
(2019) 06 GUJ CK 0047
In the Gujarat High Court
Case No : R/First Appeal No. 5388 Of 2008

Kunjlataben Pursottam Radhakishan Changoiwala & 2
Other(s) APPELLANT

Vs

Mahmadkhan Latifkhan Pathan & 2 Other(s) RESPONDENT

Date of Decision : 19-06-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2019) 06 GUJ CK 0047

Hon'ble Judges : R.M.Chhaya, J;B.N. Karia, J

Bench : Division Bench

Advocate : Kashyap R Joshi, Rituraj M Meena

Final Decision : Partly Allowed

Judgement

R.M.Chhaya, J

1. Feeling aggrieved by and dissatisfied with the judgment and award dated 20.11.2007 passed by learned Motor Accident Claims Tribunal (Aux.),

Fast Track Court, Bharuch, (hereinafter referred to as ""the Tribunal"" for short), in Motor Accident Claim Petition No.496/2001, the appellants â?

original claimants preferred present appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as ""the Act"" for short);

2. Heard Mr.Kashyap Joshi, learned counsel for the appellants â?" original Claimants and Mr. Rituraj Meena, learned counsel for respondent No.3Â?

Oriental Insurance Company Limited. Though served, no one appears for respondent Nos.1 and 2. Perused the original record and proceedings.

3. The following noteworthy facts emerge from the record of the appeal:Â?

3.1 That on 15.04.2001, at about 7 hours in the morning, the deceased Purshottambhai went to Bharuch District Coop. Bank, Kavi Branch, Bharuch,

in a Maruti Van bearing registration No.GJÂ7ÂARÂ1217 and after finishing the bank work, he went to village Sigam from Kavi looking for

construction of earthquake stricken houses as he was a contractor. During that time, driver of said Maruti van driven the said car in full speed and in

rash and negligent manner and as air leaked out from the front wheel of the car, driver of said Maruti van lost his control over the steering and dashed

with the pillar situated on wrong side of the road and turned turtle. In the said accident, the deceased thrown out from the car and sustained serious

injuries on his head and died on the spot.

3.2 It is the case of the appellants that the said accident occurred due to rash and negligent driving of driver of the said Maruti Van.

3.3 It is further the case of the appellants that the deceased was aged about 54 years on the date of accident and was a building contractor and also

doing the work of making and packing materials of wooden box at Ankleshwar since many years and had income of Rs.3,00,000/Â? p.a.

3.4 Therefore, the appellants filed claim petition before the Tribunal under Section 166 of the Act, claiming compensation of Rs.50,00,000/Â, wherein

the Tribunal partly allowed the claim petition and awarded compensation of Rs.11,57,390/Â along with costs and interest @ 9 % per annum from the

date of filing of claim petition till its realization.

3.5 Being dissatisfied with the said compensation, the appellants have filed present appeal for enhancement of compensation.

4. Learned counsel for the appellants has contended the following main two grounds:

(i) That the age of the deceased was 54 years on the date of accident and therefore, the Tribunal has erred in applying 5 multiplier, instead of 11;

(ii) Relying upon the judgment of the Apex Court in the case of National Insurance Company Ltd. Vs. Pranay Sethi, [2017 (16) SCC 680,]it was

contended that the Tribunal has also erred in granting meagre amount of Rs.25,000/Â under different conventional heads, which should be enhanced to

Rs.70,000/Â?.

On the aforesaid contentions, learned counsel for the appellants has submitted that present appeal be allowed as prayed for and the impugned

judgment and award be modified accordingly.

5. Per contra, learned counsel for respondent No.3 has supported the impugned

judgment and order and has not been able to point out any contrary thereto.

No other or further submissions have been made by learned counsel for the parties.

6. As held by the Apex Court in the case of Sarla Verma (Smt.) & Ors. Vs. Delhi Transport Corporation & Anr., [2009 (6) SCC 121,] the appellants

would be entitled to get 11 multiplier as the deceased was 54 years old on the date of accident. However, it is found that while calculating

compensation under the head of loss of dependency, the Tribunal has considered the prospective income to the extent of 50 %. Record clearly

indicates that the deceased was a contractor and self employed person, aged about 54 years on the date of accident and therefore, following the

judgment of the Apex Court in the case of Pranay Sethi (supra), the appellants would be entitled to increase in income by way of prospective income

only to the extent of 10 %.

7. Having come to the aforesaid conclusion, the appellants would be entitled to compensation under the head of loss of dependency as under:Â?

Rs.2,26,478/Â? Income as calculated by the Tribunal

+ Rs. 22,648/Â? 10 % prospective income

Â?Â?Â?Â?Â?Â?Â?Â?Â?Â?Â?Â?Â?

Rs.2,49,126/Â? Income p.a.

Â? Rs. 83,042/Â? 1/3rd towards personal expenses

Â?Â?Â?Â?Â?Â?Â?Â?Â?Â?Â?Â?

Rs.1,66,084/Â?

X Â Â Â Â Â Â Â 11 Â Â Â Â Â Â Multiplier

Â?Â?Â?Â?Â?Â?Â?Â?Â?Â?Â?Â?

Rs.18,26,924/Â?

(which is rounded to Rs.18,27,000/Â?)

8. In addition to that, as the age of the deceased on the date of accident was 54 years and hence, following the judgment of the Pranay Sethi,(supra),

the appellants would be entitled to get Rs.70,000/Â? under different conventional heads. Thus, the appellants would be entitled to get total compensation

of Rs.18,97,000/Â?.

9. As the Tribunal has awarded total compensation of Rs.11,57,390/Â, the appellants would be entitled to get additional amount of Rs.7,39,610/Â with interest at the rate of 9% p.a. from the date of filing of claim petition till its realization.

10. Accordingly, present appeal is partly allowed.

The judgment and award dated 20.11.2007 passed by learned Motor Accident Claims Tribunal (Aux.), Fast Track Court, Bharuch, in MACP

No.496/2001 stands modified to the aforesaid extent. Rest of the judgment and award remains unaltered. Respondent No.3 â?" Insurance Company

shall deposit said additional amount before the Tribunal within a period of four months from the date of receipt of this order. Record and proceedings

be remitted back to the concerned Tribunal forthwith. No order as to costs.