
(2014) 08 GUJ CK 0116
In the Gujarat High Court
Case No : First Appeal No. 2613 of 2007

New India Assurance Co. Ltd.

APPELLANT

Vs

Amrutaben and Others

RESPONDENT

Date of Decision : 26-08-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 170, 173

Citation : (2015) 2 ACC 293

Hon'ble Judges : Bhaskar Bhattacharya, C.J.

Bench : Single Bench

Advocate : Sunil B. Parikh, Advocate, for the Appellant; U.M. Shastri, for the Respondent

Final Decision : Dismissed

Judgement

Bhaskar Bhattacharya, C.J.—This appeal under Section 173 of the Motor Vehicles Act is at the instance of the Insurance Company and is directed against the award dated 6th June, 2005 passed by the M.A.C. Tribunal (Auxi.), 7th Fast Track Court, Panchmahals at Godhra in M.A.C.P. No. 1367 of 1999 thereby disposing of the application under Section 166 of the Motor Vehicles Act by partly allowing the same and awarding a sum of Rs. 4,90,000 as compensation with interest at the rate of 9% per annum from the date of the presentation of the petition till actual payment. Being dissatisfied, the Insurance Company has come up with the present, appeal.

2. After hearing Mr. Parikh, the learned Advocate appearing on behalf of the appellant and after going through the material on record, I find that on 1 May, 1999 the accident occurred when the driver of the tractor due to negligence had killed the victim who was doing agricultural work. At the time of accident, the victim was aged 22 years and his monthly income was Rs. 3500 a month. The claimants lodged a claim of Rs. 6,00,000. At the time of hearing, neither the owner of the tractor nor the driver contested the claim, but it was the Insurance Company who after taking leave under Section 170 of the Motor Vehicles Act

contested the claim, although no evidence was adduced on behalf of the Insurance Company. The sole witness for the claim asserted that the victim used to serve as Supervisor in the Gujarat Quarry and used to get salary of Rs. 2500 a month. Besides that, as there was the agricultural land of his father, he used to help in farming and used to earn further sum of Rs. 3500 from that help. According to the said witness, on the date of the accident, after doing the job in the evening, he was standing at one side of the road in Gujarat Quarry. At that time, the driver was showing the place to Dhulabhai for dumping the stones and suddenly the driver of the said tractor had driven the said tractor in high speed and dashed the deceased, resulting in his death. In the cross examination, no suggestion was given that the victim did not die in the said accident.

3. Therefore, in the case before me, it is well established that due to negligence on the part of the driver of the tractor, the deceased died. I have already pointed out that neither the driver nor the owner of the vehicle have come forward to depose opposing the claim of the claimant. In spite of taking leave under Section 170 of the Motor Vehicles Act, the Insurance Company also did not think it necessary to give any evidence controverting the factum of the accident.

4. The Tribunal below, as it appears from the order impugned, was of the view that having regard to the fact that according to the prevalent rate of Minimum Wages Act Rs. 70 per day was prescribed rate for a labourer, Rs. 2100 should be believed to be the income of the deceased from the labour work. He being coparcener and contributing his share to the family, on that count, further sum of Rs. 400 should be added and, thus, the income of the deceased was taken to be Rs. 2500. The Tribunal, thereafter, followed the principle laid down in the decision of the Hon'ble Supreme Court in the case of Sarla Dixit v. Balvant Yadav, reported in 1996 (2) TAC (1) and taking age of the victim to be 25 years, multiplier of 15 was made applicable and Tribunal arrived at a figure of Rs. 2500 x 12 x 15 = Rs. 4,50,000. In addition to that, claimants were given a further amount of Rs. 15,000 as loss of consortium, Rs. 20,000 towards loss of expectation and Rs. 5000 towards transportation and funeral expenses and thus, total amount of Rs. 4,90,000 was arrived at.

5. Mr. Parikh, the learned Advocate appearing on behalf of the Insurance Company has laboriously contended before this Court that in this appeal no additional amount of premium having been taken from the owner of the tractor for the purpose of labourer, his client was liable to pay compensation only to the extent which is payable to the labourer under the provisions of the Workmen's Compensation Act, 1923. In support of such submission, Mr. Parikh has relied on the decision of the Hon'ble Supreme Court in the case of National Insurance Co. Ltd. Vs. Prembai Patel and Others, .

6. It appears that in the said decision, an employee of the owner of the vehicle was killed and in the said policy it was mentioned to be act liability only. In such circumstances, the Hon'ble Supreme Court took a view that in absence of any additional premium payable to the labourer, the liability will be restricted to the

amount of compensation payable under the Workmen's Compensation Act.

7. In the case before me, the victim was a third party who was standing on the field and was killed due to negligence on the part of the driver of the owner of the vehicle. Such being the position, said decision cannot have any application to the facts of the present case, where a third party has been killed the employee's negligence. I, thus, find that the said decision is of no avail to the Insurance Company in the fact of the present case.

8. Having regard to the fact of the present case, I find that the Tribunal below quite reasonably assessed at a figure of Rs. 4,90,000. I find no reason to interfere with the just amount of compensation awarded by the Tribunal. The appeal is devoid of merits and is dismissed. No order as to costs.