(2005) 05 GUJ CK 0023

In the Gujarat High Court

Case No : First Appeal No''s. 504 and 505 of 1989

Hamidabanu Balubhai and Others — APPELLANT

Vs

Vasantbhai Virabhai Harijan and Another — RESPONDENT

Date of Decision : 04-05-2005

Acts Referred:

Citation : (2005) 4 ACC 661 : (2007) ACJ 240

Hon'ble Judges : Bhawani Singh, C.J;H.K. Rath, J

Bench : Division Bench

Advocate : Shirish Joshi, for the Appellant; M.G. Nagarkar and B.N. Keshwani, for the Respondent

Judgement

Bhawani Singh, C.J.—Through this judgment, we propose to dispose of both these Appeals (First Appeal No.504/1989 and 505/1989) at the instance of the claimants, seeking enhanced compensation.

2. Shortly stated, accident took place on 18-12-1983 by collision between motor cycle No.GAB 7530 and auto rickshaw No.GTS 8055. Balubhai Muljibhai Lakhani (deceased) was driving the motor cycle and Jagdishbhai Parmanandbhai Rupareliya (deceased) was the pillion rider. Both were dealing in business of foodgrains, sugar, edible oil, etc. at Dhari. The accident took place at Bagasara-Hamapar road at about 7.00 p.m. near village Hamapar. The autorickshaw overturned and motor cycle was thrown off the road causing injuries to the occupants of motorcycle, resulting in their death after some time. Balubhai Muljibhai Lakhani was 32 year old while Jagdishbhai Paramanandbhai Rupareliya was 34 1/2 year old, at the time of accident. Opponents are owner/driver of autorickshaw and the Insurance Company with which autorickshaw was insured. Widow and children of both the claimants claimed compensation of Rs.3.00 lakhs each. Claimants in both the cases state that income of the deceased at the time of accident in each case was Rs.25,000/-.

3. Owner and driver of autorickshaw did not file written statement, therefore, did

not contest the claim. Insurance Company stated that Balubhai Muljibhai Lakhani did not possess a valid driving licence at the time of accident, therefore, there is no liability for payment of compensation. Other averments are denied. It is also stated that there was contributory negligence on the part of motorcyclist.

4. After appreciating the evidence and hearing the parties, the Claims Tribunal held that both the deceased received injuries in the accident, caused due to the rash and negligent driving of autorickshaw as well as contributory negligence on the part of Balubhai Muljibhai Lakhani to the extent of 40%. Compensation of Rs.1,06,200 and Rs.1,70,400 has been awarded in these cases to the claimants respectively carrying interest 6% from the date of petitions, provided compensation is paid in two months, otherwise @ 12% with proportionate costs.

5. Questions advanced for consideration are two. The first question is whether the finding of Claims Tribunal that autorickshaw was liable for the accident to the extent of 60% while the motorcyle to the extent of 40% is correct. It is contended that liability of autorickshaw for the accident is more than 60%, therefore, finding of Claims Tribunal is liable to be reversed. This submission is opposed by the other side. Going through the evidence, it is crystal clear that accident took place due to the negligence of drivers of both the vehicles. They should have taken care to drive the vehicles on their own sides, instead of driving the same in the middle of the road. The autorickshaw was carrying number of passengers, therefore, a bigger vehicle should have been driven very cautiously and at a reasonable speed. Similarly, driver of motor cycle should have seen the approaching autorickshaw and driven the vehicle on extreme left side instead of driving the same in the middle of the road. Failing to drive the vehicles cautiously contributed to the accident. With this background, apportionment of liability by the Claims Tribunal is justified.

6. Next question pertains to assessment of compensation. Balubhai Muljibhai Lakhani was 32 year old at the time of accident. He was doing business in foodgrains, sugar, grossary, edible oil, etc. at Dhari. He also possessed 10-15 vighas of agricultural land. His wife stated that he was earning Rs.25,000 annually from business and agriculture. As per Exh.39, income of the deceased was 19,516 for Samvat Year 2029. Statement that he was carrying on business is also proved from Exh.43 and 44. Exh.58 is "khata" from the books of accounts of maintained in regular course showing his income at Rs.19,516/-. Exh.42 shows that he possessed 10 acres of agricultural land in the sim of village Rajasthali, but there is no further evidence as to how much exact income he derived from the land.

7. Consequently, the income of the deceased is taken Rs.19,000/- per year. Calculating the compensation as per principles laid down in Ritaben alias Vanitaben and Anr. v. Ahmedabad Municipal Transport Service and Anr. (2000 ACJ 153) and Smt. Sarla Dixit and another Vs. Balwant Yadav and others, compensation can be settled thus: yearly income Rs.19,000, monthly income Rs.1,583 x 2 = Rs.3,166 + Rs.1,583 = Rs.4,749 x 1/2 = Rs.2,375 - 792 (1/3 of

2375) = Rs.1,583 x 12 = 18,996, say Rs.19,000 x 17 = Rs.3,23,000 - Rs.1,29,200 (40% towards contributory negligence) = Rs.1,93,800 + Rs.10,000 (loss of expectancy of life) + Rs.7,200 (loss of consortium) + Rs.3,000 (funeral expenses) + Rs.5,000 (pain, shock and suffering) = Rs.2,19,000.

Accordingly, First Appeal No.504 of 1989 is allowed. The award stands modified to the aforesaid extent. The claimants are entitled to total compensation of Rs.2,19,000 and enhanced compensation of Rs. Rs.1,12,800 (Rs.2,19,000 - Rs.1,06,200) which will carry interest @ 6% from the date of application till payment/realisation.

8. Similarly, Jagdishbhai Paramanandbhai Rupareliya was carrying business of foodgrains, sugar, edible oil, etc. He was partner having 50% share in partnership firm of M/s.Suryakant & Co. Assessment of income for the years 1982-83, 1983-84 and 1984-85 (Exhs.49,48 and 47) show his annual income at Rs.19,000 - Rs.20,000. Claims Tribunal has taken his income at Rs.9000/- only. But the said figure was taken on the assessment that partnership business would continue, so would be 50% share thereof. This conclusion cannot be appreciated. Claimants lost the contribution to the family from the deceased and continuance in the partnership business would not help the family, since it would benefit the tort feasers. With a view to continue the partnership busines, either they have to participate in the business, which may not be possible, or engage an agent to represent them and pay him or lose the income they would have earned in case deceased had been alive and run the business by himself. Consequently, the income of the deceased is taken at Rs.19,000. Looking to his age, which was 34 1/2 years (Exh.45) at the time of accident, multiplier 17 is accepted in this case. Therefore, compensation is assessed thus: yearly income Rs.19,000, monthly income Rs.1,583 x 2 = Rs.3,166 + Rs.1,583 = Rs.4,749 x 1/2 = Rs.2,375 - 792 (1/3 of 2375) = Rs.1,583 x 12 = 18,996, say Rs.19,000 x 17 = Rs.3,23,000 + Rs.10,000 (loss of expectancy of life) + Rs.7,200 (loss of consortium) + Rs.3,000 (funeral expenses) + Rs.5,000 (pain, shock and suffering) = Rs.3,48,200.

Accordingly, First Appeal No.505 of 1989 is allowed. The award stands modified to the aforesaid extent. The claimants are entitled to total compensation of Rs.3,48,200 and enhanced compensation of Rs. Rs.1,77,800 (Rs.3,48,200 - Rs.1,70,400) which will carry interest @ 6% from the date of application till payment/realisation.

The Insurance Company will pay the compensation within two months. Parties shall bear their own costs.