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(2007) 11 GUJ CK 0014

In the Gujarat High Court

Case No : First Appeal No. 2457 of 2001

Mumtazben and Others APPELLANT

Vs

Mohammad Hanif Ismail Ugharatdar and Others RESPONDENT

Date of Decision : 28-11-2007

Acts Referred:
Motor Vehicles Act, 1988 — Section 173

Citation : (2007) 11 GUJ CK 0014

Hon'ble Judges : R.M. Doshit, J;C.K. Buch, J

Bench : Division Bench

Advocate : Renu Singh, for Y.N. Ravani, for the Appellant; V.C. Thomas, for P.V. Nanavati, for Defendant 3 and Vibhuti Nanavati, for Defendant 3, for the Respondent

Final Decision : Allowed

Judgement

R.M. Doshit, J.—This Appeal preferred u/s 173 of the Motor Vehicles Act, 1988 arises from the judgment and award dated 30th March, 2000 passed by the Motor Accident Claims Tribunal, Bharuch in Motor Accident Claim Petition No. 1031 of 1992. The appellants are the claimants. By impugned award, the appellants have been awarded compensation in the sum of Rs. 5,96,000/=. The appellants have preferred the present Appeal for enhancement of the amount of compensation. The Appellants are the minor son and the parents of deceased-Iqbal Hussain Yusufbhai Kadva, a resident of village-Achhod, Taluka-Amod.

2. On 22nd August, 1992, deceased-Iqbal Hussain and the pillion-rider Ibrahim Yusuf, both employees of the Gujarat Narmada Valley Fertilizer Company, were travelling on a scooter bearing registration No. GJ-16-F-5817 from Bharuch to Achhod. On the way, their scooter was hit by the offending Tempo bearing registration No. GQG-7815 from behind. On account of the said accident, both the rider and the pillion rider of the scooter fell off the scooter and died on the spot. The widow and the minor child of the deceased Iqbal Husain and his parents filed above referred Motor Accident Claim Petition No. 1031 of 1992

before the Motor Accident Claims Tribunal at Bharuch [hereinafter referred to as, ''the Tribunal''] for compensation in the sum of Rs. 30,00,000/=. According to the claimants, deceased-Iqbal Husain was an educated person; he had secured a Bachelor''s Degree in Commerce; was employed in the Gujarat Narmada Valley Fertilizers as a Junior Accountant. At the time of his death, he was 28 years of age. He was receiving monthly salary in the sum of Rs. 5,000/=; that he had bright prospects in future. The minor child was then 10 months old. The claim was contested by the respondents - the driver, the owner and the insurer of the offending tempo.

3. In support of their claim, the claimants produced payslip of the deceased Iqbal Hussain for the month of May, 1992 [Exh.36]. The claimant No. 3-the father of the deceased gave evidence at Exh. 34. The claimants also produced Statement {Exh.90} prepared by the employer-GNFC indicating the basic pay of the deceased-Iqbal Hussain on the date of the accident i.e., 22nd August, 1992 and the yearly increments and periodical revision of pay that he would have received during his service career till he reached the age of superannuation in the month of February, 2025. According to the said statement, his basic pay on the date of his retirement would have been Rs. 8,825/=.

4. The learned Tribunal, considering the aforesaid evidence on record, held that the take home salary of the deceased was Rs. 4,000/= and by the end of his service career, it would have been doubled to Rs. 8,000/=. Considering the mean, the average monthly salary was calculated at Rs. 6,000/=. The Tribunal deducted 1/3rd of the said amount on account of maintenance and personal expenses of the deceased and computed monthly dependency factor at Rs. 4,000/=. The Tribunal has adopted multiplier of 12 years and has worked out the dependency loss at Rs. 5,76,000/=. To this, the Tribunal has added conventional amount of Rs. 20,000/=. The claimants have thus been awarded compensation in the sum of Rs. 5,96,000/= with interest @ 12% per annum and the proportionate cost. It has come on record that pending the proceeding before the Tribunal, the widow of the deceased-Iqbhal Hussain has re-married and has settled in foreign country. Her name was, therefore, by order made on application Exh.29, deleted from the cause title of the claim petition.

5. Miss Renu Singh has appeared for the appellants and has assailed the impugned judgment and award. She has submitted that inspite of specific evidence led by the claimants with regard to salary of the deceased [Exh.36] and the statement of his prospective income [Exh.90], the learned Tribunal has erred in not accepting the said figures and in working out the average monthly salary of the deceased at Rs. 6,000/=. She has also submitted that considering the age of the deceased, the multiplier of 12 adopted by the Tribunal is conservative. The deceased had yet another 32 years of service, therefore, a higher multiplier ought to have been adopted.

6. The Appeal is contested by Mr. Thomas. He has supported the impugned judgment and award.

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7. We do agree with Miss Renu Singh. The pay-slip Exh.36 indicates that at the relevant time, the basic pay of the deceased-Iqbal Hussain was Rs. 1,300/= and the gross salary was Rs. 5,295/=. If we exclude the allowances paid to the deceased viz., shift allowance, over-time, washing allowance, etc., we can fairly estimate his monthly take home salary at Rs. 4,000/=. The statement Exh.90 records yearly increments that the deceased would have earned and the benefit of periodical upward revision of pay, as calculated by the employer-GNFC. Thus, there is no reason why this Court should not believe the statement of salary of the deceased worked out by his employer. Considering the take home salary of the deceased of Rs. 4,000/=, at the time of his death, and the maximum gross salary of Rs. 20,000/= that he would have received had he survived and served till the date of his retirement, we are of the opinion that the average salary of the deceased can fairly be estimated at Rs. 10,000/=. From that, we propose to deduct a sum of Rs. 3,000/= being the amount that would have been spent by the deceased on himself. Thus, the monthly dependency factor would come to Rs. 7,000/=. As to the multiplier, we are of the opinion that the multiplier of 12 adopted by the Tribunal is indeed conservative. It should not be lost sight that the deceased was a young man of 28 years of age and had a long 32 years of service career. Considering these factors, we propose to adopt multiplier of 16. We are, therefore, of the opinion that the claimants were entitled to compensation in the sum of Rs. 13,44,000/= as loss of dependency. We confirm the rest of the award passed by the Tribunal. The impugned award passed by the Tribunal be modified accordingly.

8. The Appeal is allowed to the aforesaid extent with proportionate cost.

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