

(2012) 02 GUJ CK 0009
In the Gujarat High Court
Case No : First Appeal No. 3638 of 2007

Hardas Laxmanbhai

APPELLANT

Vs

Jagmalbhai Ebhabhai Solanki and 1

RESPONDENT

Date of Decision : 23-02-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 163(A), 166

Citation : (2012) 02 GUJ CK 0009

Hon'ble Judges : K. S. Jhaveri, J

Bench : Single Bench

Advocate : Raxit J. Dholakias, 1.2.1, 1.2.2, 1.2.3, 1.2.4, for the Appellant; Sunil B. Parikh for Defendant(s) : 2, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice KS Jhaveri

1. The appellants herein have challenged the award dated 02.04.2007 passed by the Motor Accident Claims Tribunal Porbandar in Motor Accident Claims Petition No. 48 of 2004 so far as the Tribunal awarded only Rs. 1,74,500/- as compensation with interest at 7.5% per annum u/s 163A of the M.V. Act.

2. The original claimants had filed application u/s 163A of the M.V. Act to get compensation on structured formula basis to the tune of Rs. 4,18,500/- on account of the death of deceased in the vehicular accident. The Tribunal after hearing the parties passed the aforesaid award.

3. Mr. Dholakia, learned advocate appearing for the appellant submitted that the Tribunal erred in quantifying the award at Rs. 1,74,500/-. He submitted that the Tribunal has awarded less amount of compensation by wrongly taking the income of the deceased as Rs. 15000/- per annum. He submitted that the Tribunal has not awarded any amount under the head of loss of consortium.

4. Mr. Parikh, learned advocate for the respondent supported the award passed

by the Tribunal. He submitted that in fact the Tribunal has awarded an amount higher than what was required to be paid. In support of his submissions, Mr. Parikh has relied upon decision of the Apex court in the case of National Insurance Co. Ltd. vs. Gurumallamma and another reported in 2009(9) SCALE 764 and submitted that considering the notional annual income of Rs. 15000/- per annum and the age of the victim in the bracket of 35-40, the datum figure as per the Second Schedule comes to Rs. 2,30,000/-. Deducting 1/3 from the total income for personal expenses, the amount of dependency loss per annum shall come to Rs. 1,53,333/-which is rounded off to Rs. 154000/-. The claimants shall also be entitled to Rs. 2000/-for funeral expenses and Rs. 2500/-for loss of estate and Rs. 5000/-for consortium. The claimants shall be entitled to in all Rs. 1,63,500/-by way of compensation whereas the Tribunal has awarded Rs. 1,74,500/-.

5. The Tribunal has gone into the evidence in detail. However, the quantum of compensation awarded by the Tribunal seems to be on a higher side. As regards the income of the deceased u/s 163-A of the M.V. Act is concerned, the issue is now well settled by a recent decision of the Apex Court in the case of National Insurance Co. Ltd. vs. Gurumallamma and another (supra)wherein it is held as under:

8. Multiplier *stricto sensu* is not applicable in the case of fatal accident. The multiplier would be applicable only in case of disability in non-fatal accidents as would appear from the Note 5 appended to the Second Schedule. Thus, even if the application of multiplier is ignored in the present case and the income of the deceased is taken to be Rs. 3,300/-per month, the amount of compensation payable would be somewhat between 6,84,000/-to Rs. 7,60,000/-. As the second schedule provides for a structured formula, the question of determination of payment of compensation by application of judicial mind which is otherwise necessary for a proceeding arising out of a claim petition filed u/s 166 would not arise. The Tribunals in a proceeding u/s 163A of the Act is required to determine the amount of compensation as specified in the Second Schedule. It is not required to apply the multiplier except in a case of injuries and disabilities.

9. The Parliament in laying down the amount of compensation in the Second Schedule, as indicated hereinbefore, in its wisdom provided for payment of some amount which should be treated to be the minimum. It took into consideration the fact that a person's potentiality to earn is highest when he is aged between 25 and 30 years and that is why in case of permanent disability multiplier of 18 has been specified. The very fact that even if the deceased had an income of Rs. 3000/-per month, he being aged about 15 years, would receive a sum of Rs. 60,000/-but if his income was Rs. 40,000/-per annum, his legal heirs and representatives would receive a sum of Rs. 8,00,000/-. In the case if any non-earning person, the notional income has been fixed at Rs. 15,000/-per annum.

5.1. Accordingly, the Tribunal has rightly considered the notional income of the deceased at Rs. 15000/-per annum. Nothing is produced before this Court to

take a contrary view. However, as no cross appeal has been filed by the respondents this court is not in a position to decrease the amount of compensation. The amount of consortium is not paid to the claimants and therefore amount of Rs. 5000/-is required to be paid.

6. Accordingly, appeal is partly allowed. The claimants shall be entitled to an additional amount of Rs. 5000/-with interest at 7.5% from the date of application till realisation. The award of the Tribunal is modified accordingly. No order as to costs.