(2014) 09 GUJ CK 0104

In the Gujarat High Court

Case No : First Appeal No. 1890 of 2007

Legal Heirs APPELLANT

Vs

Jusabhai Dadabhai Sandhi RESPONDENT

Date of Decision : 25-09-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 158, 166, 170, 173

Citation : (2014) 09 GUJ CK 0104

Hon'ble Judges : Bhaskar Bhattacharya, C.J

Bench : Single Bench

Advocate : Harshit S. Tolia, Advocate for the Appellant; Karuna V. Rahevar, Advocate for the Respondent

Judgement

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Bhaskar Bhattacharya, C.J.—This appeal under section 173 of the Motor Vehicles Act, 1988 ["the Act" for short] is at the instance of the claimants in a proceeding under section 166 of the Act and is directed against an award dated 19th April 2005, passed by the Jt. District Judge & M.A.C. Tribunal [Aux.], Amreli in M.A.C. Petition No. 78 of 2000, thereby partly allowing the claim-application and awarding a sum of Rs. 2,48,000/- with interest at the rate of 9% p.a. from the date of filing of the claim-application till realization.

2. Being dissatisfied, the claimants have come up with the present appeal.

3. It may not be out of place to mention here that neither the insurance company nor the owner of the erring vehicle has preferred either any separate appeal or any cross-objection in this appeal.

4. Therefore, the involvement of the vehicles in the accident and the coverage of insurance of the vehicles are not in dispute. The only question that arises for determination in this appeal is whether the Tribunal below was justified in awarding a sum of Rs. 2,48,000/- in the facts of the present case.

5. It appears from the materials on record that on 11th February 2000, there was a head-on collision between a luxury bus and a matador van, resulting in the death of the driver of the luxury bus. According to the averments made in the claim-application, the victim was aged 30 years and used to earn Rs. 5,000/- a month as salary from his employer. The victim died leaving widow and four children.

6. In spite of service of notice, the driver or the owner of the matador van did not contest the proceeding. But it was the Oriental Insurance Company, the insurer of the matador van who alone contested the proceeding.

7. At the time of the hearing, the widow and the employer of the victim gave evidence in support of the claim-application, but notwithstanding the grant of leave under section 170 of the Act, the insurance company decided not to lead any evidence.

8. The Tribunal, on consideration of the evidence on record, came to a conclusion that in the accident, the driver of the matador van was 80% negligent while the deceased was negligent to the extent of 20%. As regards the monthly income of the victim, the Tribunal did not accept the contention of the claimants that the victim had monthly income of Rs. 5,000/-, but decided to treat the income of the victim to be Rs. 2400/- a month. Thereafter, deducting 1/3rd from the said amount and applying the multiplier of 15, the Tribunal arrived at the figure of Rs. 2,88,000/-towards the loss of dependency. In addition to that, it further added Rs. 20,000/- towards expectation of life and a further sum of Rs. 2,000/- towards the transportation and funeral expenses. Thus, the Tribunal arrived at the total figure of Rs. 3,10,000/-.

9. Mr. Tolia, the learned advocate, appearing on behalf of the appellants has strenuously contended that the Tribunal below committed substantial error of law in not taking into consideration the future prospect of the victim. Mr. Tolia also criticized the finding of the Tribunal as regards the income of the victim. Mr. Tolia points out that the employer came in the witness-box and asserted that he used to give a sum of Rs. 5000/- a month as salary to the victim which included the daily expenditure of Rs. 70/- to Rs. 90/- payable to the driver. Therefore, according to Mr. Tolia, the finding of the Tribunal that monthly income of the victim was Rs. 2400/- was perverse finding of fact based on the total misreading of evidence on record. Mr. Tolia prays for application of the principle laid down by the Supreme Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , by treating the monthly income of the victim to be Rs. 5,000/-.

10. Ms. Rahevar, the learned advocate, appearing on behalf of the insurance company has, on the other hand, opposed the aforesaid contention of Mr. Tolia and has contended that the Tribunal below, on consideration of the entire materials on record, having arrived at the conclusion as regards the income of the victim, sitting in First Appeal, I should not discard such finding for no

sufficient reason. Ms. Rahevar further points out that although in the claim-application, the age of the victim has been given to be 30 years, it has come from the document produced by the claimants themselves that the date of birth of the victim was June 1964 and therefore, on the date of the accident i.e. on 11th February, 2000, he was 35 years 7 months. Ms. Rahevar further contends that the employer of the victim having admitted that he did not maintain any books of accounts, the Tribunal was quite justified in disbelieving the version of the employer and in arriving at a reasonable conclusion as regards the monthly income of the victim. Ms. Rahevar, therefore, prays for dismissal of the appeal.

11. After hearing the learned counsel for the parties and after going through the materials on record, I find that the Tribunal below has, on consideration of the materials on record, come to a conclusion that the victim died due to 80% negligence on the part of the driver of the matador van and 20% negligence of the victim, and the insurance company has not challenged such finding. Regarding the age of the victim, I find substance in the contention of Ms. Rahevar that although in the claim-application, the age of the victim was given to be 30 years, once it is established from the certificate given by the school authority that the victim was born in the month of June 1964, it is apparent that his real age was 35 years 7 months at the time of the accident. As regards the actual income of the victim, I am, however, unable to accept the finding of the Tribunal from the materials on record. The accident occurred on 11th February 2000 and the victim was professional driver having heavy vehicle license. In such circumstances, monthly income of Rs. 5,000/- including the daily bhattha cannot be said to be unreasonable. It appears that the Tribunal below totally misread the cross-examination of the employer, wherein, he stated that the amount of Rs. 5,000/- given by him was inclusive of the daily expenditure of the driver which is between Rs. 75/- and Rs. 90/-. By misreading the said evidence, the Tribunal came to a conclusion as if the daily wage of the driver was Rs. 75/- to Rs. 90/- and on that basis, it made it a round figure of Rs. 2400/-, which was absolutely wrong. I, thus, find that in the facts of the present case, when the widow of the victim herself and the employer have come in the witness-box, there was no justification of disbelieving their version. Although Ms. Rahevar strenuously contended before this Court that as the employer admitted that he did not maintain any accounts of the driver, I should disbelieve his version, I am not impressed by such submission. The said employer has specifically stated that he had four buses and from that he was earning Rs. 1,25,000/-. If the employer does not maintain the accounts of salary of the four drivers, for that reason, there is no justification of disbelieving the statement that he used to pay Rs. 5,000/- a month towards the salary of the driver including the daily bhattha. I have already pointed out that the victim left the widow and four children. Even after the daily expenditure of the victim and other expenses, it is not possible to maintain the family of five with the daily amount of Rs. 75/-. I have already pointed out that the Court can reasonably assess the monthly income of a driver having heavy vehicle license to be Rs. 5,000/- a month in the year 2000. I,

therefore, propose to reassess the amount of compensation by treating the monthly income of the victim to be Rs. 5,000/-, inclusive of daily bhatthas. I also accept the contention of Ms. Rahevar that the age of the victim should be treated to be above 35, namely, 36 and as laid down by the Supreme Court in the case of Sarla Verma [supra], the appropriate multiplier applied by the Tribunal, i.e. 15 was correct. This Court, however, found no answer from Ms. Rahevar regarding the question of future prospect. It is apparent that the Tribunal did not, at all, take into consideration the aspect of future prospect. As laid down by the Supreme Court in the case of Sarla Verma [supra], the victim being below 40 years, 50% of the actual income should be added to arrive at the figure of future prospective income. Therefore, in this case, Rs. 5,000/- + Rs. 2500/- = Rs. 7500/- should be treated to be the future prospective monthly income. The victim having left 5 heirs, 1/4th should be deducted from the said amount. Thus, the net prospective income should be Rs. 67,500/-. By applying the multiplier of 15, the total future loss should be Rs. 10,12,500/-. A further sum of Rs. 25,000/- should be added as conventional amount and thus, the total amount should be Rs. 10,37,500/-. However, the victim having been found to be negligent to the extent of 20%, the 20% [Rs. 2,07,500/-] of the said amount should be deducted from Rs. 10,37,5000/- and thus, the total amount of compensation payable to the claimants should be Rs. 8,30,000/-.

12. At this stage, Ms. Rahevar drew my attention to the fact that the claimants themselves restricted their claim to Rs. 5.00 lakh before the Tribunal after making a specific statement that although the compensation should be above Rs. 7.00 lakh, after taking into consideration the future uncertainties, they have decided to confine their claim to Rs. 5.00 lakh. According to Ms. Rahevar, in view of this statement, this Court should not enhance the amount at any rate beyond Rs. 5.00 lakh.

13. As pointed out by the Supreme Court in the case of Nagappa Vs. Gurudayal Singh and Others, and subsequently relied upon by the Supreme Court in the case of Ibrahim Vs. Raju and Others, , if it appears to a Court dealing with the application under a Motor Vehicles Act that the amount of just compensation arrived at on the basis of materials on record is more than the one claimed in the original application, it is the duty of the Court dealing with such application to award just compensation. The following observations of the Supreme Court in the case of Ibrahim vs. Raju (supra) are quoted below:-

21. We are conscious of the fact that in the petition filed by him, the appellant had claimed compensation of Rs. 3 lakhs only with interest and costs. It will be reasonable to presume that due to financial incapacity the appellant and his family could not avail the services of a competent lawyer and make a claim for adequate compensation. However, as the Tribunal and the High Court and for that reason this Court are duty-bound to award just compensation, we deem it proper to enhance the compensation from Rs. 1,89,440 to Rs. 6 lakhs. This approach is in tune with the judgment in Nagappa vs. Gurudayal Singh. In that

case, the Court considered a similar issue, referred to the judgments of the Bombay High Court in Municipal Corpn. Of Greater Bombay vs., Kisan Gangaram Hire, Orissa High Court in Mulla Md. Abdul Wahid v. Abdul Rahim and Punjab and Haryana High Court in Nagappa Vs. Gurudayal Singh and Others,

21. For the reasons discussed above, in our view, under the MV Act, there is no restriction that the Tribunal/court cannot award compensation amount exceeding the claimed amount. The function of the Tribunal/court is to award just compensation which is reasonable on the basis of evidence produced on record. Further, in such cases there is no question of claim becoming time-barred or it cannot be contended that by enhancing the claim there would be change of cause of action. It is also to be stated that as provided under sub-section (4) to Section 166, even the report submitted to the Claims Tribunal under sub-section (6) of Section 158 can be treated as an application for compensation under the MV Act. If required, in appropriate cases, the court may permit the amendment to the claim petition.

14. Similar view is also taken in the case of Sanjay Batham Vs. Munnalal Parihar and Others, wherein in paragraph 18, the Supreme Court has made the following observations:-

18. It is true that in the petition filed by him under Section 166 of the Act, the appellant had claimed compensation of Rs. 4,20,000/- only, but as held in Nagappa Vs. Gurudayal Singh and Others, in the absence of any bar in the Act, the Tribunal and for that reason any competent court is entitled to award higher compensation to the victim of an accident.

15. Therefore, in the present case, merely because the learned lawyer for the claimants did not draw the attention of the Tribunal as regards the aspect of future prospect and for that reason, the amount claimed was shockingly low, such fact cannot stand in the way of the claimants in getting just amount of compensation from the appellate court. I have already pointed out that neither in the written arguments before the Tribunal at the instance of the claimants nor the Tribunal itself considered the aspect of future prospect. As a result, the lesser amount of award was passed by the Tribunal below. If the claim-application was dealt with by a competent lawyer, he would have definitely drawn the attention of the Tribunal to the question of future prospect and the Tribunal also committed substantial error in not dealing with that question. I, thus, find that in the facts of the present case, notwithstanding the fact that the claim was undervalued for the ignorance of the correct law of the land, this Court should award just amount of compensation in tune with the existing law of the land, namely, Sarla Verma [supra].

16. Ms. Rahevar lastly made a desperate attempt by contending that if I propose to enhance the amount beyond the amount claimed in the claim-application, further opportunity of controverting such plea should be given to her client. I am afraid, in all the decisions right from Nagappa [supra] and subsequent decisions

indicated above, it has been emphasized that the strict rule of pleading is not applicable in a proceeding under the Motor Vehicles Act. All that is required is, in the event, a court proposes to allow just amount of compensation which is more than the one claimed in the claim-application, it should direct the claimant to pay the additional amount of court fees on the added amount.

17. I, thus, allow the appeal and set aside the award impugned and enhance the awarded amount to Rs. 8,30,000/- with interest at the rate of 9% per annum from the date of filing of the application till the actual payment, provided the appellants pay the additional court fees on the added amount within two months from today. I make it clear that running of interest will stop on the amount already deposited by the insurance company after the date of deposit of the amount. The insurance company is directed to deposit the balance amount within one month after the payment of the added court fees by the claimants before the Tribunal. Since the accident occurred 14 years ago, I direct the Tribunal to release the amount together with interest accrued thereon in favour of the claimants on proper verification and in terms of the proportion indicated in the award of the Tribunal, after the deposit of the amount of additional court fees in the Tribunal.

18. No order as to costs.

19. The lower court record be sent out to the Tribunal immediately.

