**(2008) 09 GUJ CK 0078**

**In the Gujarat High Court**

**Case No :** First Appeal No''s. 2589 and 3229 of 2006

National Insurance Co. Ltd. APPELLANT

Vs

Komalben Pankajkumar Trivedi and Others RESPONDENT

**Date of Decision :** 25-09-2008

**Acts Referred:**

**Citation :** (2008) 09 GUJ CK 0078

**Hon'ble Judges :** Z.K. Saiyed, J;J.R. Vora, J

**Bench :** Division Bench

**Advocate :** Megha Jani, for the Appellant; Adil R. Mirza, for the Respondent

## Judgement

J.R. Vora, J.—Both these appeals are preferred against the judgment and award dated 16.08.2005, delivered by the Motor Accident Claims Tribunal (Axillary), Fast Track Court No. 8, Nadiad in Motor Accident Claim Petition No. 883/1996 whereby the appellants of First Appeal No. 3229/2006 being claimants were awarded compensation of Rs. 6,70,800/- [Rupees Six Lakhs Seventy Thousand Eight Hundred Only] with running interest at the rate of 12% p.a. from the date of application till realization, for the death of Pankajkumar Trivedi, husband of claimant No. 1 and father of claimant No. 2. Claimant Nos. 3 to 7 were deleted by the Tribunal vide order passed below Ex.19. First Appeal No. 2589/2006 is preferred by the National Insurance Company Limited, appellant - original opponent No. 3 and that appeal is restricted to the extent of rate of interest which is awarded by the Tribunal at the rate of 12% p.a. While the original claimants have preferred First Appeal No. 3229/2006 for enhancement of claim on the ground that the Tribunal failed to take into consideration the prospective income of the deceased Pankajkumar Trivedi.

2. Learned advocate Ms.Kapadia for learned advocate Ms.Megha Jani for the appellant in First Appeal No. 2589/2006 and for the respondent No. 3 in First Appeal No. 3229/2006 and learned advocate Mr.Adil Mirza for the appellants in First Appeal No. 3229/2006 and for respondent Nos. 1 and 2 in First Appeal No. 2589/2006 were heard in detail in respect of these appeals.

 

3. Accident in question occurred on 21.05.1996 at 7.00 a.m., while deceased Pankajmukar Trivedi was going from Petli to Nadiad, on scooter, at that time, original opponent No. 1 ? Kalubhai Nathabhai Shaikh, driving truck bearing Truck No. GJ-T-2526, negligently, dashed with the scooter on account of which Pankajkumar Trivedi died.

4. In none of these appeals, it is disputed that the conclusion of the Tribunal in respect of issue No. 1 that deceased died due to the negligent driving of the truck by the opponent No. 1.

5. The appeal filed by the claimants is for enhancement of compensation on the ground that the learned Tribunal failed to take into account the then income as well as prospective income of the deceased Pankajkumar Trivedi. It was the case of the claimants that deceased Pankajkumar Trivedi was B.Sc., B.Ed., M.Sc., M.Phil, Gold Medalist and was writing mathematic books and was full time lecturer in Science College, Kapadvanj and was earning Rs. 8,475/- as salary at the time of accident. Though it was urged that the deceased was earning Rs. 10,000/- from tuition and Rs. 10,000/- he was earning from other royalty of his writings. The deceased was also earning Rs. 15,000/- from agriculture land and that the deceased had an opportunity to become Principal and would have earned salary to the tune of Rs. 18,000/- per month.

6. One Sureshchandra Punamchand Shah examined at Ex.85, stated that, at the time of accident, deceased was earning Rs. 8,450/- per month as salary and salary of deceased could have been raised Rs. 12,000/- per month. At Ex.88 Kantibhai Vallabhbhai Patel also examined in this respect wherein he stated that the deceased could have earned Rs. 22,200/- per month, had he been alive. Some evidence of agriculture land belonged to the deceased is also produced on record. Learned trial Judge came to the conclusion that there was no evidence on record that the deceased was receiving income from royalty, paper-examination etc. nor any evidence could be produced to show that the deceased was earning from tuition class. However, learned trial Judge relied upon income tax return produced at Ex.68 and at that time, the income of the deceased was Rs. 52,230/- per year. The learned trial Judge did not believe any dependency benefit from the agriculture land because, the land remains same and the family can derive income from agriculture land in the absence of deceased, as well. There is no loss of income on account of agricultural because this is so admitted by the claimant No. 1 in her cross-examination. Before learned trial Judge relied upon the best evidence i.e. Income tax return and assessed the income of the deceased at Rs. 5,000/- per month and after deducting 1/3rd pocket expenses, the dependency benefit of the claimants was assessed at Rs. 3,400/- per month and after applying 16 multipliers, the Tribunal awarded in all Rs. 6,52,800/- towards dependency benefits. There is no dispute about other conventional amount awarded by the Tribunal to the claimants. Learned advocate Mr.Adil Mirza for the appellants in First Appeal No. 3229/2006 vehemently urged, after relying upon one marked document, that the deceased was earning Rs. 8,450/- per

 

month at the time of accident and he refers to the deposition of the witness at Ex.85 wherein according to him, this document was exhibited, but we do not find that this document is exhibited. However, even if this is to be considered, then also, the carry on salary of deceased was Rs. 5,000/- at the time of accident, as per the document relied upon by the claimants. Over-and-above, the Tribunal rightly took into consideration the best evidence available on record and that was income tax return and refund certificates produced at Ex.67 and 68. The Tribunal, therefore, rightly came to the conclusion that the monthly income of the deceased could be, in the circumstances, at the tune of Rs. 5,000/- per month. Then, learned advocate Mr.Adil Mirza for the claimants vehemently also urged that prospective income of the deceased, was not taken into consideration by the Tribunal eventhough the fellow lecturer of the deceased, who are examined in this petition, stated that they were earning Rs. 12,000/- per month, while they were deposing before the Tribunal. It is the submission on behalf of the claimants that at least prospective income of the deceased could have been taken into consideration by the Tribunal by settled method of doubling the income and adding the monthly income to that and to divide the same by two. So it is the submission that, in any case, the Tribunal did not take into consideration prospective income of the deceased and, therefore, this appeal for enhancement.

7. While considering the submission on behalf of the claimants, it must be noted that consideration of the prospective income in all cases is not an absolute formula of law. Even for considering prospective income, necessary evidence is required to be taken into consideration. Merely because, some fellow lecturer deposed before the Tribunal that he earns Rs. 12,000/- per month and that deceased would have been earned that amount, would not give rise to that consideration. Imponderables of life are also one of the factor to be considered. We do not find any error on the part of the Tribunal in not considering the income as has been vehemently submitted in this appeal, as there is no such cogent evidence. This issue can be assessed still from further angle that the deceased was 31 years of age at the time of death. The Tribunal applied 16 multipliers to employ the dependency benefits assessed by the Tribunal, but this issue is not disputed by the Insurance Company or otherside in the other appeal filed by the Insurance Company. Therefore, we do not enter into this arena, but we only say that when just and reasonable compensation is assessed, it has to be seen from all circumstances of the matter. In any case, if the prospective income of the deceased is not taken into consideration by the Tribunal then the claimants are awarded higher multipliers making the award of compensation just and reasonable and, therefore, we are not inclined to interfere in First Appeal No. 3229/2006.

8. While considering First Appeal No. 2589/2006 which is filed by the Insurance Company for limited issue of reducing the rate of interest awarded to the claimants, it clearly appears that the incident took place in 1996 and the award of interest by the Tribunal at the rate of 12% p.a. is undoubtedly on higher side.

 

The award of interest must be commensurateing to the circumstances prevailing at the relevant time. We are convinced that the rate of interest as awarded by the Tribunal is required to be reduced to 9% p.a. instead of 12% p.a. and in this view of the matter, First Appeal No. 2589/2006 is required to be partly allowed.

9. In view of the above, First Appeal No. 2589/2006 is partly allowed to the extent that the rate of interest awarded by the Tribunal at the rate of 12% p.a. is reduced to 9% p.a. and the judgment and award impugned is modified only to that extent. While First Appeal No. 3229/2006 preferred by the claimants for enhancement stands dismissed.

 