

(2014) 08 GUJ CK 0058
In the Gujarat High Court

Case No : First Appeal No. 2646 of 2007 With Civil Application No. 7471 of 2007
in First Appeal No. 2646 of 2007

Gujarat State Road Transport Corporation APPELLANT
Vs

Kokilaben RESPONDENT

Date of Decision : 20-08-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2014) 08 GUJ CK 0058

Hon'ble Judges : Bhaskar Bhattacharya, C.J

Bench : Single Bench

Advocate : Monali H. Bhatt, Advocate for the Appellant

Judgement

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Bhaskar Bhattacharya, C.J.—This appeal under Section 173 of the Motor Vehicles Act is at the instance of the owner of the vehicle and is directed against an award dated 28th February 2005 passed by the Motor Accident Claims Tribunal, and 5th Fast Track Court, Panchmahals at Godhra in Motor Accident Claims Petition No. 2486 of 1999, by awarding a sum of Rs. 2,32,000/- as compensation for the death of the victim with interest at the rate of 9% p.a. from the date of filing of the application till actual realization.

2. Being dissatisfied, the Gujarat State Road Transport Corporation, the owner of the vehicle, has come up with the present appeal.

3. The following facts are not in dispute.

3.1. On 17.11.1999, at about 5.45 a.m., the victim was driving a mini luxury bus from Dakor towards Godhra. At that point of time, there was a head-on collision with ST Bus No. GJ-18 V-2853, coming from opposite direction, as a result the driver of the mini luxury bus died. The claim application was filed by the widow, minor daughter as well as parents of the victim, thereby claiming a sum of Rs. 12,75,000/-. The application was opposed by the owner of the vehicle and the

learned tribunal below on consideration of the materials on record came to the conclusion that in the accident the victim had 60% of negligence whereas the driver of the present appellant had 40% of negligence. The tribunal was of the view that the income of the victim should be treated to be Rs. 3,000/- a month and by application of multiplier of 15, the tribunal arrived at the figure of Rs. 5,40,000/-. In addition to that the widow of the victim was given Rs. 15,000/- by way of consortium and a further sum of Rs. 5,000/- was awarded towards funeral expenses and further Rs. 5,000/- towards transportation charges. Therefore, a total amount of Rs. 5,80,000/- was arrived at. However, in view of finding that the victim was negligent to the extent of 60%, the amount was proportionately reduced to Rs. 2,32,000/-.

4. Being dissatisfied, the owner of the vehicle has come up with the present appeal.

5. Ms. Bhatt, the learned counsel appearing on behalf of the appellant, at the outset, tried to convince this Court that the tribunal below committed substantial error in holding that her client's driver negligence was 40%, which is based on no evidence. Secondly, Ms. Bhatt contends that there was no documentary evidence showing the income of the victim. On the above two grounds, Ms. Bhatt contends that the award passed by the tribunal should be set aside.

6. After going through the materials on record, I am, however, not impressed by any of the submission of Ms. Bhatt.

7. So far the question of negligence is concerned, the driver of the appellant was the best person to give evidence inasmuch as he is alive, whereas the victim, the other driver has died. For the reason best known to the appellant, neither the said driver nor the conductor of the bus was examined. In such circumstances, in the absence of any appeal by the claimant I find no reason to upset the finding of the tribunal that the driver of the State Transport Bus had negligence to the extent of 40% when the accident arose out of head-on collision.

8. As regards the income of the victim, it appears that he was a professional driver of a mini luxury bus. As held by the Supreme Court in the case of Laxmi Devi and Others Vs. Mohammad Tabbar and Another, , nowadays even an unskilled labourer earns Rs. 100/- a day. Therefore, the victim being a professional driver the finding of the tribunal that his income was Rs. 3,000/- a month cannot be said to be arbitrary. Similarly, multiplier of 15 in the facts of the present case was quite reasonable.

9. I, thus, find no reason to interfere with the findings recorded by the tribunal below. The appeal is, thus, devoid of any merit and is consequently dismissed. In view of disposal of the appeal itself, connected Civil Application has become infructuous and is disposed of accordingly.

10. The appellant is directed to deposit the arrear amount with interest, if not already deposited, before the tribunal positively within one month from today.

The amount of Rs. 25,000/- already deposited at the time of presentation of this appeal may be immediately sent to the tribunal so that the tribunal may release the amount in favour of the claimant.