(2011) 02 GUJ CK 0083

In the Gujarat High Court

Case No : First Appeal No. 78 of 2011

New India Assurance Co. Ltd. — APPELLANT

Vs

Heirs of decd. Mahadev devsibhai adroja ranjanben mahadevbhai and Others — RESPONDENT

Date of Decision : 18-02-2011

Acts Referred:

Citation : (2011) 02 GUJ CK 0083

Hon'ble Judges : Jayant M. Patel, J;B.M. Trivedi, J

Bench : Division Bench

Advocate : Lilu K. Bhaya, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Jayant Patel, J.—The present appeal is directed against the judgment and award dtd. 15.10.2010 passed by the Tribunal in MACP No. 27/08, whereby the Tribunal has awarded the compensation of Rs. 11,41,600/- plus interest at the rate of 7.5% p.a.

We have heard Ms. Bhaya, learned Counsel appearing for the Appellant. We have considered the judgment and the reasons recorded by the Tribunal. We have also considered the relevant documents forming part of the record of the Tribunal which have been made available by the learned Counsel for the Appellant during the course of hearing.

2. The short facts are that on 08.01.2008, at about 11.00, when the deceased was going on motorcycle, one truck bearing No. GJ-12-W-8468 being driven by the driver of the vehicle insured with the Appellant Company, dashed with the motorcycle and the deceased died on the spot. The criminal case was also registered against the driver of the truck which was insured with the Appellant insurance Company. The claim petition was filed being MACP No. 27/08 for recovery of compensation of Rs. 28 lakh. The Tribunal ultimately passed the award of Rs. 11,41,500/- with interest at the rate of 7.5%. Under these

circumstances, the present appeal before this Court.

3. The first contention raised by the learned Counsel on behalf of the Appellant is that the Tribunal has not considered the aspect of contributory negligence at all. It was submitted that as per the panchnama of the police papers, which came on record, the vehicle, i.e., motorcycle of the deceased was found on the midst of the road and therefore, it was required for the Tribunal to apply the mind and attribute contributory negligence of the deceased. She submitted that it was not a case where 100% negligence could have been held of the driver of the vehicle which was insured with the Appellant insurance Company.

4. The examination of the said contention shows that the Tribunal considered the aspect that no evidence whatsoever has been led on behalf of the insurance company or on behalf of the owner of the vehicle or any other person was not examined by the insurance company to show that there was rash and negligent driving by the deceased. The reliance placed upon the panchnama even if considered, has to be read with other circumstance and the evidence on record. The panchnama shows that there were blood marks on the wheels of the truck and as submitted by the learned Counsel for the Appellant, the injury was caused on the head of the deceased at that place. Merely because in the panchnama it is stated that the motorcycle was found on the midst of the road, in absence of any other evidence showing any negligent driving by the deceased, it cannot be concluded that it was a case of contributory negligence. Another aspect is that the criminal case is registered against the driver and no attempt has been made by the insurance company to show that any of the statement of any witness, in the criminal case it had transpired that the deceased was also driving the vehicle in a rash and negligent manner. Under these circumstances, if there was no evidence led by the insurance company or the owner of the vehicle for showing any contributory negligence on the part of the deceased and the Tribunal has concluded that the driver of the insured vehicle was negligent for the accident, such approach cannot be said to be erroneous or perverse to the record. Hence, the said contention cannot be accepted.

5. The learned Counsel next contended on the aspect of quantum that as recorded by the Tribunal, the net salary of the deceased was Rs. 7,279/- and inspite of the same, the Tribunal has assessed the income at Rs. 14,000/- per month and therefore, there is an error committed by the Tribunal while assessing the quantum of compensation.

6. Prima facie, the said contention may show some substance, but upon close scrutiny, it appears that as per the salary slip, the gross salary of the deceased was Rs. 13,775.68 out of which, deductions are in respect of PF, housing loan, cons. Loan, vehicle loan and LIC, which are not required to be deducted for the purpose of computing the income of the deceased. Only deduction which is permissible was of Rs. 340/- towards income tax and other taxation deduction. If the said amount is excluded, the income would come to Rs. 13,435/-. As against the same, the Tribunal has rounded the income of Rs. 14,000/-. The another

aspect which deserves to be recorded is that the deceased was the employee of a nationalised bank, viz., State Bank of Saurashtra, and therefore, the prospective income also could have been considered, which has not been considered by the Tribunal. If the prospective income is considered for the purpose of computation of income, such amount will be much higher. We are not examining the said aspect since uptil now, the claimant has not preferred the appeal for enhancement of compensation or otherwise. Under these circumstances, if the Tribunal has rounded the income of Rs. 14,000/-, such an approach cannot be said to be erroneous. Hence, the said contention cannot be accepted.

7. No other contention is raised.

8. In view of the above, the appeal is meritless. Hence, dismissed.

