(2010) 08 GUJ CK 0029

In the Gujarat High Court

Case No : First Appeal No. 1071 of 1988

Gujarat State Road Transport Corporation and Another — APPELLANT

Vs

Kankuben and Others — RESPONDENT

Date of Decision : 25-08-2010

Acts Referred:

Citation : (2010) 08 GUJ CK 0029

Hon'ble Judges : Ravi R. Tripathi, J

Bench : Single Bench

Advocate : M.D. Pandya, for the Appellant; R.M. Parmar, for Defendant 3, for the Respondent

Final Decision : Dismissed

Judgement

Ravi R. Tripathi, J.—The Gujarat State Road Transport Corporation (hereinafter referred to as ''GSRTC'', for short) is before this Court being aggrieved by judgment and award dated 30.11.1987 passed by the MACT (Main), Rajkot in MACP No. 219 of 1986, whereby the Tribunal was pleased to award an amount of Rs. 1,83,000/- with proportionate cost and interest @ 9% to the claimants consisting of widow, two minor children, father and disabled minor sister of the deceased.

1.1 The Tribunal, while answering Issue No. 3, i.e. passing of the final order, ordered apportionment of the amount as set out in paras-26, 27 and 28. The final order passed by the Tribunal reads as under:

31. Applicant No. 1 widow Kankuben Ratilal is apportioned Rs. 58,000/- is ordered to invest Rs. 70,000/- (Seventy Thousand) in fixed deposit in any nationalized bank of her choice for a period of seven (7) years with provision to collect monthly or periodically the interest to be used for the maintenance of herself and two minor children.

32. The remaining amount after deducting requisite court fees shall be paid to her by a crossed cheque, including entire interest and costs.

33. A sum of Rs. 50,000/- (Fifty thousand) apportioned to applicant No. 2 shall be invested in his name alongwith the name of applicant No. 1 Kanmuben Ratilal as his guardian in a fixed deposit with any nationalized bank of her choice for a period of seven (7) years with a provision that no interest shall be paid but it shall be capitalized from time to time (reinvestment plan) and on maturity, the entire amount with principle and interest shall be again reinvested with similar condition of capitalizing the interest from time to time for a further period of seven years.

34. So far as applicant No. 3 is apportioned Rs. 50,000/- (Fifty thousand), the entire amount shall be invested in her name alongwith the name of applicant No. 1 Kankuben Ratilal in fixed deposit in any of the nationalized bank for a period of seven (7) years with a provisions that no interest shall be paid but shall be capitalized from time to time (reinvestment plan) and on maturity, it shall be again reinvested in the same manner for a period of seven (7) years: and on that maturity attain it shall be invested for a further period of three (3) years with a provision to collect interest monthly or periodically.

35. Applicant No. 4 is ordered to invest Rs. 20,000/- (Twenty Thousand) out of the amount apportioned i.e. Rs. 25,000/- with provision to collect monthly or periodically as the case may be, for a period of five (5) years in any nationalized bank of his choice. The remaining sum be paid by Crossed cheque to appli. No. 4.

1.2 The present appeal is restricted to Rs. 55,500/-.

2. Learned Advocate for the appellant - GSRTC submitted that the Tribunal has committed an error inasmuch as, the Tribunal did not hold that the deceased was also responsible for the accident as he did not take necessary care of on-coming traffic on the road. Learned Advocate for the appellant - GSRTC submitted that the accident took place just in the middle of the road. The spot located in the panchnama is 1ft away from the white divider line, which is referred to as ''road divider''.

2.1 Learned Advocate for the appellant - GSRTC next submitted that the Tribunal has committed an error in not appreciating that the deceased was employed only 3 months before the date of accident and he was on probation and his job was not permanent and his services were liable to be terminated, if he was not found fit. Learned Advocate for the appellant - GSRTC submitted that the Tribunal has erred in holding that the deceased would have reached to Rs. 1,500/- per month. Learned Advocate for the appellant - GSRTC submitted that the Tribunal has awarded the compensation b taking the income of the deceased at Rs. 1,100/- per month, deducting only Rs. 300/- per month, calculating the dependency benefit @ Rs. 800/- per month, Rs. 9,600/- per annum, applying multiplier of 18 and awarding amount of Rs. 1,72,800/- as dependency benefit, which is erroneous. Learned Advocate for the appellant - GSRTC submitted that the amount is on a higher side and cannot be said to be a just compensation.

2.2 Learned Advocate for the appellant - GSRTC invited attention of the Court to the FIR lodged by one Lakhabhai Karshanbhai Harijan, panchnama-Exh.35, evidence of Mohanbhai Haribhai - Exh.30 - driver of the S.T. Bus and evidence of Devraj Govind-Exh.28.

3. Though the Learned Advocate for the appellant - GSRTC emphatically pressed the aforesaid submissions in service, she could not successfully assail any of the findings recorded by the Tribunal.

3.1 So far as earning is concerned, it is on record that the deceased was getting Rs. 983/- per month at the time of accident. That being so, to assess Rs. 1,100/- income for calculating the dependency benefit, cannot be said to be unreasonable by any standard. Taking into consideration the number of dependents, i.e. wife, two minor children, aged father and a minor disabled sister, the deduction of Rs. 300/-, if at all is erroneous, it is on a higher side and not on lower side by any standard.

3.2 So far as multiplier is concerned, the deceased was aged 28 years, i.e. in age group of 25 to 30, which carries the highest multiplier. Besides, multiplier answers the table prescribed in 2nd Schedule to the Motor Vehicles Act. If we consider the observations made by the Hon''ble the Apex Court in the matter of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, then also the multiplier cannot be said to be higher by any standard. That being so, the dependency benefit calculated at Rs. 1,72,800/- to be paid to as many as five dependents cannot be said to be exorbitant or on higher side by any standard. What is added to this figure is only an amount of Rs. 10,000/- under the head of loss of expectation of life. No amount under any other head is awarded by the Tribunal and that takes care of the amount being awarded, even if it is slightly on higher side because some amount could have been awarded towards funeral expenses etc.

4. Having gone through the judgment and award passed by the Tribunal and having perused the meticulous apportionment of the award, the community to which the deceased was belonging and the possibility of remarriage of widow in that community was also present in the mind of the Tribunal, this Court finds that the appeal is without any merit and the same must fail. Accordingly, the appeal fails and the same is dismissed.