(2006) 11 GUJ CK 0066

In the Gujarat High Court

Case No : First Appeal No''s. 4654 and 4655 of 2006 and Civil Application No''s. 13373 and 13375 of 2006

New India Assurance Co. Ltd. APPELLANT

Vs

Minor Arka Chakraborty and Others RESPONDENT

Date of Decision : 24-11-2006

Acts Referred:

Citation : (2006) 11 GUJ CK 0066

Hon'ble Judges : M.S. Shah, J;Akil Kureshi, J

Bench : Division Bench

Advocate : Shalin N. Mehta, for the Appellant; None, for the Respondent

Judgement

Akil Kureshi, J.—These appeals have been filed by the New India Assurance Company Ltd. challenging the common judgment and two separate awards dated 13th March, 2006 passed by the Motor Accident Claims Tribunal (Aux.), Vadodara in Motor Accident Claim Petitions Nos. 1712 and 1713 of 1995.

2. On the fateful day of 9th June 1995, a family of three members, Arun Chakraborty, his wife Kakali Chakraborty and their minor son Arka Chakraborty were travelling on a scooter bearing registration No. GBW-8307 at about 19.30 hours. The family was going towards Baroda city from Makarpura Air Force Station. When they reached near Makarpura ST Depot Road, Opp: Swastik Chambers, Vadodara, a truck bearing registration No. GRW-2468 came from behind and hit the scooter as a result of which both, Arun Chakraborty and his wife Kakali Chakraborty sustained serious injuries. They were rushed to SSG Hospital, Vadodara where they were declared brought dead.

3. For the death of his father, minor Arka Chakraborty filed MACP No. 1712 of 1995 claiming compensation of Rs. 18 lacs. Shri Mahadev Chakraborty father of deceased Arun was joined as claimant No. 2 in the said petition.

For the death of his mother, minor Arka Chakraborty filed MACP No. 1713 of 1995 claiming compensation of Rs. 7 lacs. Shri Mahadev Chakraborty, father-in-law of deceased Kakali was joined as claimant No. 2 in the said petition.

4. The Claims Tribunal found that there was evidence on record to suggest that the accident was caused solely on account of the negligent driving on the part of the driver of truck No. GRW-2468 which was insured by the appellant Insurance Company. The claimants had examined one Shri Ram Harchandrai Hirani (Ex.69) who was an eye-witness to the accident. He has his stationary shop in Swastik Chambers opposite the Makarpura Bus stand. He had given account of the manner in which the accident had taken place. On the basis of his oral evidence, the Tribunal was pleased to conclude that the accident was caused solely on account of the negligent driving of the truck. The Tribunal also took into account other evidence, such as, panchnama of the scene of accident and the nature of damage caused to the scooter to come to the said conclusion. It may be noted that the driver of the truck had neither entered the witness box nor was he examined as witness for the Insurance Company.

5. With respect to the quantum of compensation in Claim Petition No. 1712 of 1995, relating to the death of father of claimant No. 1, Arunbhai, the Tribunal noted that the deceased was aged 32 years on the date of accident. He was serving as Sergeant in Indian Air Force and was stationed at Air Force Station, Makarpura, Vadodara at the relevant time. As per his pay certificate (Ex.57), he was drawing salary of Rs. 4628/- per month on the date of the accident. In addition thereto, he was also receiving other allowances and facilities, like accommodation, canteen facilities and medical coverage. The Tribunal also noted that the deceased was a highly trained officer. He was discharging his duties as an Instructor giving training to Air Force personnel. He had passed certain courses which were equivalent to degree of Bachelor in Engineering. The Tribunal, therefore, was of the opinion that the deceased would have received periodic promotions in due course of time. Normal retirement age being 58 years, he would also have got periodic pay revisions. There was evidence before the Tribunal to suggest that the deceased would have reached the basic salary of Rs. 20,000/- per month considering the future promotional prospects and pay revisions.

6. Considering the evidence on record, the Tribunal was pleased to come to the conclusion that the future income of the deceased could be assessed at Rs. 16,000/- per month. Considering the salary at the time of accident i.e. Rs. 4628 per month and taking into account the future income (Rs.16,000/- per month), the Tribunal adopted Rs. 10,300/- (rounded off) per month as the average income of the deceased. Deducting one-third therefrom for personal expenses, the Tribunal arrived at the dependency benefit of Rs. 6900/- per month i.e. Rs. 82,800/- per annum. Considering the age of the deceased as 32 years on the date of the accident, the Tribunal adopted multiplier of 12. The Tribunal, therefore, awarded a sum of Rs. 9,93,600 (Rs.82,800 x 12). The Tribunal further added Rs. 20,000/- towards loss of love and affection and Rs. 5,000/- for funeral expenses. Thus in all an amount of Rs. 10,18,600/- was awarded in favour of the

claimants in Claim Petition No. 1712 of 1995.

7. In Claim petition No. 1713 of 1995, the Tribunal took into account the deposition of the claimants to the effect that the deceased was aged about 27 years on the date of the accident, she was studying in S.Y.B.A. (Arts), she was doing private tuitions and earning approximately Rs. 2500 per month. In due course, she would have completed her graduation and earned more income. The Tribunal, however, believed the income of deceased Kakali at Rs. 1500/- per month through tuitions. Considering Rs. 3000/- as her future income and taking an average of the current and future income, the Tribunal assessed Rs. 2250/- per month as the average prospective income of the deceased. Out of the same, one-third was deducted for personal expenditure of the deceased and net dependency benefit was worked out at Rs. 1500/- per month i.e. Rs. 18,000/- per year. Considering the age of the deceased, the Tribunal adopted the multiplier of 12 and dependency benefit of the claimants was worked out at Rs. 2,16,000 (Rs.18,000 x 12). The Tribunal further awarded Rs. 20,000 towards loss of love and affection and Rs. 5,000/- towards funeral expenses. In all an amount of Rs. 2,41,000/- was thus awarded as compensation by the Tribunal in Claim Petition No. 1713 of 1995.

8. We have heard learned advocate Mr. Shalin Mehta for the appellant. He submitted that the Tribunal erred in taking into account the future income of deceased Arunbhai at the rate of Rs. 16,000/- per month. He submitted that the assessment of dependency benefit on the basis of the said calculation is highly excessive. He contended that the Tribunal should not have taken into account the future possible increase in the pay of the deceased since the same depended largely on his getting his due promotions. He further submitted that the award passed by the Tribunal in Claim Petition No. 1712 of 1995 is excessive.

9. With respect to Claim Petition No. 1713 of 1995, the learned advocate for the appellant submitted that there was no proof of income of deceased Kakali. In absence of any evidence to establish the income of the deceased, the Tribunal erred in concluding that she was earning Rs. 1500 per month by giving tuition.

10. Having heard the learned advocate for the appellant and having perused the material on record, we find that there is hardly any debate possible about the negligence of the truck driver in causing the accident. Through eye witness account, it has come on record that while the family was travelling on their scooter going from Makarpura Air Force Station to Vadodara city, a speeding truck came from behind and dashed the scooter while trying to overtake. As per the eye-witness account of Shri Ram Hirani (Ex.69), the truck was being driven in an excessive speed and in a rash and negligent manner. The front portion of the truck hit the scooter from behind. This witness owns a shop right opposite the place where the accident took place. His presence, therefore, at the scene of accident was natural. His account could not have been disbelieved without any valid reason. In addition to the account of this eye-witness, there was ample other evidence on record suggesting gross negligence on the part of the truck

driver in driving the vehicle. Panchnama of the scene of offence as well as the nature of damage caused to the scooter involved in the accident would clearly demonstrate that the scooter was dashed by the truck from behind. Back portion accessories of the scooter received extensive damage. The position of the two vehicles, as indicated in the panchnama, further strengthens this conclusion. Additionally, we also find that the truck driver of the offending truck was not examined as a witness by the Insurance Company before the Claims Tribunal.

11. Considering all these aspects of the matter, we find that the Tribunal committed no error in coming to the conclusion that the accident was caused solely on account of the negligent driving by the driver of the truck. Tragically, in a fraction of a second with one stroke of misfortune, claimant No. 1, a minor child, was left orphaned.

12. With respect to the amount of compensation awarded by the Claims Tribunal, we may first advert to Claim Petition No. 1712 of 1995. This claim petition, as noted earlier, pertains to the claim made by the claimants for the death of deceased Arunbhai. There was documentary evidence on record supported by oral depositions that deceased Arunbhai was serving as Sergeant in Indian Air Force. On the date of the accident, he was drawing salary of Rs. 4628/- per month. He was highly qualified and trained in his duties. He was trained in USSR and a certificate to that effect was produced on record at Ex.53. He was discharging his duties as an Instructor and was giving training to Air Force personnel. He had passed Section A and B of the AMTE Engineering Course which is equivalent to Bachelor in Engineering. The degree certificate and mark-sheets were also produced on record. Thus, it could be seen that the deceased was a bright young officer of Indian Air Force who had ample opportunities to make further career advancements.

13. The claimants had also produced evidence on record to suggest that his co-employees on the date of deposition had received promotions and were earning salary of more than Rs. 15,000/- per month. The age of superannuation of the deceased was 58 years. He had every possibility of getting further promotions. He, therefore, had a bright future in his career and his pay would certainly have been revised from time to time.

One may also note that the accident which tragically cut short the life of the deceased took place on 9th June 1995. Within just about six months of his death, the Government had introduced pay revisions by implementing the recommendations of 5th Pay Commission with effect from 1.1.96. It is a common knowledge that though the recommendations of the Pay Commission were accepted later on, the implementation was with retrospective effect from 1.1.96. Thus, shortly after the date of the accident, the pay-scale of the post which the deceased held itself underwent substantial upward revision.

14. In New India Assurance Co. Ltd. v. Kala Devi 1996 ACJ 16, the Apex Court approved the High Court judgment enhancing compensation on the basis of

revision of pay-scale of the post held by the deceased by the Third Pay Commission.

14.1 Following the aforesaid decision in the case of New India Assurance Co. Ltd. v. Kala Devi (supra), a Division Bench of this Court in Saruyaben Harisingbhai Bilwal Vs. Ataullahkhan Mehtabkhan Lalkhan Pathan and Others, enhanced the compensation awarded by the Claims Tribunal, taking into account the revision of pay scale of the post held by the deceased by virtue of implementation of the Fifth Pay Commission recommendations with effect form 1.1.96.

14.2 Similarly, in the case of Gujarat State Road Transport Corporation Vs. Patel Rajabhai Bavabhai and Others, a Division Bench of this Court took into account the periodic pay revisions to enhance the compensation in favour of the claimants. It was observed in para 14 of the said decision that pay-scales only provide for basic salary and the Government Officer is also paid dearness allowance and other allowances.

15. Thus the pay which the deceased drew on the date of the accident would have been revised on account of implementation of the recommendations of the Pay Commission. Additionally, the deceased would have received at least some promotions. Even otherwise, in Government pay-scales, which are time scale of pay, there is always an element of yearly increment which would further augment the basic pay of the employee with passage of time and seniority. In addition to basic pay, there are several allowances added in the form of Dearness Allowance, House Rent Allowance, City Compensatory Allowance, etc. Thus, it can be seen that the salary of the deceased would have increased substantially during his service career.

16. The Hon''ble Supreme Court in the case of Smt. Sarla Dixit and another Vs. Balwant Yadav and others, was also pleased to take into consideration the bright career of the deceased who was Lieutenant in the Army. The Hon''ble Supreme Court was pleased to take into account the future prospects of promotion and come to the conclusion that the it will not be unreasonable to predict that the gross monthly income of the deceased would have shot up had he survived and continued with his future military career. Considering all the aspects of the matter and observing that the deceased had a brilliant academic record and stable military service, the Hon''ble Supreme Court was pleased to enhance the compensation awarded by the Claims Tribunal as well as the High Court.

17. Considering all these aspects of the matter, we find no error in the conclusion of the Tribunal that the average monthly income of the deceased could be assessed at Rs. 10,300. The Tribunal thus committed no error in assessing the dependency benefit at Rs. 6900/- per month after deducting one-third from the salary of the deceased for his personal expenses. There was evidence to establish that the deceased was aged 32 years on the date of the accident. The choice of multiplier of 12 adopted by the Tribunal, therefore, was at any rate conservative.

18. Thus, in our opinion, the Tribunal committed no error in awarding Rs. 9,93,600/- (Rs.6900 x 12 = Rs. 82,800 x 12) towards dependency benefit. To the said figure, the Tribunal added Rs. 20,000/- as conventional amount of loss of expectation of life (though termed as loss of love and affection) and Rs. 5,000/- for funeral expenses. In our opinion, the compensation awarded by the Tribunal being just and reasonable calls for no interference.

19. Considering all these aspects of the matter, we find no substance in First Appeal No. 4654 of 2006 corresponding to Claim Petition No. 1712 of 1995.

20. Coming to the question of compensation awarded in Claim Petition No. 1713 of 1995 filed by the claimants for the death of deceased Kakali Chakroborty, we find that there was oral testimony on record to suggest that the deceased was giving private tuitions. Even otherwise, as a housewife also the value of services rendered by the deceased cannot be underestimated. That being so, the Tribunal committed no error in assessing the income of the deceased at Rs. 1500 per month. Considering the future rise in income to Rs. 3,000/- per month and taking average of the existing and the future income, the Tribunal adopted the average figure of Rs. 2250/- per month as the income of the deceased and one-third was deducted for her personal expenditure. The net dependency was worked out to Rs. 1500 per month and Rs. 18,000/- per year. The said assessment of the Tribunal calls for no interference as the same is eminently just and reasonable. The Tribunal adopted the multiplier of 12 perhaps considering that the claimants were minor son and aged father-in-law. In any case, we find no error in the choice of multiplier also. The Tribunal thus awarded a sum of Rs. 2,16,000/- towards dependency benefit. To this amount, further sum of Rs. 20,000/- towards loss of expectation of life and Rs. 5,000/- towards funeral expenses were added and a total amount of Rs. 2,41,000/- was awarded by way of compensation in Claim Petition No. 1713 of 1995. We find no error in assessment and computation of the compensation.

21. First Appeal No. 4655 of 2006 also, therefore, deserves to be dismissed.

22. In view of the above discussion, both the appeals are dismissed.

23. In view of dismissal of appeals, Civil Applications for stay are also dismissed.

24. The amounts deposited by the appellant Insurance Company at the time of filing the appeals shall be transmitted to the Claims Tribunal within a period of one month from today.

