(2019) 07 GUJ CK 0074

In the Gujarat High Court

Case No : R/First Appeal No. 1253, 1254 Of 2014

New India Assurance Co Ltd APPELLANT

Vs

Mita Chetanbhai Mehta And 3 Other(S) RESPONDENT

Date of Decision : 05-07-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2019) 07 GUJ CK 0074

Hon'ble Judges : R.M.Chhaya, J;B.N. Karia, J

Bench : Division Bench

Advocate : Gc Mazmudar, Hg Mazmudar, Ghanshyam Amin, Saurabh G Amin

Final Decision : Dismissed

Judgement

1. Feeling aggrieved by and dissatisfied with the common judgment and award dated 27.11.2013 passed by learned Motor Accident Claims Tribunal

(Main), Ahmedabad, (hereinafter referred to as ""the Tribunal"" for short), in Motor Accident Claim Petition Nos.790 and 791 of 2005, the appellant â?

Insurance Company preferred present appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as ""the Act"" for short);

2. As both these appeals arising out of the same accident, same were heard together and are disposed of by this common judgment.

3. Heard Mr.H.G.Mazmudar, learned counsel for the appellant and Mr.Saurabh Amin, learned counsel for respondent Nos.1 to 3 â?" Original

claimants.

4. The following noteworthy facts emerge from the record of the appeal:Â?

4.1 That, on 21.03.20015 at about 1:30 P.M, deceased Chetankumar Bharatbhai Mehta and deceased Shwetaben Chetankumar Mehta were returning from Dhandhuka to Ahmedabad in their car and while they reached near village GundaÂnaÂpara on Bagodara â?" Dhandhuka highway, at that time,

one truck bearing registration No.GJÂ4ÂTÂ5605 came with full speed and in rash and negligent manner and dashed with the car of the deceased,

due to which, deceased Chetankumar Bharatbhai Mehta and deceased Shwetaben Chetankumar Mehta received serious injuries and died.

4.2 In connection with the said accident, FIR being C.R.No.18/2005 came to be registered at Bagodara Police Station, Dist. Ahmedabad (Rural).

4.3 It is the case of the claimants that the said accident occurred due to rash and negligent driving of driver of the truck.

4.4 It is further the case of the claimants that both the deceased Chetankumar and Shwetaben were doing the business of furnishing items in the name

of ABC Associates and had income of Rs.1,01,992/Â?.

4.5 The original claimants filed two claim petitions i.e. M.A.C.P No.790/2005 and claimed compensation of Rs.37,65,000/Â and M.A.C.P

No.791/2005 and claimed compensation of Rs.17,25,000/Â before the Tribunal under Section 166 of the Act, wherein the Tribunal partly allowed the

claim petitions and awarded compensation of Rs.18,73,415/Â in MACP No.790/2005 and Rs.11,96,490/Â in MACP No.791/2005 along with costs and

interest @ 9 % per annum from the date of filing of claim petitions till its realization.

Being dissatisfied with the said compensation, the appellant â?" Insurance Company has filed present appeals.

5. Learned counsel for the appellant contended as under:

(i) That, considering the FIR at Exh:36 and the panchnama at Exh:37, the Tribunal has wrongly come to the conclusion that the driver of the truck was

solely negligent;

(ii) That, considering the manner in which the accident has occurred, the Tribunal ought to have held the driver of both the vehicles equally liable for

the accident and ought to have come to the conclusion that the driver of both the vehicles are negligent to the extent of 50/50 %;

(iii) That, the Tribunal has also erred in considering the income of the deceased and has wrongly awarded compensation under the head of loss of

dependency in both the claim petitions;

(iv) That, the Tribunal has granted Rs.1,00,000/Â as compensation under the head of loss of love and guidance and Rs.25,000/Â for funeral expenses

on higher side and therefore, relying upon the judgment of the Apex Court in the case of National Insurance Company Ltd. Vs. Pranay Sethi, reported

in 2017 (16) SCC 680, learned counsel for the appellant submitted that the same should be reduced to Rs.70,000/Â?.

On the above mentioned contentions, learned counsel for the appellant has submitted that present appeals deserve to be allowed, as prayed for.

6. Per contra, Mr. Saurabh Amin, learned counsel for the respondents has supported the impugned judgment and award and contended that, the

manner in which the accident has occurred and considering the panchnama at Exh:37, it can be asserted that the accident has occurred only because

of sole negligent of the driver of the truck. He further invited the attention of this Court to the panchnama at Exh:37, and contended that the accident

has occurred on 22 feet wide road and car was stuck inside the truck and it was dragged inside the truck at least 25 feet as recorded in the

panchnama and as observed by the Tribunal in the impugned judgment and award and therefore, the Tribunal has rightly come to the conclusion that,

the driver of the truck was solely negligent. He also contended that the accident has occurred on 21.03.2005 and on the date of the accident, deceased

Chetanbhai Mehta, who was 36 years old, was a businessman. Mr. Amin Relying upon the income tax returns at Exhs:30 and 31 for the assessment

year 2002Â03 and 2003Â04 respectively and income tax returns in Form No.2D for the assessment year 2004Â05, income is mentioned as

Rs.1,42,614/Â p.a., however, the fact remains that the Tribunal has committed an error in considering the income of both the deceased. He also

contended that the accident has occurred on 21.03.2005 and the Tribunal has such as committed an error in averaging the income as the income for

the assessment year when the accident has occurred was Rs.1,42,614/Â. He further submitted that it is true that as per the judgment of the Apex

Court in the case of Pranay Sethi (supra), the respondent claimants would be entitled to get compensation under different conventional heads

maximum at Rs.70,000/Â?.

7. Mr.Amin has also relied upon the judgment of the Apex Court in the case of Divisional Manager, Oriental Insurance Company Ltd. Vs. Swapna

Nayak & Ors. [(2017) 3 SCC 598] and has urged that even if compensation under the head of conventional amount is reduced from Rs.1,25,000/Â to

Rs.70,000/Â, considering the error committed by the Tribunal while computing income, amount as awarded by the Tribunal in both the claim petitions

is just and reasonable and therefore, as held by the Apex Court in the case of Divisional Manager, Oriental Insurance Company Ltd. (supra), this

Court may not interfere with the impugned judgment and award.

On the aforesaid contentions, Mr. Amin, learned counsel for the respondentsÂclaimants submitted that, present appeals being meritless, deserve to be

dismissed.

No other or further submissions have been made by learned counsel for the parties.

8. Similarly, the deceased Shwetaben was also in the business of selling Venetian Blind, Vertical Blind and Mosquito nets and as per the claimants,

relying upon the income tax returns at Exhs:Rs.33, 34 and 35, it was contended by Mr. Amin that in case while calculating the income of the deceased

Â? Shwetaben, the Tribunal has committed a similar error by averaging her income.

9. Have perused the original record and proceedings. Upon reappreciation of the evidence on record, more particularly, the panchnama at Exh:37, the

manner in which the accident has occurred and the impact of the accident on fiat car, it is proved beyond doubt that the truck was being driven in an

excessive speed in such a manner that the fiat car was below the truck and was dragged at least 20 feet on the road. The Tribunal has considered the

said aspect in para 7 of the impugned judgment and award, which reads as under:

â??7. First of all the FIR Exh:36 lodged by the claimant Bharatbhai Chunilal Mehta is concerned, as discussed above he had not seen the accident

personally. However, he had stated in FIR that accident was occurred due to rash and negligent driving on the part of the driver of vehicle Truck

bearing No.GjÂ4ÂTÂ 5606. The panchnama of scene of incident Exh:37 would reveal that the accident was occurred near village Gandanapura on

Bagodara â?" Dhandhuka road and the vehicle Truck was lying on the eastern edge of the road. It is also mentioned in the Panchnama that the road

was 22 ft. in width. The car was struck 5 ft. inside and below the truck car was dragged at least 20 ft. from the place of incident by the truck. The

surface of the road was unearthened meaning thereby the vehicle Truck was in so excessive speed so that the driver could not control the steering at

the relevant point of time of accident. It is also mentioned in the panchnama that the front side of the car, bonnet, engine, windscreen, roof of the car

were damaged to the extent of Rs.2 lakh and also caused damage to the truck to the extent of Rs.50,000/Â. Meaning thereby the driver of the vehicle

Truck No.GJÂ?4Â?TÂ?5605 is sole negligent for the accident.

10. We are in total agreement with the reasonings given by the Tribunal. The appellant Â Insurance Company has not examined the driver and upon

reappreciation of the evidence on record, more particularly the FIR at Exh:36 and the panchnama at Exh:37, contention raised by Mr.Mazmudar, that

the driver of both the vehicles were equally negligent, deserves to be rejected outright.

11. It is true that the Tribunal in both cases has been pleased to award Rs.1,00,000/Â under the head of loss of love and guidance and Rs.25,000/Â as

funeral expenses, which should be reduced to Rs.70,000/Â in both the appeals. However, considering the judgment of the Apex Court in the case of

Divisional Manager, Oriental Insurance Company Ltd. (supra), the Tribunal in both the claim petitions has taken average of income of both the

deceased for 3 years.

12. Upon reappreciation of the said evidence, we are of the opinion that the Tribunal ought to have considered the last income tax returns, which is

more proximity to the date of accident and determine the income.

13. At this juncture, it would also be appropriate to refer to the judgment of the Apex Court in the case of Ranjana Prakash & Ors. Vs. Divisional

Manager & Anr. [(2011) 14 SCC 639], wherein the Apex Court has observed thus:

â??7. This principle also flows from Order 41 Rule 33 of the Code of Civil Procedure which enables an appellate court to pass any order which ought

to have been passed by the trial court and to make such further or other order as the case may require, even if the respondent had not filed any appeal

or crossÂ objections. This power is entrusted to the appellate court to enable it to do complete justice between the parties. Order 41 Rule 33 of the

Code can however be pressed into service to make the award more effective or maintain the award on other grounds or to make the other parties to litigation r to share the benefits or the liability, but cannot be invoked to get a larger or higher relief. For example, where the claimants seek

compensation against the owner and the insurer 0f the vehicle and the Tribunal makes the award only against the owner, on an appeal by the owner

challenging the quantum, the appellate court can make the insurer jointly and severally liable to pay the compensation, along with the owner, even

though the claimants had not challenged the nonÂ?grant of relief against the insurer. Be that as it may.

8. Where an appeal is filed challenging the quantum of compensation, irrespective of who files the appeal, the appropriate course for the High Court is

to examine the facts and by applying the relevant principles, determine the just compensation. If the compensation determined by it is higher than the

compensation awarded by the Tribunal, the High Court will allow the appeal, if it is by the claimants and dismiss the appeal, if it is by the

owner/insurer. Similarly, if the compensation determined by the High Court is lesser than the compensation awarded by the Tribunal, the High Court

will dismiss any appeal by the claimants for enhancement, but allow any appeal by the owner/ insurer for reduction. The High Court cannot obviously

increase the compensation in an appeal by the owner/insurer for reducing the compensation, nor can it reduce the compensation in an appeal by the

claimants seeking enhancement of compensation.â??

14. In peculiar facts and circumstances arising out of these appeals, if the income of the deceased in both the claim petitions is taken into

consideration, the respondents â?" claimants would be entitled to more compensation under the head of loss of dependency.

15. In light of the aforesaid facts, the compensation as awarded by the Tribunal is just and reasonable and in peculiar facts arising in these appeals,

impugned judgment and award does not require any alteration of modification. By applying the ratio laid down by the Apex Court in the case of

Pranay Sethi (supra), the amount awarded under the conventional head may be reduced to Rs.55,000/Â in both the claim petitions. However, as the

Tribunal has not correctly determined the income as observed hereinabove, the claimants would be entitled to get higher amount of compensation

under the head of loss of dependency and under such circumstances, the appeals are liable to be dismissed in order to see that the original claimants be awarded just and reasonable compensation in the facts of the case.

Accordingly, impugned common judgment and award dated 27.11.2013 passed by learned Motor Accident Claims Tribunal (Main), Ahmedabad, in

M.A.C.P Nos.790 and 791 of 2005 stands confirmed and hence, present appeals are dismissed. In the facts of the case, no order as to costs. Record

and proceedings be transmitted back to the concerned Tribunal forthwith.