
(2014) 09 GUJ CK 0122
In the Gujarat High Court
Case No : First Appeal No. 3106 of 2005

New India Assurance Co. Ltd.

APPELLANT

Vs

Mansukhbai Chaturbhai

RESPONDENT

Date of Decision : 04-09-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 170, 173

Citation : (2015) 1 ACC 963

Hon'ble Judges : Bhaskar Bhattacharya, C.J

Bench : Single Bench

Advocate : Sunil B. Parikh, Advocates for the Appellant; Satyen B. Rawal, Advocates for the Respondent

Judgement

Bhaskar Bhattacharya, C.J.—This appeal under Section 173 of the Motor Vehicles Act is at the instance of the New India Assurance Company Limited and is directed against the award dated 4th May, 2005 passed by the learned M.A.C. Tribunal (Auxi.), Surendranagar in M.A.C.P. No. 394 of 2003 by which the Tribunal awarded a sum of Rs. 12,10,000 with interest at the rate of 9% per annum from the date of filing of the application till realization, for the death of the victim. It may not be out of place to mention here that the claimants lodged a claim of Rs. 11,00,000.

2. Being dissatisfied, the Insurance Company has come up with this appeal challenging the quantum as well as the extent of negligence on the part of the driver of the offending truck in question which is insured by the Insurance Company.

3. After going through the materials on record, I find that on 28th December, 2002 at about 1.00 p.m. while the victim was travelling on his scooter, there was a collision with a truck coming from the opposite direction, as a result, the victim died after one month and 19 days of the accident. During that period, he was hospitalized. At the time of death, the victim was aged 43 years and was in service having monthly income of Rs. 6,685 a month, as appearing from the

documentary evidence produced by the claimants.

4. After the service of notice upon the owner and the driver of the offending vehicle, they entered appearance and filed joint written statement denying the allegations made in the claim application and even denied the involvement of the truck in the accident. The Insurance Company also filed written statement and as at the time of hearing neither the driver nor the owner of the offending truck appeared, after taking leave under Section 170 of the Motor Vehicles Act the Insurance Company contested the proceedings.

5. The Insurance Company did not bring any evidence of its own, but simply cross-examined the witnesses for the claimants.

6. The Tribunal took the monthly income of the victim to be Rs. 5000 a month in spite of the fact that documentary evidence indicating monthly income to be Rs. 6685 was produced. The Tribunal below converted Rs. 5,000 to an yearly amount of Rs. 60,000 and then applied the multiplier of 15 to arrive at a figure of Rs. 9,00,000. In addition to that, the Tribunal added a sum of Rs. 70,000 towards medical expenses, Rs. 30,000 towards special diet, Rs. 10,000 towards funeral expenses, Rs. 1,00,000 towards pain, shock and suffering and further Rs. 1,00,000 for conventional charges. Thus, the total amount came to Rs. 12,10,000, which was more than the amount claimed by the claimants in the claim application.

7. Mr. Parikh, the learned Advocate appearing on behalf of the appellant, at the very outset, laboriously contended before this Court that in this case, the claimants have failed to prove involvement of the insured truck. Mr. Parikh contends that in the complaint lodged by the relative of the victim on the next day, there was no indication of the truck number of the vehicle. According to Mr. Parikh, even in the Panchanama prepared at the site of the accident on the same day, there was no indication of any number of the offending vehicle and at the same time, the widow of the victim who gave evidence on behalf of the claimants, was admittedly not an eye-witness. Such being the position, according to Mr. Parikh, involvement of the offending vehicle has not been proved. Mr. Parikh further makes submission in the alternative that if it is assumed for the sake of argument that the insured truck was really involved, there was no justification of holding the driver of the truck to be solely responsible for the accident. Mr. Parikh contends that the accident having occurred in the broad daylight and the same being a head-on collision, the Tribunal should have at least held the driver of the scooter to be equally guilty and at least 25% negligent for the accident.

8. In the case before us, the driver and the owner of the offending vehicle who have been made parties have filed written statement denying the involvement of the vehicle. However, in spite of filing written statement, they did not care to appear as witness in support of their defence. Even if I assume for the sake of argument that there was no eyewitness, the driver of the offending vehicle was

the best witness, who could point out to the Court whether the vehicle in question was involved or whether there was any negligence on the part of the deceased victim.

9. In the case before us, the claim application having been primarily lodged against the owner and the driver of the offending vehicle and in spite of filing written statement, they having failed to appear as witness and at the same time, the Insurance Company having taken leave under Section 170 of the Motor Vehicles Act, it was the duty of the Insurance Company to summon the driver of the offending vehicle. It is contended by Mr. Parikh that although the driver of the offending vehicle has not come forward to depose and at the same time, the claimants are deprived of the opportunity of cross-examining the driver, the best witness, I should still hold that the offending vehicle was not involved or that there was contributory negligence on the part of the deceased.

10. I find no substance in the aforesaid contention of Mr. Parikh. The Insurance Company, after taking leave under Section 170 of the Motor Vehicles Act, cannot evade its responsibility to bring the best evidence for which purpose the leave was granted to it.

11. As regards the quantum, I find that there was no justification of treating the monthly income of the victim to be Rs. 5,000 a month, when documentary evidence has been produced on record showing the actual income to be Rs. 6685 a month. If I make it round figure of Rs. 6,600 and consider additional 30% total prospective income i.e. Rs. 8580 (Rs. 6,600 + Rs. 1,980) and thereafter, deducting 1/4th towards personal expenditure (Rs. 2,145) as pointed by the Hon'ble Supreme Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , the monthly prospective loss figure comes to Rs. 6,435. Converting the said amount to an annual amount, the figure comes to Rs. 77,220 (Rs. 6,435 x 12) and applying the multiplier of 14, the total future loss of dependency will come to Rs. 10,81,080. Rs. 70,000 should be added to the aforesaid amount towards medical expenses with further sum of Rs. 30,000 towards special diet and attendant charges and Rs. 10,000 towards funeral expenses. Since the victim was alive for more than one month and 19 days in hospital. I am of the opinion that this is a fit case where a sum of Rs. 1,00,000 should be added towards pain, shock and suffering. Apart from the aforesaid amount, Rs. 20,000 should be added towards conventional charges. Thus, the total figure comes to Rs. 13,11,080 which is more than the amount awarded by the Tribunal.

12. The claimants having not preferred any appeal or cross-objection in this appeal at the instance of the Insurance Company, there is no scope of enhancing the amount.

13. As regards the grant of compensation by the Tribunal which was more than the amount claimed, it is now well settled law as held by the Hon'ble Supreme Court in the case of Nagappa Vs. Gurudayal Singh and Others, , if it appears to

the Court that while dealing with the application under the M.V. Act, that the amount of just compensation available on the basis of the material on record is more than one claimed in the original application, then it is the duty of the Court dealing with such application to award the just compensation. This appeal is dismissed. No order as to costs. Now that this appeal is dismissed, I direct the Tribunal to release the invested amount in favour of the claimants with interest accrued thereon, if any, by account payee cheque on proper verification.

Record and Proceedings be sent to the Tribunal.