

(2022) 06 GUJ CK 0091
In the Gujarat High Court
Case No : R/First Appeal No. 2538 Of 2010

Hamidabanu Anawarbhai Multani & 2 Other(S)	APPELLANT
Vs	
Haiderbhai Bhikhabhai Bhetariya & 5 Other(S)	RESPONDENT

Date of Decision : 09-06-2022

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2022) 06 GUJ CK 0091

Hon'ble Judges : R.M.Chhaya, J;Sandeep N. Bhatt, J

Bench : Division Bench

Advocate : MTM Hakim, Kashyap R Joshi, Vibhuti Nanavati

Final Decision : Partly Allowed

Judgement

R.M.Chhaya, J

1. Feeling aggrieved and dissatisfied by the judgment and award dated 02.09.2008 passed by the Motor Accident Claims Tribunal (Aux), Bharuch in MACP No. 701/03, the original claimants have preferred the present appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the "Act").

2. The following facts emerge from the record of the appeal -

2.1 That the accident took place on 05.08.2003. It is the case of the claimants that the deceased Anwarbhai Yusufbhai was travelling with his family members in Tata Sumo bearing registration No. GJ-06-X-9085 and was travelling between Bharuch to Vadodara. It is the further case of the claimants that at about 11.00 PM, as it was raining, for safety purpose, the TATA Sumo was parked near Almagir on the road abutting to national highway no.8 near Rajmandir Hotel. The persons travelling in the SUMO car got down for attending nature's call. At that juncture, another Tata Sumo car bearing registration no. GJ-05-AG-6913 came there and was also parked. The record indicates that at that time one car Luxury Bus No. GJ-05-Z-8282, which was being driven in excessive speed in rash and

negligent manner, dashed with the Sumo car because of which, the claimants sustained injuries and due to the said accident, the deceased fell down and the wheel of the Tata Sumo ran over the body of the deceased and he sustained serious injuries and succumbed to the injuries during treatment at Vadodara hospital. It was the case of the claimants that the deceased was working as Helper with Asian Paints Ltd. and fall under Workman 'B' Category and was drawing salary of Rs. 14,158/-p.m. and on the said basis, the present claim petition was filed under Section 166 of the Act and claimed compensation of Rs. 35,00,000/-.

2.2 The claimants also relied upon the oral deposition of Hamidabanu, wife of the deceased at exhibit 37 and one Shaikh Mohammed Yusuf Abbasbhai at exhibit 40. The appellants-claimants also relied upon plethora of documentary evidence such as office copy of the letter asking for details regarding salary, perks and other details of deceased Anwarbhai working with Asian Paints Co. Ltd. at exhibit 41, copy of the letter of Asian Paints Ltd. providing salary details of deceased at exhibit 42, Salary slip of deceased Anwarbhai for the month of July 2003 at exhibit 43, Certified copy of the salary slip of one of the employee Jangi Yadav, working with Asian Paints Ltd. at exhibit 46, Injury Certificate given by SSG Hospital, Vadodara of claimant Hamidaben Anwarbhai at exhibit 47, Certified copy of pay-slip of deceased Anwarbhai provided by Asian Paints Co. for the months March-02 to June 03 at exhibit 50, certified copy of certificate showing bonus paid to deceased from April-02 to March-03 to deceased Anwarbhai by Asian Paints Co. at exhibit 51, Certified copy of pay-slip of employee Jangi L. Yadav provided by Asian Paints Co. for the months March-02 to June 03 at exhibit 52, certified copy of certificate showing bonus paid to employee Jangi L. Yadav from April-02 to March-03 by Asian Paints Co. at exhibit 53, Xerox copy of investigation papers relating to offence registered with Varnama Police Station for the incident at exhibit 56, xerox copy of the statement given before the police by the driver of the Tata Sumo involved in the accident at exhibit 57, xerox copy of the statement given before the police by the driver of the Luxury Bus involved in the accident at exhibit 58, Certified copy of the duly signed and sealed information given by the Duty Head Constable of the Govt. Hospital to Varnama Police Station at exhibit 59, Carbon copy of the FIR registered with the Varnama Police Station for the accident at exhibit 60, certified copy of the panchnama of the place of incident at exhibit 61, Certified copy of the PM report of deceased Anwarbhai at exhibit 62, School Leaving Certificate of deceased Anwarbhai at exhibit 63, Copy of the ID Card given Asian Paints Co. Ltd. to the deceased Anwarbhai at exhibit 64, Copy of the RC book of the Luxury Bus involved in the accident at exhibit 65, Insurance Policy of the Tata Sumo involved in the accident at exhibit 66. The Tribunal after appreciating the evidence on record, came to the conclusion that the accident took place because of the sole negligence of the driver of the Luxury Bus, and after appreciating the oral as well as documentary evidence, determined the income of the deceased at Rs. 10,600/- p.m. and after giving prospective and deducting amount towards personal expenses and

applying multiplier of 12, awarded a sum of Rs.15,26,400/- under the head of loss of dependency, Rs. 15,000/- towards loss of estate, Rs.15,000/- towards loss of consortium and Rs. 2,500/- towards funeral expenses and thus, while partly allowing the claim petition, awarded a sum of Rs. 15,58,900/- with 9% interest from the date of filing of the claim petition till its realisation. Being aggrieved by the same, the present appeal is filed by the claimants as aforesaid.

3. Heard Mr. Mohsin Hakim, learned advocate for the appellants, Mr. Vibhuti Nanavati, learned advocate for respondents no.3 and 6, the insurance company and Mr. Kashyap Joshi, learned advocate for respondents no. 4 and 5. Though served, no one appears for the other respondents.

4. Mr. Hakim, learned advocate appearing for the appellants relied upon the documentary evidence at exhibits 42, 43 and 46, in particular, contended that the Tribunal has committed an error in considering the income of the deceased at Rs. 10,600/- p.m. Relying upon the said set of evidence, Mr. Hakim contended that the Tribunal has committed an error in determining the income. According to Mr. Hakim, the amount received as gross salary as well as the amount received under the head of bonus including travelling allowances as well as overtime has to be considered to be a part of the income while determining the income. Mr. Hakim further contended that considering the age of the deceased to be 43 years on the date of the accident, the appropriate multiplier would be that of 14 and not 12 as granted by the Tribunal. It was also further contended by Mr. Hakim, learned advocate for the claimants that kith and kin would be entitled to consortium as held by the Hon'ble Apex Court in the case of United India Insurance Co. Ltd. Vs. Satinder Kaur alias Satwinder Kaur and Ors. reported in AIR 2020 SC 3076, Magma General Insurance Company Limited vs. Nanuram alias Chuhru Ram and Ors. reported in (2018) 18 SCC 130 and the New India Assurance Co. Ltd. Vs. Somwati reported in (2020) 9 SCC 644. Relying upon the judgment of the Apex Court in the case of National Insurance Company Ltd. Vs. Pranay Sethi, reported in 2017 (16) SCC 680, it was also contended by Mr. Hakim that the appellants would be entitled to Rs.15,000/- as loss of estate and Rs.15,000/- towards funeral expenses. Mr. Hakim thus contended that on the aforesaid grounds, the impugned judgment and award deserves to be modified and the amount of compensation awarded by the Tribunal deserves to be enhanced as prayed for by allowing the appeal.

5. Per contra, Mr. Vibhuti Nanavati, learned advocate has opposed this appeal. Mr. Nanavati, learned counsel appearing for the insurance company of both the vehicles contended that even if the pay-slip at exhibit 43 is taken as basis for determining the income of the deceased, the Tribunal has rightly determined the same at Rs. 10,600/-. According to Mr. Nanavati, certain special allowances as can be seen from the pay-slip at exhibit 43, was not being regular income of the deceased and the personal allowances cannot be treated as a genuine segment for determination of the income. Mr. Nanavati thus contended that the Tribunal has awarded just and adequate compensation by applying multiplier of 12 in the

facts of this case and no interference is called for. According to Mr. Nanavati, the appeal being meritless, deserves to be dismissed.

6. Mr. Kashyap Joshi, learned advocate appearing for respondents no. 4 and 5 contended that this Court may pass appropriate order.

7. Upon hearing the learned counsel appearing for the parties, on perusal of the original record and proceedings, the question which arises in this appeal is whether the Tribunal has correctly determined the income of the deceased or not. In order to appreciate the aspect of determination of income, it is a matter of fact that the deceased was permanently working in Asian Paints Ltd. at Ankleshwar. Exhibit 43 is the pay-slip for the month of July 2003. Upon re-appreciating the evidence on record, it clearly transpires that the gross salary of the deceased was Rs. 13,227/- and the deceased was also receiving bonus of Rs.1,340/- per month as well as overtime of Rs.1,300/-. However, the fact remains that the amount of gross salary as reflected in the pay slip at exhibit 43 also contains certain personal expenses such as transport, special allowances, etc., over and above that, deduction of professional tax to the tune of Rs.80/- p.m. Upon re-appreciation of the evidence on record, this Court is of the considered opinion that the salary as determined by the Tribunal deserves to be enhanced and same can easily be determined and quantified at Rs.13,000/- per month.

8. Following the ratio laid down by the Apex Court in the case of Sarla Verma vs. Delhi Road Transport Corporation reported in (2009) 6 SCC 121 and Pranay Sethi (supra), as the age of the deceased was admittedly 43 years on the date of the accident, the appellants would be entitled to prospective income to the extent of 30% and the appropriate multiplier would be that 14 and not 12 as awarded by the Tribunal.

9. As the member of dependents were 3 in number, 1/3rd of the income will have to be deducted towards personal expenses. Thus, the appellants would be entitled to compensation under the head of loss of dependency as under -

Rs.13,000/- (income per month) + Rs.3,900/- (30% prospective income) = Rs.16,900/- p.m. - Rs.5,633/- (1/3rd deduction towards personal expenses) = Rs.11,267/- p.m. X 12 X 14 (multiplier) = Rs. 18,92,856/-. (Loss of dependency)

10. As aforesaid, the appellant no.1 is the wife and appellant no.2 Naseemben Anwarbhai Multani and appellant no.3 Dilawar Anawarbhai Multani were minor aged 17 and 15 on the date of the accident and on the date of filing of the claim petition before the Tribunal. Hence, following the ratio laid down by the Apex Court in the case of Satinder Kaur (supra), Magma General Insurance Company Limited (supra) and Somwati (supra), all the three appellant no.1 would be entitled to spousal consortium, and appellants no.2 and 3 would be entitled to parental consortium of Rs.40,000/-(Rs.1,20,000/-). Over and above the same, the appellants would also be entitled to Rs.15,000/- as loss of estate and Rs.15,000/- as funeral expenses and thus, the appellants would be entitled to

Rs.1,50,000/- under the conventional heads. Accordingly, the appellants would be entitled to total compensation of Rs. 20,42,856/-.

11. As the Tribunal has awarded Rs. 15,58,900/-, the appellants would be entitled to additional compensation of Rs. 4,83,956/-, which is rounded off to Rs.4,84,000/-. However, such additional amount of compensation shall attract interest at the rate of 6% p.a. from the date of filing of the claim petition till its realisation. The respondent insurance company shall deposit the additional amount as awarded by this Court within a period of four weeks from the date of receipt of certified copy of this judgment and order. Accordingly, the appeal is partly allowed. The impugned judgment and award is modified to the aforesaid extent. However, there shall be no order as to costs. Record and proceedings be transmitted back to the Tribunal forthwith.