
(2012) 01 GUJ CK 0052
In the Gujarat High Court
Case No : First Appeal No. 328 of 1997

Laxmiben and Others

APPELLANT

Vs

Mittal Cold Storage Pvt. Ltd. and 1

RESPONDENT

Date of Decision : 10-01-2012

Acts Referred:

Citation : (2012) 01 GUJ CK 0052

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

Bench : Single Bench

Advocate : Hiren M. Modis, for the Appellant; Dakshesh Mehta for Defendant(s) : 2, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice K.S. Jhaveri

1. The appellants herein have challenged the award dated 02.12.1996 passed by the Motor Accident Claims Tribunal (Main), Panchmahals at Godhra in Motor Accident Claims Petition No. 293 of 1990 so far as the Tribunal awarded only Rs.1,07,250/- as compensation with interest and costs after apportioning contributory negligence of 50% on both the truck drivers.

2. It is the case of the appellants that on 04.07.1989 while Shri Devisinh was driving truck bearing registration No. MKM 1854 near outskirts of village Vadbara, another truck bearing registration no. MKO 9078 which was being driven by the original opponent no. 1 in a rash and negligent manner dashed the front portion of the truck no. MKM 1854 by its own rear portion. As a result of the said collision the driver of the truck no. MKM 1854 sustained injuries and finally succumbed to those injuries. The legal heirs therefore filed claim petition for compensation to the tune of Rs. 3,30,000. The Tribunal after hearing the parties passed the aforesaid award.

3. Mr. Hiren Modi, learned advocate appearing for the appellants submitted that the Tribunal erred in holding that the deceased had 50% contributory negligence

and that the Tribunal ought to have held that the driver of truck no. MKO 9078 was fully responsible and negligent for the accident.

3.1. Mr. Modi submitted that the appellant's monthly income is assessed only 1200/- and that the Tribunal has not considered the future increase in the income. He submitted that having regard to the fact that the deceased was only 40 years old the Tribunal ought to have taken prospective income into account.

3.2. Mr. Modi has relied upon a decision of the Apex Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, and submitted that the Tribunal ought to have deducted 1/4th for personal expenses. Mr. Modi further submitted that the Tribunal also erred in awarding only Rs. 2000/- for funeral expenses.

4. Mr. Dakshesh Mehta, learned advocate appearing for the respondent no. 2 supported the award passed by the Tribunal so far as contributory negligence is concerned. He submitted that considering the age of the deceased at around 40 years the Tribunal has adopted multiplier of 16 which is on the higher side.

5. Having heard learned advocates for both the sides and having perused the papers on record, this Court is of the view that the Tribunal after perusing the documents on record has rightly come to the conclusion that the negligence of both the vehicles is equal. It is required to be noted that there was a kachha road of around 5 ft on the left side of the truck no. MKM 1854. Had both the vehicles been on their extreme left side the accident would not have occurred. From the panchnama at Ex. 19 it is clear that the front portion of truck no. MKM 1854 was damaged. The drivers of both the vehicles had omitted to take care while driving. The Tribunal has rightly assessed contributory negligence at 50% on both the drivers.

6. Before proceeding further it is required to be noted that the issues with regard to income and deduction by way of personal expenses and multiplier are already settled by the decision of Apex Court. In the case of Sarla Verma & Ors Vs. Delhi Transport Corporation & Anr.

Reported in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, it is held as under:

In Susamma Thomas this Court increased the income by nearly 100%. In Sarla Dixit the income was increased only by 50% and in Abat Bezbaruah the income was increased by a mere 7%. In view of the imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. (Where the annual income is in the taxable range, the words "actual salary" should be read as "actual salary less tax"). The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of the deceased is more than 50 years. Though the evidence may indicate a different

percentage of increase, it is necessary to standardize the addition to avoid different yardsticks being applied or different methods of calculation being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments, etc.) the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances.

Where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third ($\frac{1}{3}$ rd) where the number of dependent family members is 2 to 3, one-fourth ($\frac{1}{4}$ th), where the number of Dependant family members is 4 to 6, and one-fifth ($\frac{1}{5}$ th) where the number of Dependant family members exceed six.

Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parents/s and siblings is likely to be cut drastically. Further subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a Dependant and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be Dependant on the father. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a Dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where family of the bachelor is large and Dependant on the income of the deceased, as in the case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third.

The multiplier to be used should be as mentioned in column (4) of the Table (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.

6.1. In the present case the Tribunal has rightly assessed the income of the deceased at Rs. 1200/-. Nothing is pointed out to take a different figure in that regard. However, the Tribunal has failed to consider future income in the case of deceased. In this case, considering 40 years of age 30% increase ought to have been considered. Accordingly, the income comes to Rs. 1560/- (Rs. 1200/- + Rs. 360/-).

6.2. In the present case the claimants are the widow and three minor children. As per the ratio laid down in the case of Sarla Verma (supra), 1/4th ought to have been deducted by way of personal expenses. Accordingly, Rs. 390/- is deducted from Rs. 1560/- which comes to Rs. 1170/- per month rounded off to Rs. 1200/-. The net income therefore comes to Rs. 14400/-.

7. As per the ratio laid down in the case of Sarla Verma (supra), I am of the view that, looking to the age of the claimant, the multiplier of 16 awarded in the present case is on higher side. The just and proper multiplier would be 15. Therefore the future loss of income would come to Rs. 2,16,000 (Rs.14400 x 15). The Tribunal has already awarded Rs. 192000/- under this head. Therefore the appellants are entitled to an additional amount of Rs. 24000/- under the head of dependency loss.

8. The amount awarded by the Tribunal under the head of funeral expenses is on lower side. An amount of Rs. 5000/- ought to have been just and proper. Accordingly, an additional amount of Rs. 3000/- is required to be awarded under the head of funeral expenses. As regards the rest of the awards under various heads are just and proper and no interference is required.

9. Therefore the claimants are entitled to a total sum of Rs. 2,41,500/- (i.e. Rs. 2,16,000/- for future loss of income + Rs. 5,000/- for funeral expenses + Rs. 20000/- for loss of expectation of life + Rs. 500/- for transportation). The Tribunal has considered the total compensation at Rs. 214500/-. Therefore in all, an amount of Rs. 26,500/- can be considered payable to the appellants. However, considering the contributory negligence of 50%, the appellants shall be entitled to additional amount of Rs. 13250/-

10. Accordingly, appeal is partly allowed. The appellants shall be entitled to an additional amount of Rs. 13250/- alongwith interest at 7.5% from the date of application i.e. 04.08.1989 till realisation. The award of the Tribunal is modified accordingly. No order as to costs.