(2024) 07 GUJ CK 0064

In the Gujarat High Court

Case No : First Appeal No. 37 of 2013

Jinatbibi Hasammiya Malek & Anr. Versus APPELLANT

Vs

Maqboolhusain Mohommadhussain Malek & Ors. RESPONDENT

Date of Decision : 24-07-2024

Acts Referred:

Motor Vehicles Act, 1988 — Section 168, 173

Citation : (2024) 07 GUJ CK 0064

Hon'ble Judges : Sandeep N. Bhatt, J

Bench : Single Bench

Advocate : Hiren M Modi, Vibhuti Nanavati

Final Decision : Partly Allowed

Judgement

Sandeep N. Bhatt, J

1. The present First Appeal, under Section 173 of Motor Vehicles Act, 1988, is preferred by the appellant/s – original claimant/s – legal heirs of the deceased – Hasammiya Bhulamiya Malek, being aggrieved and dissatisfied with the judgment and award dated 29.09.2012 passed by the Motor Accident Claims Tribunal (Aux.), Kheda at Nadiad in Motor Accident Claim Petition No.1310 of 2007, by which the Tribunal has awarded compensation of Rs.85,000/- with 8% per annum interest to the claimant/s, holding Opponents liable, jointly and severally.

2. Brief facts of the case are as under:

2.1 That on 18.10.2007 at about 4:00 p.m., deceased – Hasammiya Bhulamiya Malek coming back to him home from the field on bicycle riding at proper side of the road, at that time, opponent No.1 came with Tempo bearing registration No.GJ-23-T-5544 in rash and negligent manner and in excessive speed and dashed with the deceased. The deceased was immediately shifted to the Government Hospital at Mahudha, however, since there were serious injuries, she was shifted to the Government Hospital at Nadiad. But, the injuries were very serious, therefore, he was advised to shift at the Civil Hospital at Ahmedabad, but while going to Ahmedabad, he succumbed to the injuries in the ambulance during shifting. Therefore, the legal heirs of the deceased – widow and son have filed claim petition seeking compensation of Rs.2 lakhs with cost and interest for unnatural and untimely death against the present respondents before the Tribunal.

2.2 Notices were served to the opponents. Opponents No.1 and 2 - driver and owner have chosen not to appear and contest the claim petition before the Tribunal. Opponent No.3 - Insurance Company has appeared and has filed its written statement / objections by disputing all the averments made by the claimant in the claim petition.

2.3 The Tribunal has framed the issues. The oral as well as documentary evidence were led by the rival parties before the Tribunal. After considering the documentary as well as oral evidence and submissions made at the bar, the Tribunal has partly allowed the claim petition by awarding compensation as noted above.

2.4 Being aggrieved and dissatisfied with the impugned judgment and award passed by the Tribunal, the present appeal is preferred by the claimant/s for enhancement.

3. Learned advocate Mr. Hiren Modi for the appellant/s - claimant/s has submitted that the Tribunal has committed an error in not properly calculating the amount of compensation. He has submitted that amount of award is on lower side as the Tribunal has not properly considered the various aspects; like prospective income of the deceased, negligence, liability and family circumstances, etc. He has submitted that the deceased was aged about only 62 years at the time of accident and was doing agriculture activities. He has submitted that at the relevant point of time, his monthly income was Rs.2,800/-. He has fairly submitted that the learned Tribunal has rightly considered the amount of deduction of personal expenses looking to the age of the deceased. He has submitted that the multiplier should be 7 looking to the age of the deceased instead of 5. He has submitted that therefore, considering the loss of dependency, it would be calculated accordingly, which would come to Rs.1,56,800/- total loss of dependency, which should be awarded to the claimants by the learned Tribunal.

He has further submitted that considering the general and non-pecuniary damages, the learned Tribunal should award Rs.16,500/- each towards loss of estate and funeral expenses. He has also submitted that towards loss of consortium, there are two dependents and therefore, it would be awarded in all Rs.88,000/- as per the decision of the Hon'ble Apex Court in the case of United India Insurance Co. Ltd., versus Satinder Kaur @ Satwinder Kaur reported in (2021) 11 SCC 780.

He has submitted that the compensation is required to be enhanced by modifying the award impugned accordingly and this appeal may be allowed.

4. Per contra, Mr. Vibhuti Nanavati, learned advocate for respondent – Insurance Company has submitted that the impugned judgment and award passed by the Tribunal is just and proper. The Tribunal has rightly considered the income of the deceased, the age of the deceased, the dependency and future aspect of income. He has submitted that under the head of loss of estate and funeral expenses, the Tribunal has rightly awarded compensation. He has submitted that the amount under the head of loss of consortium is just and proper. He has submitted that this appeal may be dismissed and no interference be made by this Court.

5. It is noteworthy to mention that the provisions of the Motor Vehicles Act, 1988 which gives paramount importance to the concept of 'just and fair' compensation. It is a beneficial legislation which has been framed with the object of providing relief to the victims or their families. Section 168 of the Motor Vehicles Act deals with the concept of 'just compensation' which ought to be determined on the foundation of fairness, reasonableness and equitability. Although such determination can never be arithmetically exact or perfect, an endeavor should be made by the Court to award just and fair compensation irrespective of the amount claimed by the claimants.

6.1 I have considered the submissions made by the rival parties. I have perused the record and proceedings of the Tribunal. I have gone through the impugned judgment and award passed by the Tribunal. From the record, it transpires that the deceased was aged about 62 years and was doing agriculture activities and his monthly income was Rs.2,800/- is required to be considered at the relevant point of time, which is just and proper. Therefore, it should be considered as monthly income of the deceased. Hence, Rs.2,800/- per month income. Since the deceased was aged about 62 years and there are two dependents, 1/3 would be proper to be deducted as personal expenses and therefore, it would come to Rs.933/-. Hence, the income would come to Rs.1,867/- per month and therefore, yearly, it would come to Rs.22,404/- (round figure Rs.22,400/-) and applying 7 multiplier as per the schedule of the Motor Vehicles Act as well as the ratio laid down by the Hon'ble Apex Court in the case of Sarla Verma versus Delhi Transport Corporation reported in (2009) 6 SCC 121, it would come to Rs.1,56,800/-as future loss, which is required to be awarded to the claimants.

6.2 Further, considering the ratio laid down by the Hon'ble Apex Court in the case of Pranay Shethi (supra), as general and non-pecuniary damages, under the head of loss of estate and funeral expenses, if we award Rs.16,500/- and Rs.165,00/-, respectively, which would be the just and proper compensation.

6.3 Further, there are two dependents to the deceased, consisting widow and one son. Therefore, as per the decision of the Hon'ble Apex Court in the case of United India Insurance Co. Ltd., versus Satinder Kaur @ Satwinder Kaur reported in (2021) 11 SCC 780, Rs.40,000/- consortium to each dependent and 10% rise, which comes to Rs.44,000/- as consortium to each dependents, which comes to

Rs.88,000/-, which should be awarded to the claimants.

6.4 Therefore, total compensation would be as under, which the claimant/s is/are entitled to get.

Particulars

Amount (Rs.)

Future Loss of Income

1,56,800/-

Loss of Estate

16,500/-

Funeral Expenses

16,500/-

Loss of consortium

88,000/-

Total…

2,77,800/-

Less : Amount which is already awarded

85,000/-

Additional amount which is awarded

1,92,800/-

7. Therefore, I hold that the claimant/s are entitled to get the total amount of compensation of Rs.2,77,800/- with 8% p.a. interest from the date of filing the claim petition till its realisation, which would meet the ends of justice. Rest of the direction(s) of the Tribunal remain same. The Tribunal has already awarded Rs.85,000/-, therefore, remaining amount of Rs.1,92,800/- would be the enhanced amount of compensation payable to the claimant/s.

8. For the reasons recorded above, the following order is passed.

8.1 The present appeal is partly allowed.

8.2 The Insurance Company is directed to deposit the enhanced amount Rs.1,92,800/- with 8% p.a. interest from the date of claim petition till its realisation before the concerned Tribunal, within a period of four weeks from the date of receipt of this order.

8.3 The Tribunal shall disburse the entire awarded amount lying in the FDR and/ or with the Tribunal, with accrued interest thereon, if any, to the claimants, by account payee cheque / NEFT / RTGS, after proper verification and after following due procedure.

8.4 While making the payment, the Tribunal shall deduct the courts fees, if not paid, in accordance with rules/law.

8.5 Record and proceedings be sent back to the concerned Tribunal, forthwith.

