(2022) 04 GUJ CK 0025

In the Gujarat High Court

Case No : R/First Appeal No. 2612 Of 2007

Heirs Of Decd.Govind Bhikha APPELLANT

Vs

Bawaji Mangangiri Rupgiri & 2 Other(S) RESPONDENT

Date of Decision : 06-04-2022

Acts Referred:
Motor Vehicles Act, 1988 — Section 173

Citation : (2022) 04 GUJ CK 0025

Hon'ble Judges : A.G.Uraizee, J

Bench : Single Bench

Advocate : Apurv Jani, Ashish M Dagli, Mausami Nanavati, Vibhuti Nanavati

Final Decision : Allowed

Judgement

A.G.Uraizee, J

1. This is an appeal under Section 173 of the Motor Vehicles Act 1988 ("M.V. Act" for short) by the appellant for enhancement of compensation awarded to him by the Motor Accident Claims Tribunal (Auxi) Veraval in M.A.C.P. No.434 of 1999 (Old No.355 of 1992).

2. The facts as could be gathered from the impugned judgment and the connected material, are as under:-

2.1 The deceased Govind Bhikha was the son of the applicant Bhikha Jetha. The applicant No.2 Puriben was the mother of Govind Bhikha and she was died during the pendency of the petition. On 17.5.1992 at about 10.00 a.m., when the deceased Govind Bhikha was going near Cham Factory, at that time the Truck No. G.R.W. 1888 was came rushly and negligently and it was dashed with the deceased Goving Bhikha and thereby he had suffered grievous injuries and due to that injuries, he was died. The opponent No.1 was the driver of the truck and the opponent No.2 and 3 are the owner and insurer of the truck and therefore, all the opponents are liable to pay the compensation to the applicants - heirs.

2.2 It appears that Govind Bhikha was healthy and 25 years young person and was earning by serving in Chm Factory. He was working as Fish Processor and his pay was Rs.1,200/- per month. By the death of him, the applicants have lost their son therefore, the applicants are entitled for the compensation of Rs.2,15,000/- and that amount be awarded with interest and cost against the opponents.

3. The Tribunal, after considering the oral and documentary evidence adduced by the parties, partly allowed the claim petition and directed the respondents to pay sum of Rs.62,000/- with 9% interest per annum from the date of filing of the claim petition till realization jointly and severally. The appellants did not happy with the quantum of the compensation, hence present appeal.

4. Heard Mr. Apurv Jani, learned advocate for Mr. Ashish Dagli, learned advocate for the appellant and Ms. Mausami Nanavati, learned advocate for Mr. Vibhuti Nanavati, learned advocate for the respondent No.3-Insurance Company.

5. Mr. Apurv Jani, learned advocate for the appellant submits that the Tribunal has not considered prospective income of the deceased and the compensation awarded under the head of loss of estate, funeral expenses and the multiplier is not as per the decision of the Supreme Court in case of National Insurance Company vs. Pranay Sethy and others reported in 2017 (16) SCC 680. He submits that the loss of consortium i.e. parental consortium awarded by the Tribunal is also on lower side and it should be Rs.40,000/- instead of Rs.10,000/- as per decision of the Supreme Court in case of Magma General Insurance Co. Ltd. vs. Nanu Ram alias Chuhru Ram reported in 2018 (18) SCC 130. He, therefore, urges that the compensation awarded by the Tribunal may be modified accordingly.

6. On the other hand Ms. Mausami Nanavati, learned advocate for the respondent No.3-Insurance Company has supported the impugned judgment and award and urges that it does not warrant any interference.

7. I have considered the rival submissions and perused the record of the appeal.

8. It eminently emerges from the impugned judgment that the Tribunal has not considered the prospective income of the deceased. It is not in dispute that the deceased was an unmarried person and was 25 years of age. As per the decision of Supreme Court in case of Pranay Sethy (supra), in case of fatal cases, prospective income is required to be considered for the purpose of deciding the dependency of the claimants. Since the deceased was 25 years of age at the time of the accident, 40% rise is required to be considered in the monthly income of the deceased to determine the future prospective rise. Since the deceased was unmarried as per the decision in case of Pranay Sethy (Supra) 50% is required to be deducted towards the personal expenses. Moreover, compensation under the head of loss of estate and funeral expenses should be 15,000/- each however, Tribunal has awarded only Rs.2,000/- for funeral expenses and has not awarded any compensation under the head of loss of

estate. Hence, the appellant is entitled to Rs.15,000/- each under these heads. Moreover, the loss of consortium of Rs.10,000/- which is awarded by the Tribunal needs to be enhanced to Rs.40,000/- in view of the decision of the Supreme Court in case of Magma General Insurance Co. Ltd. (supra).

9. The appellant is therefore, entitled to the compensation as under:-

Monthly Income

1,200

Future Prospects 40%

480

Total

1,680

Personal Deduction - 50%

840

Net Monthly Income

840

Loss of Income

840x12x18

1,81,440

Loss of Estate

15,000/-

Parental Consortium

40,000/-

Funeral Expenses

15,000/-

2,51,440

-62,000

…………

1,89,440

10. In view of the above, the appellant is entitled to Rs.2,51,440/- as compensation in place of Rs.62,000/- as awarded by the Tribunal and accordingly the appellant is entitled to Rs.1,89,440/- as an additional compensation.

11. The Tribunal had awarded 9% interest on the compensation from the date of filing of the claim petition till realization. However, considering the overall facts of the case, it would be just and reasonable to award interest @ 7.5% on the additional compensation from the date of filing of the claim petition till realization.

12. For the forgoing reasons, present appeal succeeds in part and the award of the Tribunal is modified.

13. The appellant is held entitled to Rs.2,51,440/- as compensation in place of Rs.60,000/- as awarded by the Tribunal. Accordingly the appellant is held entitled to Rs.1,89,440/- as additional compensation with 7.5% interest from the date of filing of the claim petition till realization.

14. The Insurance Company is directed to deposit the amount of additional compensation along with interest in the Tribunal on or before 30.6.2022. The Records and Proceedings, if summoned, be remitted to the Tribunal forthwith. The parties to bear their own cost.

