(2023) 04 GUJ CK 0103

In the Gujarat High Court

Case No : R/First Appeal No. 3473 Of 2010

Manjulaben Wd/O Bapuji Amraji Thakarda & 3 Other(S) APPELLANT

Vs

Shatishkumar Mahadev Chauhan (Chavan) & 4 Other(S) RESPONDENT

Date of Decision : 28-04-2023

Acts Referred:
Motor Vehicles Act, 1988 — Section 173

Citation : (2023) 04 GUJ CK 0103

Hon'ble Judges : S.V. Pinto, J

Bench : Single Bench

Advocate : R.K.Mansuri, Sunil B Parikh, Vibhuti Nanavati

Final Decision : Partly Allowed

Judgement

S.V. Pinto, J

1. Though served, no one has appeared for the respondent Nos.2 and 4.

2. This appeal has been preferred by the appellants – original claimants under section 173 of the Motor Vehicles Act ("the Act" for short) being aggrieved and dissatisfied by the judgment and award passed by the learned Motor Accident Claims Tribunal (Main), Sabarkantha @ Himmatnagar in Motor Accident Claims Petition No.861 of 2007 on 21.4.2000.

3. The brief facts of the case that emerge from the record are as under.

3.1 That on 26.6.2006 at about 8.30 pm, deceased Bapuji Amraji Thakarda was going from Sahakari Jeen towards Motipura as a pillion rider on Motor Cycle No.GJ 9 P 1951 which was being driven by the opponent No.1. That at that time, Truck No.MH 9 L 6592 was stationed on the service road without any signal or indication and the opponent No.1 – driver of Motor Cycle No.GJ 9 P 1951 dashed his motor cycle with the stationery truck, as a result of which, the pillion rider - Bapuji Amraji Thakarda fell down on the road and sustained fatal injuries and died due to the injuries sustained in the said motor vehicular accident. The claimants who are the widow and children of the deceased - Bapuji Amraji Thakarda have filed the application for compensation under different heads for the accidental death of the deceased in the vehicular accident.

4. Notices were duly served to the opponents and they appeared and the opponent No.3 – insurance company of Truck No.MH 9 L 6592 filed the written statement at Exh.29 and the opponent No.5 – Reliance General Insurance Company Limited of Motor Cycle No.GJ 9 P 1951 filed the written statement at Exh.30. Both the insurance companies have denied all the averments made by the claimants in the claim petition. The opponent Nos.1 and 2 driver and owner of the Truck No.MH 9 L 6592 have appeared and file the written statement at Exh.19 denying all the allegations whereas the opponent No.4 driver cum owner of motor cycle No.GJ 9 P 1951 though being served has not appeared.

5. The learned Tribunal, after having considered the evidence on record, held the opponent Nos.4 and 5 i.e. driver-cum-owner and the insurance company of Motor Cycle No.GJ 9 P 1951 solely responsible for the accident and exonerated the opponent Nos.1, 2 and 3 i.e. driver, owner and the insurance company of Truck No.MH 9 L 6592 and ordered the opponent Nos.4 and 5 to jointly and severally pay an amount of Rs.2,86,860/- to the claimants with interest at the rate of 6% till realization. The learned Tribunal considered the age of the deceased as 45 years and considered the income at Rs.2000/- per month and accordingly considered the total yearly income of Rs.24,000/- and after deducting 1/3rd amount from personal expenses calculated the yearly future loss of dependency as Rs.16,000/-. The multiplier of 15 was awarded and Rs.2,40,000/- was granted as future loss of dependency, Rs.15,000/- towards pain, shock and suffering, Rs.8860/- towards medical expenses, Rs.10,000/- towards loss of estate, Rs.10,000/- towards loss of consortium and Rs.3000/- towards funeral expenses and in all, an amount of Rs.2,86,860/- was awarded by way of compensation with 6% interest to the claimants.

6. Being aggrieved and dissatisfied by the aforesaid award, the appellants – original claimants have approached this Court by way of this appeal.

7. I have heard learned advocate Mr.R.K.Mansuri for the appellants – original claimants, learned advocate for Mr.Vibhuti Nanavati for respondent No.5 and learned advocate Mr.Sunil Parikh for the respondent No.3. Though served, the respondent Nos.2 and 4 have not appeared.

8. It is mainly contended by Mr.R.K.Mansuri, learned advocate appearing for the appellants – original claimants that the learned Tribunal has erred in considering the income of the deceased at Rs.2000/- per month and it is much on the lower side. Moreover, the learned Tribunal has not added any future prospects as per the judgment of the Honourable Supreme Court in the case of National Insurance Company Limited Vs Pranay Sethi and others reported in (2017) 16 SCC 680 and the learned Tribunal also awarded much lower side as consortium, loss of estate and funeral expenses and hence, the total amount awarded is not calculated as

per the settled principles of law. He, therefore, has urged this Court to allow the appeal.

9. On the other-hand, Mr.S.B.Parikh, learned advocate for respondent No.3 and Mr.Vibhuti Nanavati, learned advocate for respondent No.5 have submitted that the learned Tribunal has considered all the aspects properly and has ordered just and reasonable compensation and no order of interference is required and hence, the appeal of the appellants must be dismissed.

10. I have gone through the record and proceedings of the present appeal and it appears that there is no dispute with regard to the order of the learned Tribunal exonerating the opponent Nos.1, 2 and 3 from paying any compensation to the claimants. There is also no dispute with regard to the age of the deceased Bapuji Amraji Thakarda which is considered as 45 years at the time of accident considering the PM note of the deceased produced at Exh.53. As far as the amount of income per month of the deceased is concerned, it is on record that the deceased was doing centering work and the learned Tribunal has considered the monthly income of Rs.2000/- which appears to be on the lower side and if the prevailing minimum wages at the relevant time is considered, the amount of Rs.2800/- per month would be just and proper considering the fact that centering work was done by the deceased at the time of accident. The learned Tribunal has also not added any future prospects and has held that as the claimants have not produced any cogent evidence regarding the income of the deceased, they are not entitled to any future prospective income, but as per the judgment of the Honourable Supreme Court in the case of Pranay Shethi (supra), the deceased was self employed and aged 45 years and is entitled to 30% future prospective income. Moreover, the learned Tribunal has also erred in not considering the proper amounts of award towards the loss of estate, consortium and funeral expenses and as per the judgment of the Honourable Supreme Court in the case of Pranay Shethi (supra), and the claimants are entitled to Rs.15,000/- towards loss of estate, Rs.40,000/- each towards loss of consortium and Rs.15,000/- towards funeral expenses, whereas the learned Tribunal has awarded the amounts of Rs.10,000/-, Rs.10,000/- and Rs.3000/- respectively which is erroneous. There is no dispute regarding the fact that after the accident, deceased Bapuji Amraji Thakarda was alive for 16 days and the learned Tribunal has awarded the amount of Rs.15,000/-towards pain, shock and sufferings and Rs.8860/- towards medical expenses as the medical bills to the tune of Rs.8858/- were produced on record at Exhs.46 and 47.

11. The learned Tribunal has, after considering the age of the deceased as 45 years, awarded multiplier of 15 and it appears that there is also an error in the application of the multiplier. As per the decision of the Honourable Supreme Court in the case of Sarla Verma and others Vs Delhi Transport Corporation and another, reported in (2009) 6 SCC 121 when the deceased was between 41 to 45 years of age, the multiplier of 14 must be awarded and hence, considering the above aspects, the claimants are entitled to an enhanced amount.

12. Considering the monthly income as Rs.2800/-per month and adding 30% prospective income, the amount would be Rs.3640/- and as there are four dependents, after deducting 1/4th amount, loss of dependency would be Rs.2730 x 12 and yearly loss of dependency would be Rs.32,760/-. The multiplier of 14 must be awarded and accordingly, the total amount towards future loss of dependency is Rs.4,58,640/-. Hence, the claimants are entitled to the following amount.

13. The learned Tribunal has awarded the amount of Rs.2,86,860/- when in fact, the claimants are entitled to the amount of Rs.6,72,500/- and the enhanced amount of Rs.3,85,640/- is to be paid by the respondent Nos.4 and 5 jointly and severally to the claimants.

Sr.No.	Details	Amount
1	Future loss of dependency	Rs.4,58,640/-
2	Pain, shock and sufferings	Rs.15,000/-
3	Medical expenses	Rs.8860/-
4	Loss of estate	Rs.15,000/-
5	Loss of consortium	Rs.1,60,000/-
6	Funeral expenses	Rs.15,000/-
Total		

Rs.6,72,500/-

14. In view of the above discussion, First Appeal No.3473 of 2010 filed by the appellants – original claimants is partly allowed. The impugned judgment and award passed by the learned Motor Accident Claims Tribunal (Main), Sabarkantha @ Himmatnagar in Motor Accident Claims Petition No.861 of 2007 dated 21.4.2010 is hereby modified to the aforesaid extent. The respondent Nos.4 and 5 are hereby directed to deposit the enhanced amount of Rs.3,85,640/- before the learned Tribunal within a period of

12 weeks from the date of receipt of the order with interest at the rate of 6%. As the original matter is of 2007 and the First Appeal is of the year 2010, the learned Tribunal is directed to disburse the said enhanced amount to the claimants after due verification through RTGS or NEFT in the proportion as per the order of the learned Tribunal. Record and Proceedings be sent back to the concerned learned Tribunal forthwith. No costs.