(2008) 07 GUJ CK 0086

In the Gujarat High Court

Case No : First Appeal No. 2587 of 2007 and Civil Application No. 7429 of 2007 in First Appeal No. 2587 of 2007

National Insurance Co. Ltd. APPELLANT

Vs

Niruben Natwarbhai Patel RESPONDENT

Date of Decision : 18-07-2008

Acts Referred:
Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2008) 07 GUJ CK 0086

Hon'ble Judges : Z.K. Saiyed, J;A.M. Kapadia, J

Bench : Division Bench

Advocate : Megha Jani, for the Appellant; Amit N. Patel, for the Respondent

Judgement

A.M. Kapadia, J.—Challenge in this appeal filed u/s 173 of the Motor Vehicles Act, 1988 (''the Act'' for short) is to the correctness of the judgment and award dated 8.10.2004 rendered in Motor Accident Claim Petition No. 261 of 1999 by the Motor Accident Claims Tribunal (Aux), 3rd Fast Track Court, Navsari (''the Tribunal'' for short) by which the claim petition filed u/s 166 of the Act by respondent Nos. 1 to 5 (''the claimants'' for short) against the appellant-National Insurance Company Limited and respondent Nos. 6 and 7, driver and owner of the Jeep Tempo Trex bearing registration No. GJ-6-AA-9235 (''the offending vehicle'' for short) claiming compensation of Rs. 37,43,900/- on account of the untimely demise of Natvarbhai Naranbhai Patel, in a vehicular accident which took place on 14.4.1999 has been partly allowed and thereby the claimants were held entitled to recover compensation of Rs. 17,00,500/- together with interest at the rate of 9% per annum from the date of filing of the claim petition till realization and proportionate costs of the claim petition and accordingly the appellant-insurance company and respondent Nos. 6 and 7, driver and owner of the offending vehicle, were jointly and severally held liable to pay the said amount as compensation to the claimants and ordered to pay the same within 30 days.

2. As per the averments made in the claim petition, on the fateful day i.e., 14.4.1999, at about 8.15 P.M. Natvarbhai Naranbhai Patel, was proceeding on his motor cycle bearing registration No. GJ-15-3322 from Bhinar towards Vansda. He was riding the motor cycle on the correct side of the road, at a moderate speed and with due care and caution. When the motor cycle reached at Nani Bhamti village, on Billimora-Vansda Road, from Vansda side, respondent No. 6 came with the offending vehicle driving it at an excessive speed and in a rash and negligent manner. As a result of negligent driving on the part of respondent No. 6, he lost control over the offending vehicle and it dashed with the motor cycle on which Natvarbhai was proceeding. As a result of the severe impact, Natvarbhai was thrown off the motor cycle and fell on the road which resulted in serious injuries all over his body. While he was being shifted to hospital from the place of the accident, he succumbed to the injuries on the way. After the accident, respondent No. 6, the driver of the offending vehicle fled from the scene of accident. An FIR came to be lodged against respondent No. 6, driver of the offending vehicle, at Vansda Police Station.

2.1. As per the averments made in the claim petition, the accident had taken place due to rash and negligent driving on the part of respondent No. 6 who was driving the offending vehicle at the relevant time and, therefore, he was primarily liable to pay compensation. Since the offending vehicle was owned by respondent No. 7, he was vicariously liable to pay compensation for the wrong committed by his driver. The offending vehicle was insured with the appellant and, therefore, the appellant was liable to indemnify the insured i.e., owner of the offending vehicle-respondent No. 7 against the award that may be passed by the Tribunal in favour of the claimants. Therefore, according to the claimants, the appellant and respondent Nos. 6 and 7 being the insurer, driver and owner of the offending vehicle, jointly and severally, were liable to pay compensation as may be awarded by the Tribunal in favour of the claimants.

2.2. Putting forward the claim for compensation, it was averred by the claimants that at the time of the accident Natvarbhai was aged about 40 years and was serving as a Research Assistant in the Tribal Project Office, Vansda and was earning handsome salary. On account of his untimely demise, the claimants who were fully dependent on his income, have lost the dependency benefits available from him. Therefore, on all counts, the claimants have claimed total compensation of Rs. 37,43,900/- together with interest and cost from the driver, owner and insurer of the offending vehicle.

3. The claim petition was contested by the appellant-National insurance Company Limited by filing written statement wherein, inter alia, the brief particulars of the accident were not admitted. It was denied that Natvarbhai Patel was riding the motor cycle on the correct side of the road and at a moderate speed and at that time the driver of the offending vehicle came from Vansda side driving it in a rash and negligent manner and with recessive speed. It was also denied that as a result of the negligent driving of the offending vehicle by respondent No. 6 the

accident took place. It was contended that the accident had taken place because of the rash and negligent riding of the motor cycle by Natvarbhai who lost control over it and dashed it with the offending vehicle and as a result of it he fell down and sustained injuries. Hence, according to the insurance company, the driver of the offending vehicle was not responsible for the accident and hence the appellant was not liable to pay any amount of compensation to the claimants.

3.1. So far as the claim of compensation put forward by the claimants is concerned, it was denied by the appellant. The income of the deceased was also denied by the appellant. It was also pleaded that the claimants were not entitled to interest on the amount of compensation. It was also pleaded that the claim was exaggerated. On these grounds, it was prayed by the insurance company to dismiss the claim petition.

4. On the pleadings of the parties, the Tribunal framed issues and after considering the oral as well as documentary evidence and more particularly Ex.32, FIR and Ex.33, Panchnama of the scene of accident and the fact that respondent No. 6, driver of the offending vehicle, fled from the scene of accident, came to the conclusion that the accident was the result of rash and negligent driving on the part of the driver of the offending vehicle i.e., respondent No. 6 and his negligent driving claimed the life of Natvarbhai Patel and, therefore, he being the driver of the offending vehicle was primarily liable to pay compensation. It was further held that the offending vehicle was owned by respondent No. 7 and hence he was vicariously liable to pay compensation. The appellant being the insurer of the offending vehicle was liable to indemnify the insured against the claim to be passed against the owner of the offending vehicle and hence it was also liable to pay compensation. Therefore it was held that the appellant, respondent Nos. 6 and 7, were jointly and severally liable to pay compensation to the claimants.

4.1. So far as the quantification of compensation is concerned, the Tribunal on the basis of the evidence of respondent No. 4, Naranbhai Koyabhai Patel, father of deceased Natvarbhai, Ex.29, came to the conclusion that at the time of accident the deceased was 41 years 9 months old and was serving as Research Assistant with Tribal Project Office at Vansda and drawing salary of Rs. 9505/- inclusive of D.A., Medical Allowance and tribal allowance. The Tribunal thereafter adopted the standard formula followed by the Supreme Court in catena of decisions and doubled the said amount in order to find out the average prospective income and assessed the average prospective income at Rs. 9,325/- which comes to Rs. 1,11,900/- per annum and thereafter multiplier of 15 was applied and accordingly assessed the dependency benefit at Rs. 16,78,500/- and added Rs. 20,000/- for loss to estate and Rs. 2,000/- for funeral expenses and thus awarded the amount of compensation in the following break-up:

Rs. 16,78,500/- dependency benefits Rs. 20,000/- loss of estate; Rs. 2,000/- funeral expenses -------------- Rs.17,00,500/- Total compensation ============

4.2. The Tribunal has awarded interest at the rate of 9% per annum from the date of the claim petition till realization and proportionate costs of the claim petition, which has given rise to instant appeal at the instance of the appellant-National Insurance Company Limited.

5. Ms. Megha Jani, learned advocate for the appellant, in support of the appeal, has mainly raised the following submissions:

(a) That the Tribunal has erred in doubling the income of the deceased for the purpose of calculating the prospective monthly income at Rs. 13,987.50 which is on higher side and excessive;

(b) As the deceased was 41 years of age at the time of death, the Tribunal has erred in applying 15 multiplier. According to her, it should not have been more than 12.

5.1. In support of the aforesaid submission, she has relied upon the following decisions of the Supreme Court:

(i) Nagappa Vs. Gurudayal Singh and Others,

(ii) Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya and Others,

(iii) Andhra Pradesh State Road Transport Corporation and Anr. v. M. Ramadevi and Ors. 2008 ACJ 930;

(iv) Oriental Insurance Company Ltd. Vs. Jashuben and Others,

5.2. She, therefore, submitted that the impugned judgment and award may be modified by awarding just and adequate compensation and the appeal may be allowed to that extent. She therefore urged to allow the appeal.

6. Per contra, Mr. Amit N. Patel, learned advocate for the claimants, has contended that the impugned judgment and award does not require any interference as the Tribunal has rightly considered the average prospective income of the deceased and also applied the correct multiplier. Accordingly to him, the tribunal has rightly awarded just compensation looking to the erosion of rupee value and inflationary trend.

6.1. In support of the aforesaid submissions, he has relied upon the following decisions of the Supreme Court:

(i) H.S. Ahammed Jussain and Anr. v. Irfan Ahammed and Anr. 2002(2) GLR 1825;

(ii) Abati Bezbaruah Vs. Dy. Director General Geological Survey of India and Another,

(iii) Chellammal and Ors. v. Kailasam and Anr. 2006 ACJ 854;

6.2. He, therefore, submitted that no interference with the impugned judgment and award is called for in this appeal as the Tribunal has rightly assessed average prospective income of the deceased and also applied the correct multiplier. He therefore urged to dismiss the appeal.

7. We have considered the submissions advanced by Ms. Megha Jani, learned advocate for the appellant and Mr. Amit Patel, learned advocate for the claimants. We have also perused the impugned judgment and award as well as the averments made in the claim petition and the memo of appeal so also the paper book and also the judgments cited at the bar.

8. So far as the factum of involvement of the offending vehicle in the accident as well as the negligence on the part of the driver of the offending vehicle are concerned, no dispute is raised in the appeal and, therefore, we do not deemed it expedient to reappreciate the evidence in that regard and we confirm the finding recorded by the Tribunal with regard to the attribution of negligence on the part of the driver of the offending vehicle.

9. Now, the only question which calls for consideration of this Court is as to whether the assessment of average prospective dependency benefit as well as the multiplier of 15 adopted by the Tribunal is just and reasonable or it is on higher side requiring interference of this Court by modifying the same.

10. In this connection, adverting to the oral evidence of respondent No. 4, Naranbhai Koyabhai Patel, Ex.29, he has inter alia testified that the deceased was born on 9.7.1957 and the accident had taken place on 14.4.1999 and the age of the deceased at the time of accident was 41 years and 9 months and he was serving as a Research Assistant with Tribal Project Office at Vansda and was drawing salary of Rs. 9,505/- per month including D.A., Medical allowance and tribal allowance. In support of the said evidence, he has also produced pay slip at Ex.38. The Tribunal on the basis of the said evidence, considering the income of the deceased at the rate of Rs. 9,505/- per month and also considering various decisions of the Supreme Court and also considering the future prospects, assessed the average prospective income by doubling basic pay and allowing D.A. and other allowances available at the time of death, found out the net dependency benefit available at Rs. 13,987.50 and from that 1/3rd amount was deducted for his personal upkeep and thereafter worked the average prospective income at Rs. 9,325/- per month and worked the annual prospective income at Rs. 1,11,900/- On reappraisal of the evidence, according to us, the calculation made by the Tribunal for determination of prospective income is just and in accordance with the latest decisions of the Supreme Court and hence no interference is called for in this appeal.

11. So far as the application of multiplier is concerned, the Tribunal, on the basis of the age of the deceased which was 41 years and 9 months, has applied 15 purchaser factor, which, according to us, is on higher side in view of the latest decisions of the Supreme Court. In the case of Oriental Insurance Co. Ltd. v. Jashuben (supra) the deceased was aged 35 years and was an Assistant with ONGC and in that case the Supreme Court has adopted 13 multiplier. In the case

of A.P. State Road transport Corporation v. M. Ramadevi (supra) where the deceased was 40 years old, the Supreme court has adopted 10 multiplier. In the case of T.N. State Transport Corporation Ltd. v. S. Rajapriya (supra), the deceased was of 38 years and the Supreme Court has applied 12 multiplier.

12. Applying the principles laid down by the Supreme Court in the above referred to judgments, according to us, 13 multiplier would be just and proper in order to find out the correct, just and adequate net dependency benefits available to the claimants. We have worked out the dependency benefits at the rate of Rs. 1,11,900 per annum and has applied 13 multiplier which comes to Rs. 14,54,700/- To that we shall add an amount of Rs. 20,000/- towards loss to the estate and Rs. 2,000/- towards funeral expenses as awarded by the Tribunal. Therefore, the entitlement of the claimants comes in the following break up:

Rs. 14,54,700.00 loss of dependency benefits Rs. 20,000.00 loss to the estate Rs. 2,000.00 funeral expenses -------------- Rs. 14,76,700.00 total compensation. ===============

13. Seen in the above context, the appeal deserves to be allowed in part by reducing the amount of compensation and the award is also required to be modified to the extent indicated in this judgment.

14. For the foregoing reasons, the appeal succeeds in part and accordingly it is partly allowed with no order as to costs of this appeal. The impugned judgment and award dated 8.10.2004 rendered by the MACT (Aux) 3rd Fast Track Court, Navsari in MACP No. 261 of 1999 awarding total compensation of Rs. 17,00,500/- is hereby modified by awarding total compensation of Rs. 14,76,700/- instead of Rs. 17,00,500/- as awarded by the Tribunal, together with interest at the rate of 9% per annum from the date of the filing of the claim petition till realization and proportionate costs of the claim petition. Rest of the directions with regard to apportionment, investment and disbursement made by the Tribunal is hereby confirmed.

14.1. Modified award to be drawn accordingly.

14.2. The appeal is disposed of accordingly.

15. Ms. Megha Jani, learned advocate for the appellant, states that the appellant-insurance company has deposited Rs. 25,03,035/- with the concerned Tribunal and Rs. 25,000/- deposited with the Registry of this Court at the time of filing of the appeal was also transmitted to the concerned Tribunal. The Tribunal concerned is directed to pass appropriate orders with regard to apportionment, investment and disbursement of the amount of compensation which has been deposited by the appellant-insurance company in terms of the directions contained in the impugned judgment and award. If the amount deposited by the appellant-insurance company is in excess after satisfying the compensation awarded to the claimants as per the modified award passed by this Court, the excess amount shall be refunded to the appellant-insurance company. If the

amount deposited by the appellant is less than the amount of compensation awarded to the claimants as per the modified award passed by this Court, the appellant-insurance company shall deposit the same within a period of six weeks from today.

16. Since the appeal is partly allowed by modifying the award, the civil application which is filed for stay of the impugned judgment and award now does not assume any survival value and hence the same is disposed of with no order as to costs. Rule is discharged.