(2012) 02 GUJ CK 0085

In the Gujarat High Court

Case No : First Appeal No. 912 of 1999

Meghubhai Hira Rabari and 3 APPELLANT

Vs

Premji Manji Patel and 2 RESPONDENT

Date of Decision : 07-02-2012

Acts Referred:

Citation : (2012) 02 GUJ CK 0085

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

Bench : Single Bench

Advocate : Mehul S. Shahs - 4 and Mr. Suresh M. Shahs - 4, for the Appellant; S.k. Patel for Defendant(s) : 1, Notice Served for Defendant(s) : 2 and Mr. Vibhuti Nanavati for Defendant(s) : 3, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice Ks Jhaveri

1. The appellant herein has challenged the award dated 30.11.1998 passed by the Motor Accident Claims Tribunal (Aux.), Kachchh at Bhuj in Motor Accident Claims Petition No. 314 of 1990 so far as the Tribunal awarded only Rs. 93,000/- as compensation with interest at 6% and costs.

2. It is the case of the appellants that on 22.02.1990 the deceased Shri Hira Vela Rabari was walking on the road, when a truck bearing registration No. GRX 4369 which was being driven by the original opponent no. 1 in a rash and negligent manner hit Shri Hira Vela thereby killing him. The appellants being legal heirs and representatives of the deceased therefore filed claim petition for compensation to the tune of Rs. 2 lakhs. The Tribunal after hearing the parties passed the aforesaid award.

3. Mr. Mehul S. Shah, learned advocate appearing for the appellants submitted that the Tribunal erred in considering the income of the deceased at Rs. 750/-. He submitted that the Tribunal has erred in deducting 1/3 for personal expenses when actually it ought to have been only 1/4th. He has relied upon a decision of

the Apex Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, in support of his submission.

3.1 Mr. Shah has further submitted that the Tribunal has erred in applying multiplier of 12 and it ought to have been increased. He submitted that the Tribunal has erred in not awarding sufficient amounts under the head of loss of consortium and loss to estate. He also submitted that the Tribunal has not awarded adequate amount under the head of pain shock and suffering. Mr. Shah has also submitted that the rate of interest of 6% is on lower side and the same requires to be enhanced.

4. Mr. Thomas, learned advocate appearing for Mr. Vibhuti Nanavati for the respondent insurance company supported the award passed by the Tribunal. He submitted that however, the Tribunal has applied multiplier of 12 which is on higher side and the same is required to be reduced in view of the decision in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, . He submitted that the rate of interest awarded by the Tribunal is just and proper and does not call for any interference by this Court as the same is the discretion of the court.

5. Before proceeding further it is required to be noted that the issue deduction by way of personal expenses and multiplier are already settled by the decisions of Apex Court. In the case of 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,w e are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the decased towards future prospects, whee 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 fo the deceased was 40 to 50 years. There should be no addition, where the age of the deceased is more than 50 years. Thouugh 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. Wehr e 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 (1/3rd) where the number of dependent family numbers is 2 to 3, one-fourth (1/4th), where the number of Dependant family members is 4 to 6, and one-fifth (1/5th) 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. The Tribunal has assessed the income of the deceased at Rs. 750/- per month which seems to be just and proper. Nothing is pointed out to take a contrary view. In the present case the claimants are four and therefore 1/4th of the income ought to have been deducted by way of personal expenses. Accordingly, Rs. 187.5 is required to be deducted. The loss of dependency per month shall be Rs. 562.5 which is rounded off to Rs. 563/- per month and Rs. 6756/- per annum.

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 12 awarded in the present case is on higher side. The just and proper multiplier would be 11. Therefore the loss of dependency would come to Rs. 74,316/-. (Rs. 6756 x 11).

8. The Tribunal ought to have awarded Rs. 5000/- for funeral expenses and Rs. 6000/- for medical expenses and pain shock and suffering. The Tribunal ought to have awarded Rs. 10,000/- for loss to estate and Rs. 10,000/- for loss of consortium. The appellants are therefore entitled to Rs. 1,05,316/- (Rs. 74,316 + Rs. 31000). The Tribunal has already awarded Rs. 93,000/- and therefore the appellants are entitled to an additional amount of Rs. 12,316/-.

8.1 The rate of interest of 6% awarded by the Tribunal is just and proper as the same is the discretion of the Tribunal and therefore this Court does not think it fit to interfere in the same more particularly when the Tribunal has specifically observed that there was delay on the part of the appellants in joining the insurance company as a party.

9. Accordingly, appeal is partly allowed. The appellant shall be entitled to an additional amount of Rs. 12,316/- alongwith interest at 7.5% from the date of application till realisation. The award of the Tribunal is modified accordingly. No order as to costs.