

(2016) 03 GUJ CK 0158
In the Gujarat High Court

Case No : First Appeal No. 1550 of 2004 to First Appeal No. 1554 of 2004 with
First Appeal No. 1146 of 2005 to First Appeal No. 1149 of 2005

New India Assurance Co. Ltd.

APPELLANT

Vs

Jayaben Shaileshbhai Intwala

RESPONDENT

Date of Decision : 21-03-2016

Acts Referred:

Citation : (2016) AAC 1678 : (2017) 1 GLR 577

Hon'ble Judges : K.J. Thaker, J.

Bench : Single Bench

Advocate : Mr. Sunil B. Parikh, Advocate, for the Appellant; Mr. M.T.M. Hakim, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

K.J. Thaker, J.(Oral)—Since, all these appeals arise out of the common judgment and award of the Tribunal, they are taken-up for hearing and disposal, together.

2. First Appeal Nos. 1550 to 1554 of 2004 are preferred by the New India Assurance Co. Ltd., i.e. the insurer of the Truck bearing registration No. GJ-5T-1770, which was involved in the accident, whereas, First Appeal Nos. 1146 to 1149 of 2005 have been preferred by the original claimants, i.e. the heirs and representatives of the victims of the accident in question, challenging the judgment and award passed by the learned Motor Accident Claims Tribunal (Main), Vadodara (for short, 'the Tribunal?'), in M.A.C.P. Nos. 1915 of 1992, 1107 of 1993, 1108 of 1993 and 1109 of 1993, whereby, the Tribunal passed the common impugned judgment and award.

3. The brief facts of the case are that on 06.11.1992, while the deceased were proceeding in a jeep car bearing registration No. GJ-16-1771 towards village Sankarda, it met with an accident with a truck bearing registration No. GJ-5T-1770, which was insured with the appellant-insurance company in First

Appeal Nos.1550 to 1554 of 2004, on N.H.-8 near village Dethan. On account of the alleged accident, the deceased, who were travelling in the jeep, sustained grave injuries and succumbed to the same. Hence, the appellants, i.e. the original claimants, in First Appeal Nos. 1146 to 1149 of 2005 preferred the aforesaid claim petitions, wherein, the Tribunal passed the impugned judgment and award. Hence, the present appeals.

4. Mr. Parikh, learned Advocate for the appellant in First Appeal Nos. 1550 to 1554 of 2004 and Mr. Hakim, learned Advocate for the original claimants-the appellants in First Appeal Nos. 1146 to 1149 of 2005 submitted that, though, a number of grounds have been taken in the memo of these appeals, they are restricting their arguments to the aspect of quantum of compensation awarded by the Tribunal only.

5. In above view of the matter, this Court is not required to delve into the aspect of negligence and the liability and the findings recorded by the Tribunal to that extent requires to be confirmed.

6. So far as the amount of compensation awarded in MACP No. 1915 of 1992 is concerned, the claimants, therein, are the wife, children and parents of the deceased Shaileshbhai, who was driving the jeep. The wife of the deceased Jayaben entered the witness box and, in her deposition, she stated that the deceased used to do the business of bricks and transportation, and thereby, he used to earn about Rs. 8,000/- per month. However, during her cross-examination, she conceded that the business of bricks is still going on and that her father-in-law is looking after the same. The brother of the deceased Shailesh, namely Ashokbhai also deposed that the deceased was doing the business of bricks and transportation. It may be noted that the heirs of the deceased Shaileshbhai also produced his income-tax returns for the years 1990-91, 1992-92 and 1992-93. Further, the Tribunal recorded that the deceased Shaileshbhai was doing the business of brick every year between the months of October to May. Thus, after taking into consideration the aforesaid factors, the Tribunal took the income of the deceased Shaileshbhai at Rs. 5,000/- per month and after adding 50% amount towards rise in income assessed the same at Rs. 7,500/-. The Tribunal, then, deducted ? amount towards personal expenses and determined the monthly loss of income or dependency to the claimants at Rs. 5,000/- per month and Rs. 60,000/- per annum. The date of birth of the deceased Shaileshbhai is 14.02.1964, and therefore, the Tribunal applied the multiplier of 15 years.

7. Here, Mr. Hakim, learned Advocate for the original claimants submitted that in view of the decision of the Apex Court in "Sarla Verma and Others v. Delhi Transport Corporation and Anr.", (2009) 6 SCC 121, the Tribunal ought to have deducted ? amount towards personal expenses, since, the deceased Shaileshbhai, at the relevant point of time, left behind his widow, two minor children and his parents. Mr. Hakim, further, submitted that in view of the fact that the deceased was aged about 29-30 years, at the time of accident, the

Tribunal ought to applied the multiplier of, at least, 17.

8. On the other hand, Mr. Parikh, learned Advocate for the appellant-insurance company, invited the attention of this Court to the fact that the Tribunal has awarded 12 per cent interest per annum on the amount of compensation from the date of filing of the claim petition till its realization, whereas, 9 per cent interest , thereafter, till its realization, which is on very higher side. He also submitted that the Tribunal ought not to have bifurcated the rate of interest.

9. Taking into consideration the arguments of the learned Advocates for the both the sides, now, if, the argument of the learned Advocate, Mr. Hakim, is accepted and ? deduction is made towards personal expenses and the multiplier of 17 is applied, then, this Court has to also accept the submission of Mr. Parikh and has to reduce the rate of interest from 12 per cent to 9 per cent. If, the arguments of learned Counsels for both the sides are accepted, even then, there would not be much difference in the datum figure, since, deduction of ? amount towards personal expenses and applying the multiplier of 17 shall follow the reduction in rate of interest from 12 per cent to 9 per cent, and therefore, the datum figure that may come shall be more or less the same. Hence, in the opinion of this Court, the findings of the Tribunal to that extent does not call for any interference and same requires to be confirmed.

10. That takes this Court to the aspect of amount awarded by the Tribunal under the conventional heads. The tribunal has awarded a total amount of Rs. 23,000/- towards loss of estate, loss of consortium, funeral expenses etc., which is on lower side. Hence, if, an additional amount of Rs. 30,000/- is awarded under the aforesaid heads, same would meet the ends of justice.

11. So far as the quantum of compensation awarded in M.A.C.P. No.s 1107, 1108 and 1109 of 1993 is concerned, the original claimants, therein, claimed compensation of Rs. 4,00,000/- in each petition. The case of the claimants in those claim petitions was that the deceased were doing the labour work with the deceased Shaileshbhai and that they were getting Rs. 100-125/- per day. It was also their case that all the deceased were in the age group of 30-35 years. However, the original claimants failed to substantiate their say so far as income is concerned. The Tribunal, hence, taking into consideration their age and their vocation, took their income at Rs. 1800/- including prospective income, therein, and after deducting ? from the same, assessed their monthly income at Rs. 1,200/- per month. Taking into consideration, the age of the deceased, the Tribunal applied the multiplier of 15 and assessed the loss of future income or dependency to the claimants, herein, at Rs. 2,16,000/- in each of them, which appears to be just and proper. Hence, the findings recorded by the Tribunal to that extent requires to be confirmed.

12. Insofar as the amounts awarded in these claim petitions towards conventional heads is concerned, here also the Tribunal awarded Rs. 23,000/- only towards conventional heads in each petition, which requires to be enhanced

by Rs. 30,000/- in each petition, in view of the catena of decisions of the Apex Court and this Court in that regard.

13. So far as the rate of interest on the enhanced amount of compensation, i.e. Rs. 30,000/-, is concerned, taking into consideration the current repo rate, if, 7.5 per cent interest per annum is awarded on the enhanced amount of compensation, same would meet the ends of justice.

14. In the result, First Appeal Nos. 1550 to 1554 of 2004 preferred by the appellant-New India Assurance Co. Ltd. fail and are DISMISSED, whereas, First Appeal Nos. 1146 to 1149 of 2005 preferred by the original claimants are Partly Allowed and that the appellants-original claimants in each of the aforesaid appeals shall be entitled to get an additional amount of Rs. 30,000/- under the conventional heads with interest at the rate of 7.5 per cent per annum from the date of the filing of the claim petition, till its realization. The judgment and award of the Tribunal stands Modified to the aforesaid extent. No order as to costs.