(2013) 01 GUJ CK 0110

In the Gujarat High Court

Case No : First Appeal No. 1166 of 2004

Kashiben Ishwarbhai Patel and Others APPELLANT

Vs

Ayub Sardar Bhatthi and Others RESPONDENT

Date of Decision : 23-01-2013

Acts Referred:

Citation : (2014) 1 ACC 92

Hon'ble Judges : Bhaskar Bhattacharya, C.J

Bench : Single Bench

Advocate : D.N. Pandya, Nos. 1 to 3, for the Appellant;

Final Decision : Partly Allowed

Judgement

Bhaskar Bhattacharya, C.J.—This appeal is at the instance of claimants in a proceedings for compensation under the Motor Vehicles Act (for short "the Act") and is directed against the award dated 31st January, 2012 passed by the Motor Accident Claims Tribunal (Aux.), Bharuch in Motor Accident Claim Petition No. 21 of 1996 by awarding a sum of Rs. 1,32,000 with interest at the rate of 9% per annum as compensation. Being dissatisfied, the claimant, the mother of the victim, has come up with the present appeal.

2. In spite of the service, none appears on behalf of the Insurance Company or the owner or driver of the vehicle to contest this appeal.

3. After hearing Mr. Pandya on behalf of the appellants and after going through the materials on record, I find that there is specific finding recorded by the Tribunal that due to negligence on the part of the owner of the vehicle, the accident occurred, as a result, the victim, a person aged 22 years who was a bachelor, died. According to the mother of the victim, he used to work as a carpenter and get Rs. 60 a day. A further witness had appeared in the witness box to assert that the deceased used to work under him as a helper in the business of carpentry.

4. It appears from the order impugned that the Tribunal after arriving at the conclusion that the annual income of the victim was Rs. 22,000 deducted 2/3 from the said amount as personal expenditure and on the basis of remaining 1/3, i.e. Rs. 7500, fixed the amount of compensation by applying multiplier of 16 and arrived at a figure of Rs. 1,20,000. Over and above, Rs. 2000 paid were under the heading funeral charges and Rs. 10,000 for loss of estate.

5. In my view, there was no justification of deducting 2/3rd from the total income as personal expenditure and the mother being the only heir under the Hindu Succession Act, the Tribunal ought to have deducted half as personal expenditure. Therefore, it was a fit case where on the basis of annual income of Rs. 11,000, the Tribunal ought to have applied multiplier. On that basis, it comes to Rs. 1,43,000 and in addition to the aforesaid amount, a further sum of Rs. 12,000 should also be paid towards funeral expenditure and loss of estate, which comes to Rs. 1,66,000.

6. In my view, a young man aged 22 having lost his life for negligence of the driver of the offending vehicle, the owner and the insurer of the same must compensate the aforesaid amount for the death. I thus, enhance the amount to Rs. 1,66,000 with interest at the rate of 9% per annum. The Insurance Company is directed to pay the balance amount within three months from today. The appeal is thus, allowed to the extent indicated above.