

(2012) 02 GUJ CK 0011
In the Gujarat High Court
Case No : F.A. No. 3737 of 2005

National Insurance Co. Ltd.	Vs	APPELLANT
Hematbhai S. Solanki (Deceased) by L.Rs. and Others		RESPONDENT

Date of Decision : 02-02-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 166

Citation : (2012) ACJ 2501

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

Bench : Single Bench

Advocate : Dakshesh Mehta, for the Appellant; Kishor M. Paul, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.—This appeal has been filed against the judgment and award dated 17.9.2005 passed by the Motor Accidents Claims Tribunal [Main], Rajkot, in M.A.C. Petition No. 409 of 2005, whereby the claim petition was allowed and the original claimants were awarded total compensation of Rs. 2,04,500 along with interest at the rate of 10 per cent per annum from the date of the application till its realization. Facts in brief are that on 29.3.2005, at around 0100 hours, while Hematbhai, son of respondent Nos. 1 and 2, was going on his bicycle, at that time, the rickshaw (chhakdo) bearing No. GJ 10-T 548, driven by respondent No. 3 and insured with the appellant insurance company, in a rash and negligent manner, knocked down Hematbhai, as a result of which he sustained severe bodily injuries and succumbed to the injuries. The legal heirs of the deceased child filed claim petition, which came to be partly allowed, by way of the impugned award.

2. The learned counsel for the appellant submitted that the deceased was minor and income and the multiplier taken by the Tribunal is on higher side and that Tribunal has followed the structured formula as per Second Schedule to the Act mechanically and such reliance has resulted into awarding higher amount to the

claimant.

3. As a result of hearing and perusal of the record, there is no dispute that the deceased was 13 years old. As far as the income of the minor is concerned, the Apex Court in the case of National Insurance Co. Ltd. v. Gurumallamma, 2009 ACJ 2660 (SC), held as under:

(8) Multiplier *stricto sensu* is not applicable in the case of fatal accident. The multiplier would be applicable only in case of disability in non-fatal accidents as would appear from Note 5 appended to the Second Schedule. Thus, even if the application of multiplier is ignored in the present case and the income of the deceased is taken to be Rs. 3,300 per month, the amount of compensation payable would be somewhat between Rs. 6,84,000 and Rs. 7,60,000. As the Second Schedule provides for a structured formula, the question of determination of payment of compensation by application of judicial mind which is otherwise necessary for a proceeding arising out of a claim petition filed u/s 166 would not arise. The Tribunals in a proceeding u/s 163-A of the Act is required to determine the amount of compensation as specified in the Second Schedule. It is not required to apply the multiplier except in a case of injuries and disabilities.

(9) Parliament while laying down the amount of compensation in the Second Schedule, as indicated hereinbefore, in its wisdom, provided for payment of some amount which should be treated to be the minimum. It took into consideration the fact that a person's potentiality to earn is highest when he is aged between 25 and 30 years and that is why in case of permanent disability multiplier of 18 has been specified. The very fact that even if the deceased had an income of Rs. 3,000 per month, he being aged about 15 years, would receive a sum of Rs. 60,000 but if his income was Rs. 40,000 per annum, his legal heirs and representatives would receive a sum of Rs. 8,00,000. In the case of any non-earning person, the notional income has been fixed at Rs. 15,000 per annum.

4. In view of the above it is very clear that the Tribunal is not required to strictly apply the multiplier except in a case of injuries and disabilities. Even in injury or disability case multiplier of 18 has been specified. It is further evident that in case of a minor application of multiplier of 20 is just and reasonable.

5. In the present case the Tribunal has taken the income of Rs. 15,000 per annum. Deceased was 13 years old. Therefore, by applying multiplier of 20 years as per the ratio laid down in the aforesaid decision, it would come to Rs. 3,00,000 [Rs. 15,000 x 20]. One-third deduction would come to Rs. 1,00,000 and, therefore, the net amount would be Rs. 2,00,000. Learned Tribunal has awarded Rs. 4,500 under the heads of loss to estate and funeral expenses, which in my opinion is just and proper. Learned Tribunal has rightly awarded Rs. 2,04,500 as compensation to the claimants.

6. Considering the facts of the case and keeping in mind the principle laid down in the aforesaid decision, the impugned award passed by the Tribunal is just and

proper. In my opinion, the assessment made by the Tribunal is just and reasonable. I am in complete agreement with the reasonings given by the Tribunal in the impugned award and hence, find no reasons to interfere with the same. For the foregoing reasons, the appeal is dismissed. No costs.