facts and circumstances, it could not be said that the Tribunal was in error in awarding multiplier of 13. It is also submitted by learned advocate for the opponents original claimants that the learned Tribunal assessed the income from the business properly and deceased was proprietor of two companies, i.e., Rachna Thin Mark Exim Co. Ltd. and Kamal Corporation. The claimants have been examined in this respect and witness Kishor Gheewala was auditor and chartered accountant who produced on record the income tax returns and audit reports of these companies. Therefore, the assessment of the Tribunal as to the income of the deceased from those two companies is established sufficiently.

9. We have considered the contentions raised extensively. We have gone through the record and proceedings of the Tribunal and while considering the assessment made by the Tribunal, it becomes clear that the claimants could establish sufficiently the income of the deceased from salary and from business. It is proved that the deceased was doing business of cement and building materials through both the above companies. These companies were audited by recognized chartered accountant, who is examined by the claimants and he is witness Kishor Gheewala. The income tax returns filed by these companies are placed on record. Gheewala is an independent witness and, therefore, it could not be said that there was no income of the deceased from companies from business/salary as it has been proved by evidence. The learned Tribunal has extensively considered this aspect in paras 12 and 13 of the judgment and award impugned in this appeal. Nothing could be shown by the appellant to interfere in this conclusion of the Claims Tribunal that the dependency benefits of the claimants from the salary income of the deceased was monthly Rs. 7,333 and that Rs. 1,50,000 yearly from business.

10. However, it clearly appears that the learned Tribunal has awarded higher multiplier in the facts and circumstances of the case. True it is that in Second Schedule, 15 as multiplier is allowed to the age of 45 years, but then the Second Schedule to the Act is a guideline and not mandate. Various factors are to be looked into while applying multiplier for future dependency benefits. In Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya and Others, the Supreme Court allowed 12 as multiplier when the deceased was aged about 38 years. Dependency, expectancy of life, age of the claimants, other relevant factors are required to be considered while applying multiplier. We find that the Tribunal clearly erred in this regard. We find that the widow of the deceased Bhavnaben died during proceedings leaving two claimants, i.e., son and daughter of the deceased. Even at the time of filing of this appeal, daughter was aged 21 years and had married while son was aged 19 years. Now, the question which arises is whether multiplier of 13 applied by the Tribunal is just and proper. Having regard to various decisions, specifically above decision of the Supreme Court and considering various factors, we feel that proper multiplier which ought to have been awarded by the Tribunal is 11 and not 13 and, therefore, we reduce the award of compensation impugned in this appeal to the extent of 2 multipliers.

11. Now applying 11 as multiplier to the dependency benefits as assessed by the Claims Tribunal, the loss of future income to the claimants on the account of salary would come to Rs. 9,67,956 instead of Rs. 11,44,000 as awarded by the Tribunal. Likewise, the amount of dependency benefits from the income of business after applying multiplier of 11 would come to Rs. 16,50,000 instead of Rs. 19,50,000 as has been awarded by the Tribunal. Totalling Rs. 9,67,956 and Rs. 16,50,000, the amount comes to Rs. 26,17,956 and this is amount for which the claimants are entitled and not the amount of Rs. 31,27,000 as awarded by the Tribunal towards the future loss of income, i.e., dependency benefits. Considering 50 per cent contributory negligence of the deceased, this amount comes to Rs. 13,08,978, as awarded by Tribunal. Adding the amount of Rs. 26,000 towards loss of expectancy of life, Rs. 7,000 for transportation and funeral charges, the amount comes to Rs. 13,41,978. This is the amount to which the claimants are entitled and, therefore, we modify the judgment and award impugned in this appeal to the above extent that instead of Rs. 15,63,500 the claimants would be entitled to the compensation of Rs. 13,41,978 with running interest at the rate of 7.5 per cent from the date of application till realization.

12. In the result, this appeal is partly allowed. The judgment and award impugned in this appeal is modified and it is that the opponents original claimants are entitled to compensation of Rs. 13,41,978 instead of Rs. 15,63,500 awarded by the Tribunal with running interest at the rate of 7.5 per cent from the date of application till realization from the appellant.

13. Appellant is directed to deposit the amount of award as afore-stated within four weeks from today in the Tribunal. Tribunal shall disburse the amount as per

award accordingly.