(2008) 03 GUJ CK 0039

In the Gujarat High Court

Case No : First Appel No. 792 of 2008 and Civil Application No. 2397 of 2008

National Insurance Co. Ltd. APPELLANT

Vs

Vallabhdas Mohanlal Pala and Others RESPONDENT

Date of Decision : 11-03-2008

Acts Referred:
Motor Vehicles Act, 1988 — Section 163A, 166, 173

Citation : (2008) 03 GUJ CK 0039

Hon'ble Judges : D.H. Waghela, J

Bench : Single Bench

Advocate : Mehul Sharad Shah, for the Appellant; Anshin H. Desai, for Defendant Nos. 1.2.1, 1.2.2, 1.2.3 and 1.2.4, for the Respondent

Judgement

D.H. Waghela, J.—The appellant-Insurance Company has, u/s 173 of the Motor Vehicles Act, 1988 (for short, the Act), called into question common award dated 15.07.2006 of M.A.C.T., Junagadh in Claim Case No. 666 of 1993, whereby the claimants are awarded total Rs. 3,75,000/- with cost and interest as compensation for accidental death of their young son and brother at the age of 21. The appeal was restricted to claiming reduction of the amount by Rs. 1,30,000/- out of the appellant''s liability to pay Rs. 2,25,000/- with proportionate interest and cost.

2. Learned Counsel Mr.Mehul Sharad Shah, appearing for the appellant, vehemently argued that the claim was made u/s 166 of the Act and hence, the age of the parents was required to be considered for applying proper multiplier and two-thirds of the assumed income of the deceased was required to be deducted towards his personal expenditure on account of his being unmarried at the time of accident. He relied upon judgment of the Supreme Court in Gyanchand Jain and Anr. v. Parmanand and Ors. 2003 ACJ 2152, wherein age of the parents was considered for choosing appropriate multiplier, but only one-third of the income of the deceased was deducted towards personal expenses even though he was unmarried. Learned Counsel Mr.Shah also submitted that the

Tribunal had adopted the figure of monthly income of Rs. 3,000/- only on the basis of deposition of his father, who had admitted in his cross-examination below Exh.36 that the deceased was in fact working in his father''s own establishment and no documentary evidence had been produced either of the income of the deceased or of his father. He submitted that, in such circumstances, the Tribunal ought to have presumed the value of services of the deceased at the bare minimum and determined the loss of dependency benefits on that basis. Learned Counsel produced copy of the relevant evidence for perusal of the Court.

3. Learned Counsel Mr.Sejpal, appearing with learned advocate Mr.Anshin Desai, submitted that the Tribunal could have and ought to have applied multiplier of 17 in view of young age of the deceased, that only Rs. 10,000/- was awarded by way of loss of expectation of life and no future prospect of the deceased was considered, even as he was proved to have taken training and certificate for working as a goldsmith after his matriculation. He submitted that the list of claimants included brother and sisters of the deceased and even the parents of the claimants were aged 45 years at the relevant time. Thus, in short, he supported the impugned award and submitted that the total amount awarded to the claimants was less than reasonable and just compensation in the peculiar facts of the case.

4. It was seen from the evidence in the form of affidavit of the father of the deceased and his cross-examination that there was no serious dispute about the fact that the deceased was aged 21, a matriculate and a qualified skilled goldsmith. Therefore, the value of his services claimed to be Rs. 100/- per day appears to be truthful and reasonable even in relation to the year 1993, when the life of the deceased was extinguished in the prime of his youth, without any fault on his part. It is unfortunate that the claim petition has taken 13 years to be adjudicated during which period the purchasing power of rupee would have eroded to a considerable extent and no notice thereof was taken in the award. Therefore, even assuming that the income of the deceased or value of his services would have remained static and he had no future prospect of earning a higher amount with the passage of time, only for awarding the amount of compensation which would have been due in the year 1993, it would have been required to be at least doubled by the time the adjudication process was over. In awarding Rs. 10,000/- towards loss to the estate and Rs. 5,000/- towards funeral expenditure, 13 years after the accident and in the year 2006, the Tribunal could, by no stretch, be said to have awarded an excessive amount. It was seen that even calculating the amount of compensation strictly on the basis of no fault liability u/s 163A of the Act, as though those provisions were applicable and applied, amount of compensation would have been in the vicinity of Rs. 4,50,000/- as against the total sum of Rs. 3,75,000/- awarded by the Tribunal by the impugned award.

5. In the above facts, no ground having been made out to reduce the amount of

compensation awarded by the impugned award, the appeal is not required to be entertained and hence, it is dismissed at the threshold with no order as to costs. Civil Application for stay does not survive and accordingly stands disposed.

