

(2017) 03 GUJ CK 0058
In the Gujarat High Court
Case No : 1325 of 2003

NEW INDIA ASSURANCE CO. LTD

APPELLANT

Vs

NOORMAMAD LAKHIAR JAT & ORS.

RESPONDENT

Date of Decision : 14-03-2017

Acts Referred:

Citation : (2017) 03 GUJ CK 0058

Hon'ble Judges : S.G. Shah

Bench : Single Bench

Advocate : PALAK H THAKKAR, ?HEMAL SHAH

Final Decision : Dismissed

Judgement

1. Heard learned advocate Mr.Palak H. Thakkar for the appellant - insurance company and learned advocate Mr.Hemal Shah for respondent Nos.1 and 2 being original claimants. Respondent No.3 is deleted whereas respondent No.4 being owner of the vehicle though duly served has remained absent.

2. The insurance company of the vehicle which has involved in a road accident has challenged the judgment and award dated 23.1.2003 by Motor Accident Claims Tribunal (Aux-I) of Kachchh @ Bhuj in Motor Accident Claim Petition No.311 of 1994. By such impugned judgment and award, the

Tribunal has directed the appellant to pay an amount of Rs.1,50,000/- towards compensation with 9% interest thereon from the date of filing of claim petition i.e. 4.6.1994 till the amount is paid with proportionate cost of such litigation.

3. Such amount of compensation was awarded because of the undisputed fact that on 21.1.1994, when victim and her father were proceeding towards Subhashpura, the driver of truck No.GQY-4635 has driven it rashly, negligently and in excessive speed and, therefore, lost control over the truck which dashed and collided with the victim Samotibai Noormamad Jat which resulted into serious injuries for which she succumbed to death. At the time of such incident, deceased victim was aged about 12 years and having sound physique and good health and she used to do embroidery and knitting work and earned Rs.450/- per month. After recording evidence and after scrutiny of available evidence, the Tribunal has awarded Rs.1,50,000/- to the claimants / respondents being parents of the victim, considering that victim was earning Rs.450/- per month and, thereby, taking notional income as Rs.15,000/- per annum applying 15 as suitable multiplier and after deducting 1/3rd amount for personal expenses. Therefore, from total calculation of Rs.2,25,000/- (Rs.15,000/- X 15), 1/3rd amount

is deducted and hence Rs.1,50,000/- is awarded.

The perusal of judgment makes it clear that nothing further has been awarded on other heads like non pecuniary damages.

4. Mr.P.H. Thakkar, learned advocate has contended that if the monthly income of the victim is considered, then, at the most, claimants are entitled to only Rs.1,37,900/- as maximum compensation or at-least Rs.1,27,900/- as just and reasonable compensation. Therefore, the only difference is less than Rs.25,000/- and if we consider the proper calculation even as per the submissions by the appellant then difference is practically limited to Rs.12,000/- only.

5. Therefore, there is no reason to interfere in such award of Rs.1,50,000/- at this stage, because in-fact compensation awarded by the Tribunal is on the contrary on lower side.

6. It would be appropriate to recollect the following decisions on the subject: -

(A) AIR 2007 SCC 324 between New India Assurance Co. Ltd v. Satender wherein Hon"ble Supreme Court has for the death of a child of 9 years, Rs.1,50,000/- was awarded.

(B) AIR 2009 SCC 2506 between R.K. Malik v. Kiran Pal wherein while confirming an award of Rs.1,50,000/- to dependents of children between the age group of 10-15 years and Rs.1,65,000/- to dependents of children between

age group of 15-18 years, the Hon"ble Supreme Court has confirmed that parents of the victim child are entitled to non-pecuniary damages of Rs.75,000/- in addition to above compensation. Therefore, for the age group of 10-15 years, the total amount confirmed by the Hon"ble Supreme Court is Rs.2,33,000/-.

(C) AIR 2014 SCC (Suppl) 173 between Kishan Gopal v. Lala wherein the Hon"ble Supreme Court has awarded Rs.5,00,000/- for the death of boy aged 10 years.

(D) 2014 SCC (Weekly) 548 between Radhakrishna v. Gokul wherein Hon"ble Supreme Court has awarded Rs.7,00,000/- for the death of 19 years old student.

7. In view of above facts and circumstances and cited cases, I do not see any reason or substance in this appeal filed by the Insurance Company so as to reduce the amount of compensation from Rs.1,50,000/- to Rs.1,27,900/- as suggested. On the contrary, the award is on lower side and, therefore, when difference is also not much between the proposed compensation by the appellant and compensation awarded by the Tribunal, I do not see any reason to interfere with the impugned judgment in any manner whatsoever. Therefore, there is no substance in the present appeal and hence the same stands dismissed.