(2014) 09 GUJ CK 0060

In the Gujarat High Court

Case No : First Appeal No. 3848 of 2006

New India Assurance Co. Ltd. — APPELLANT

Vs

Kantilal Vadilal Kamdar — RESPONDENT

Date of Decision : 23-09-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 15
Motor Vehicles Act, 1988 — Section 166, 170, 173
Succession Act, 1925 — Section 306

Citation : (2014) 09 GUJ CK 0060

Hon'ble Judges : Bhaskar Bhattacharya, C.J

Bench : Single Bench

Advocate : Vibhuti Nanavati, Advocate for the Appellant; Mayur Rajguru, Advocate for the Respondent

Judgement

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Bhaskar Bhattacharya, C.J.—This First Appeal under section 173 of the Motor Vehicles Act [the Act, hereafter] is at the instance of an Insurance Company and is directed against an award dated 27th April 2006 passed by the Motor Accidents Claims Tribunal [Aux.], Ahmedabad City in M.A.C.P. No. 710 of 1998 thereby disposing of a proceeding under section 166 of the Act by awarding a sum of Rs. 2,88,000-00 with interest at the rate of 9% per annum from the date of filing of the petition till 31st December 2000 and at the rate of 6% per annum from 1st January 2001 till realization.

2. Being dissatisfied, the Insurance Company has come up with the present appeal.

3. The claimants happen to be parents of the deceased who died at the age of 51 years. They came up with an application under section 166 of the Act claiming a sum of Rs. 6 lakh for the death of their son, Bharatbhai Kantilal Kamdar, and the case made out by the claimants was as follows:-

3.1. The accident took place at about 11.30 a.m. on 17th December 1997 on the edge of the Nehru Bridge within the limit of Navrangpura police station. According to the claimants, on the aforesaid date, after finishing his work, the deceased Bharatbhai had proceeded towards his residence from Lal Darwaja on his scooter bearing registration No. GUI 3954. When the deceased was passing near the western end of Nehru Bridge, at that time, the opponent No. 1 came driving a Maruti car bearing registration No. GJ.1.AR.6630 with full speed in a rash and negligent manner and without following the traffic rules from the wrong side of the road, and dashed with the scooter driven by Bharatbhai, as a result, the deceased had fallen down on the road and sustained severe injuries resulting in his death. The driver of the Maruti car was made opponent No. 1 and the owner of the Maruti car was made the opponent No. 2 in the claim-application.

3.2. According to the claimants, the deceased used to do business in the name of Bhagwati Provisions of selling newspapers and magazines etc., and was also doing seasonal business of crackers and thereby earning Rs. 6000/- a month, out of which, after deducting his personal expenses, the deceased used to give Rs. 5500/- a month to the claimants to meet with the family expenses. According to the claimants, the deceased was the only bread earner in the family. The claimants, therefore, filed the claim-petition for awarding a sum of Rs. 6 lakh for the death of their son in the accident.

4. In spite of service of notice, neither the driver nor the owner of the Maruti car appeared to resist the petition by filing Written Statement. However, the insurer of the Maruti car, the appellant herein, entered appearance and took leave under section 170 of the Act and filed Written Statement denying the allegations made in the application. According to the Insurance Company, the alleged accident took place on account of collision between scooter No. GUI 3954 driven by the deceased and the Maruti Car bearing registration No. GJ.1.AR.6630 and that the accident had taken place due to sole negligence on the part of the deceased. The Insurance Company also took a plea that the driver of the Maruti car alleged to be involved in the accident had no effective and valid driving licence to drive the said vehicle. The Insurance Company has also denied the date, time and place of occurrence of the accident. In the same breath, it has also denied involvement of the Maruti car in the accident.

5. At the time of hearing, the Mother of the deceased appeared as witness No. 1 for the claimants while one Anwarkhan Subakhan Pathan, an eyewitness, appeared as witness No. 2 in support of the claim-application.

6. The Insurance Company, on the other hand, examined the driver of the Maruti car, who did not file any Written Statement, in opposing the claim-application.

7. Although in the written statement the specific case made out by the Insurance Company was that the driver of the Maruti Car had no driving licence, no such question was put to the said driver by the Insurance Company. According to the said driver, although he was driving his Maruti car mentioned in the claim-

application and was very much present at the spot, it was one Tata Sierra vehicle that had hit the scooter and his vehicle was not involved in the accident.

8. At this stage, it may not be out of place to mention here that on the basis of the complaint lodged by the police constable who was on duty at the spot, a criminal case was lodged, and the said complainant gave the number of the Maruti car by describing it as the offending vehicle.

9. The learned Tribunal below, on consideration of the materials on record, came to the conclusion that it was the Maruti car mentioned in the claim-application which was the offending vehicle, and the accident occurred due to rash and negligent driving of the Maruti car.

10. As regards the amount of compensation, the learned Tribunal treated the income of the victim to be Rs. 4000/- a month. Thereafter he deducted 1/3rd towards self-expenditure of the deceased and treated the annual loss of dependency at Rs. 32,000/- per annum. After taking into consideration the fact the claimant No. 1, the father, waged aged 75 years and the claimant No. 2, the mother, was aged 69 years, the Tribunal decided to apply the multiplier of 8 considering the age of the claimants, and arrived at the figure of Rs. 2,56,000/- under the head of loss of dependency. Apart from the said amount, the Tribunal also awarded a further sum of Rs. 10,000/- towards the loss of love and affection and a further sum of Rs. 10,000/- under the head of loss of estate. The Tribunal further awarded a sum of Rs. 10,000/- under the head of medical expenses and Rs. 2,000/- towards funeral expenses, and thus, awarded total compensation of Rs. 2,88,000-00.

11. Mr. Nanavati, the learned advocate appearing on behalf of the appellant-Insurance Company, strenuously contended before this Court by relying upon the panchnama of the place of the accident that there being a divider in the street where the accident had occurred, the Maruti car coming from the opposite direction could not have collided with the scooter driven by the deceased which was coming from the opposite direction. Mr. Nanavati strongly relied upon the deposition of the driver of the Maruti car who has stated in his deposition that it was a Tata Sierra car that had hit the scooter. According to Mr. Nanavati, the Maruti car in question not being involved, his client is not liable to pay any amount of compensation. Even on the quantum of compensation, according to Mr. Nanavati, the deceased being a bachelor, instead of deduction of 1/3rd towards personal expenses, as held in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , the Tribunal should have deducted half of the amount towards personal expenditure and applied a multiplier of 5 based on the age of the mother of the victim. Mr. Nanavati, therefore, prays for setting aside the award.

12. Mr. Rajguru, the learned advocate appearing on behalf of the claimant, has, on the other hand, supported the award impugned and has contended that the police constable on duty having taken the number of the offending vehicle and

the driver of the vehicle having admitted that at the point of time when the accident occurred he was very much present at the spot but another vehicle was involved, the Tribunal below rightly disbelieved such version. Mr. Rajguru further contends that the driver or the owner of the Maruti car not having disputed the allegation of the accident involving the Maruti by filing a written statement, the Tribunal rightly disbelieved the version of the driver appearing as a witness at the instance of the Insurance Company. Mr. Rajguru, therefore, prays for dismissal of the appeal.

13. Therefore, two questions that arise for determination in this appeal are, first, whether the Maruti car was involved in the accident, and, secondly, if the answer to the first question was in the affirmative, what should be the compensation.

14. After hearing learned counsel for the parties and after going through the materials on record, I find that there is no dispute about an accident by which the victim, a scooterist, died. It is the specific case made out by the claimants that the Maruti Car was coming from wrong side of the road and had hit the scooter which was on the correct side. The Constable on duty who took the number of the Maruti vehicle lodged the complaint. Neither the owner nor the driver, in spite of the fact that they were made parties, filed any written statement denying the allegations about the involvement of the Maruti car and its negligence. The insurance company has by taking leave under Section 170 of the Act filed written statement alleging that the driver of the vehicle had no driving licence. While examining the driver as its witness, curiously, no suggestion was given to him that he had no licence. The said driver in his evidence admitted his presence at the time of accident but according to him, a Tata Sierra Car had hit the scooter. The above admission indicates that the complaint filed by the Constable on duty was correct and he was justified in taking the number of the Maruti car as that of the offending vehicle. Moreover, if it was known to the driver that the real offending vehicle was one Tata Sierra Car, such fact ought to have been disclosed in the written statement. Not having filed any written statement disputing such allegation, in my opinion, the stance taken by the Driver in the witness-box should be looked askance at. Moreover, an independent person who has a garage near the place of accident has given evidence that he is the eyewitness of the accident and that it was the Maruti car which is the offending vehicle. I thus find no reason to disbelieve the independent eyewitness as well as the version of the complaint lodged by the Police Constable who took the number of the Maruti vehicle. Although Mr. Nanavati tried to convince this court that there being a divider, the Maruti car could not strike the scooter by coming from the opposite direction, I am not impressed by such submission because it is specific case of the claimants that the Maruti car came from wrong side. On consideration of the entire material on record, I find no reason to disagree with the view taken by the Tribunal that the Maruti Car is the offending vehicle.

15. Next question is what should be the appropriate amount of compensation.

16. The victim died at the age of 52 and was a bachelor. According to the Hindu Succession Act, his mother aged 69 was the sole heir and legal representative. The learned Tribunal below has disbelieved the case of the claimant that the victim had a monthly income of Rs. 6000 and according to it, his income should be treated to be Rs. 4000/- a month, and I do not find any reason to disturb the said finding. However, the Tribunal deducted only 1/3rd for personal expenditure, and in my view, the Tribunal should have deducted half as the victim was a bachelor, as pointed out by the Supreme Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, . Thus, the monthly income of the deceased is assessed at Rs. 2000 [Rs. 4000/2 = Rs. 2000/-.

16.1. According to the aforesaid decision in the case of Sarla Verma [supra], the victim being 52 years of age, the appropriate multiplier should be 11. Mr. Nanavati, however, strenuously contended that I should apply the multiplier based on the age of the mother and thus, it should be 5. I am afraid, I am unable to accept the contention of Mr. Nanavati inasmuch as in the case of Sarla Verma (supra), the Supreme Court never held that in case of mother being the claimant, her age should be treated for finding out the multiplier. All that appears from the said judgment was that the learned judges referred to the following observations of the same court in the case of U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, :

"18. ... Besides, the selection of multiplier cannot in all cases be solely dependent on the age of the deceased. For example, if the deceased, a bachelor, dies at the age of 45 and his dependents are his parents, age of the parents would also be relevant in the choice of the multiplier. ... What we propose to emphasise is that the multiplier cannot exceed 18 years'' purchase factor. This is the improvement over the earlier position that ordinarily it should not exceed 16."

(Emphasis supplied)

16.2. I, however, find that in a subsequent decision of the Supreme Court in the case of Amrit Bhanu Shali and Others Vs. National Insurance Co. Ltd. and Others, , after taking note of the decision of the Supreme Court in the case Sarla Verma [supra] and UPSRTC v. Trilok Chandra [supra], the Bench made the following observations in paragraph 18:-

"18. In the case of Salra Verna (supra) this Court held that the multiplier to be used should be as mentioned in Column (4) of the table of the said judgment which starts with an operative multiplier of 18. As the age of the deceased at the time of the death was 26 years, the multiplier of 17 ought to have been applied. The Tribunal taking into consideration the age of the deceased rightly applied the multiplier of 17 but the High Court committed a serious error by not giving the benefit of multiplier of 17 and bringing it down to the multiplier of 13.?

16.3. In my view, the aforesaid observation of the Supreme Court is also in conformity with the provisions of section 306 of the Indian Succession Act, according to which, in a proceeding for compensation for personal injuries leading to death, the right to sue survives upon the legal heirs and executor of the deceased. Thus, not only any compensation ultimately granted should form part of the estate of the deceased and is heritable but even the cause of action for proceeding before culminating into an award or decree would also be heritable and would survive on the heirs and legal representatives. Therefore, there is no question of applying the multiplier on the basis of the age of the claimants when the ultimate award forms part of the estate of the deceased like any other property. Assessment of loss of estate can depend upon the age of the heir only if such right of enjoyment extinguishes on the death of the heir but not so, if the right is transferable and heritable.

16.4. There is another major difficulty in assessing the compensation based on the principle of multiplier according to the age of the claimant. If a person dies leaving more than one legal heir, in that event, the ages of all the heirs should be added and then a mean is to be calculated and if the said mean age is more than the age of the deceased, the same is to be considered to be the basis of finding out the multiplier if I accept the contention of the learned Advocate for the Insurance Company. In my opinion, to find out the loss of estate suffered by the deceased, the mean age of the heirs will be a totally irrelevant factor and thus, such approach would be totally erroneous as would appear from the following example:-

16.4.1. Let us take a case where a brilliant young person having very bright prospect has died at the age of 25 before his marriage leaving his father aged 52 years and mother aged 47 years, one brother aged 23 years and a sister aged 20 years. Let us assume that he is a member of the Indian Administrative Service. If the deceased happens to be a Hindu, his mother aged 47 years will be the sole heir. If he happens to be a Muslim, all the four persons will be the heirs. On the other hand, if he happens to be a Christian, his father will be the sole heir, while if the deceased is a Parsi, both his parents will be the heirs. The result will be that the value of loss of estate will depend upon the religion he belongs to. However, that cannot be the guiding factor for assessing the loss of an estate. I appreciate that the assessed loss occurred to an estate can be divided among the heirs and legal representatives according to the rules of succession based on the religion of the deceased but the value of the loss of an estate cannot vary depending upon the religion to which the deceased belongs and the tortfeasor cannot be asked to pay different amount of compensation calculated on the basis of the religion of the victim. In my view, the loss suffered by the estate of a member of Indian Administrative Service aged 25 should be the same based on future prospect whether he is a Hindu, or a Muslim or a Christian or a Parsi. Similarly, if the deceased, by executing a Will, has bequeathed his entire estate in favour of a particular person appointing him also as the executor, the amount of loss will depend upon the age of the said person, if I accept the contention of Mr. Nanavati.

16.5. I, thus, propose to adopt the following observations made by the Supreme

Court in paragraph 17 in the case of Amrit Bhanu Shali v. National Insurance Co. Ltd. [supra] regarding relevancy of age of the claimant in assessing compensation:-

"17. The selection of multiplier is based on the age of the deceased and not on the basis of the age of dependent. There may be a number of dependents of the deceased whose age may be different and, therefore, the age of dependents has no nexus with the computation of compensation.

[Emphasis supplied]

17. I now propose to deal with the decisions cited by Mr. Nanavati. However, before entering into those decisions, I may point out that regarding the application of multiplier, even the decisions given by the Supreme Court are not consistent in the field of MV Act. Even in the case of Sarla Verma [supra], which is currently consistently followed by Tribunals/Courts, such discrepancies have been indicated.

18. Mr. Nanavati placed strong reliance upon the observations in the case of U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, and General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, in support of his contention that where the claimants are parents of a bachelor, while fixing multiplier, the age of the claimants should be taken into consideration. Mr. Nanavati further contended, by relying upon the above decisions, that on the basis of the age of the victim or that of the claimant, whichever multiplier would be lower, should be applied.

18.1. In the aforesaid two decisions, there was not even any argument, nor was there any finding on the question as to what will be the position of law regarding fixation of loss suffered by the estate of the deceased of different religion who has died in the accident. Only in the case of Amrit Bhanu Shali v. National Insurance Co. Ltd. (supra), although a two-judges-bench-decision, it has been specifically stated that while assessing compensation, the age of the claimant has no nexus.

18.3. Therefore, in the light of the observations of the Supreme Court in the case of Amrit Bhanu Shali v. National Insurance Co. Ltd. (supra) and in view of my observations in the light of Section 306 of the Indian Succession Act and even Articles 14 and 15 of the Constitution of India, the total compensation payable by a tortfeasor cannot be assessed based on religion and there must be same law for the purpose of assessing damages where the tortfeasor is a third-party; otherwise, the fate of the tortfeasor will depend upon the religion of the person who has died.

19. In the case of Shakti Devi Vs. New India Insurance Co. Ltd. and Another, relied upon by Mr. Nanavati, the Supreme Court emphasized on the efficacy of multiplier method for calculating loss of estate, and in that case relied upon the principle that the multiplier should be fixed on the basis of age of the claimants. I

have already pointed out above that in the case of Amrit Bhanu Shali v. National Insurance Co. Ltd. (supra), after taking notice of the decision in the case of U.P.S.R.T.C. v. Trilok Chandra [supra], which is also referred to in the case of Shakti Devi [supra], a different view has been taken in that case, which, in my view, is inconsistent with the other existing laws of the land and the Constitution of India.

20. In the case of Kishan Gopal and Another Vs. Lala and Others, , the Supreme Court was considering a case under section 166 of the M.V. Act for compensation on the death of a 10 year old child. The Supreme Court awarded compensation of Rs. 5 lakh with interest at the rate of 9% per annum, and by relying upon the principles laid down in the case of Lata Wadhwa and Others Vs. State of Bihar and Others, held that multiplier based on mother''s age should be applied. Therefore, the said decision was passed after taking into consideration the facts of the said case, and the view taken by the earlier decision of the Supreme Court in the case of Amrit Bhanu Shali v. National Insurance Co. Ltd. (supra) was not at all referred to. I do not find any reason how the said decision can be of any help to the appellant in the facts of the present case.

21. Mr. Nanavati also relied upon the decision of the Supreme Court in the case of Maharashtra State Road Transport Corpn. Vs. Lalnipuii, where the Supreme Court, for the death of a bachelor victim aged 31 years, relied upon the age of the mother for the purpose of determining the multiplier. That was also a decision of a two-judges-bench of the Supreme taking a view which is different from the one taken in the case of Amrit Bhanu Shali v. National Insurance Co. Ltd. (supra).

22. A recent decision of a Division Bench of Calcutta High Court in the case of National Insurance Co. Ltd. v. Nikhil Mondal & Ors. reported in 2014 LAW SUIT (CAL) 473 has been strongly relied upon by Mr. Nanavati where the Division Bench of the Calcutta High Court took into consideration all the relevant decisions on the aspect, and ultimately decided to follow the decision in the case of U.P.S.R.T.C. v. Trilok Chandra [supra], only on the ground that the same is a three-judge-bench decision. The said Division Bench has also relied upon paragraph 17 of the judgment in the case of Amrit Bhanu Shali v. National Insurance Co. Ltd. (supra) and after taking into consideration the decisions in the case of Sarla Verma [supra] and U.P.S.R.T.C. v. Trilok Chandra [supra] decided to ignore the same by relying upon the decision in the case of Trilok Chandra [supra]. In my opinion, when a subsequent decision of the Supreme Court interprets an earlier decision and also takes into consideration other earlier decisions of the Supreme Court, the same cannot be ignored by holding that the High Court proposes to hold that the interpretation given by the two-judges-Bench of the Supreme Court is incorrect. More so, when the subsequent two-judges-bench decision is not in conformity with the other laws of the land which was not taken note of in the earlier three-judges-bench decision. With great respect of the learned Judges of the Division Bench of the Calcutta High Court, I

am unable to follow the same as a precedent.

23. Mr. Nanavati also relied on another Division Bench decision of the Calcutta High Court in the case of National Insurance Company Limited Vs. Smt. Mohini Kamila and Others, in support of his contention that in case of death of a bachelor, the multiplier should be fixed on the basis of the age of the mother, and not on the basis of the age of the deceased. In that decision, the Division Bench of the Calcutta High Court did not take into consideration the question whether in assessing of loss of estate, the assessment can depend upon the religion of the deceased.

24. I, thus, find that in all the cases relied upon by Mr. Nanavati, the above aspect has not been taken note of.

25. In view of the aforesaid decision of the Supreme Court in the case of Amrit Bhanu Shali v. National Insurance Co. Ltd. (supra), not only interpreting the decision in the case of Sarla Verma [supra] but also noticing the three-judge-bench decision of the Supreme Court in the case of U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, , I find no substance in the contention of Mr. Nanavati that the appropriate multiplier should have been applied on the basis of the age of the parents.

26. Moreover, as pointed out earlier, if the object of the trial of the claim-application under Section 166 of the Act is to find out the loss suffered by the estate of the deceased due to negligence of the driver of the offending vehicle, the age of the heir and legal representative deceased cannot, at any rate, be a relevant factor for assessing the amount of loss. The tribunal is required to find out what should be the amount which the estate of the victim has suffered for the curtailment of his life by the accident, which necessarily means the amount that he would have earned less the amount which the victim himself would have spent for his own expenditure. The said amount is the real loss of the estate of the deceased.

27. This Court also cannot lose sight of the fact that according to the provisions of the Act, an application for compensation can be made only by the heirs or legal representatives of the victim and it is not necessary that in addition to his status as the heir or legal representative, he should be also financially dependent on the victim. (See Smt. Manjuri Bera Vs. The Oriental Insurance Company Ltd. and Another, .) Therefore, even though we refer to the expression loss of "future dependency", while calculating the amount of compensation, the question whether the applicant is really dependent on the on the estate of the victim is immaterial for the purpose of determination of compensation.

28. For instance, a widow of the victim even after remarriage will be entitled to maintain an application for compensation as an heir to inherit the estate and enjoy the award according to her share in terms of the law of succession. Therefore, if an aged mother as a sole heir and legal representative applies for compensation, the real loss of the estate of the deceased cannot be curtailed

merely because the aged mother would not be alive for a long for enjoyment whereas in case of a young widow, her necessity of money would continue for a long time. The only valid reason for variation of the amount is that in case of a bachelor victim, the tribunal should presume that the victim would have spent more amounts for his own necessity than in a case, if he had more financially dependents as heirs. Thus, the observations of the Supreme Court in paragraph 17 in the case of Amrit Bhanu Shali v. National Insurance Co. Ltd. (supra) after taking into consideration both Sarla Verma(supra) and UPSRTC v. Trilok Chandra [supra] are binding upon this court. Even in the case of UPSRTC v. Trilok Chandra [supra], the Supreme Court while making remarks upon the defects in the Schedule II of the Act made the observations about the importance of consideration of the age of the parents as quoted earlier but at the same time, hastened to add the following observations:

"What we propose to emphasise is that the multiplier cannot exceed 18 years'' purchase factor. This is the improvement over the earlier position that ordinarily it should not exceed 16."

28.1. Thus, according to Sarla Verma (supra), the multiplier specified is 11, and even having regard to the provisions of the Hindu Succession Act, I am of the view that in this case, the appropriate multiplier should be 11 after deducting half of the income for personal expenditure of the victim.

29. Applying the above principle, the amount of future loss should be Rs. 2000 X 12 X 11 = Rs. 2,64,000/-. In my opinion, further amount of Rs. 20,000/- should be added by following Sarla Verma [supra] under the heading of conventional amount. Thus, by following Sarla Verma [supra] and Amrit Bhanu Shali [supra] the claimant is held entitled to the following amounts:-

Rs. 2,64,000-00 Loss of dependency [Rs. 2000 X 12 X 11]

Rs. 20,000-00 Conventional amount

Rs. 2,84,000-00 Total

29.1. The award is accordingly modified by reducing it by a sum of Rs. 4000/- from Rs. 2,88,000/- to Rs. 2,84,000/- with interest at the rate of 9% per annum from the date of filing of the claim petition till the actual date of payment.

29.2. Pursuant to the orders dated 23rd November 2006 and 7th December 2006 passed in Civil Application No. 11780 of 2006 passed by this Court, the Insurance Company has deposited the entire amount awarded by the Tribunal and half of the amount was ordered to be disbursed to the claimants and the remaining half was ordered to be invested in a Fixed Deposit, with permission to the claimants to withdraw the interest accruing thereon. The Tribunal is directed to forthwith refund the difference amount of Rs. 4000/- with proportionate interest thereof to the appellant-Insurance Company by accounts payee cheque and disburse the remaining amount to the claimants, upon proper verification, by accounts payee cheque, the amount invested in the Fixed Deposit.

30. The appeal is thus partly allowed. No order as to costs.

31. If the amount of Rs. 25,000/- deposited by the appellant at the time of filing of the appeal is not yet transferred to the Tribunal below, the same may be immediately transferred to the Tribunal.

32. The Registry is directed to forthwith return the Record and Proceedings to the Tribunal.

