(2008) 01 GUJ CK 0073

In the Gujarat High Court

Case No : First Appeal No. 1403 of 2002

New India Assurance Co. Ltd. APPELLANT

Vs

Prafullaben Kishorebhai Soni and Others RESPONDENT

Date of Decision : 21-01-2008

Acts Referred:

Citation : (2008) 01 GUJ CK 0073

Hon'ble Judges : Sharad D. Dave, J;A.L. Dave, J

Bench : Division Bench

Advocate : Sandip C. Shah, for the Appellant; Dharmesh V. Shah, for the Respondent

Judgement

A.L. Dave, J.—This appeal arises out of the judgment and award rendered by the Motor Accident Claims Tribunal (Auxi.), Court No. 19, Ahmedabad, in Motor Accident Claims Petition No. 448/1998 on 13th December, 2001, awarding total compensation of Rs. 8,35,000/- with 12% interest per annum and proportionate costs, against the claim of Rs. 14 Lacs.

2. The present respondents No. 1 to 4 preferred the said claim-petition before the Tribunal against the present respondents No. 5 & 6 and the appellant, claiming damages for the accidental death of Kishorbhai Chimanlal Soni husband of respondent No. 1, father of respondents No. 2 & 3 and son of respondent No. 4.

3. The brief facts of the case are that the deceased was working as a goldsmith. On the date of accident i.e. 14.4.1998, he was proceeding from Bavla to Ahmedabad with his brother on Scooter No. GJ-1-AS-4872. The scooter was driven by respondent No. 5 and the deceased was on the pillion seat. When they reached near Vaghjipura Patia at about 3.00 P.M. on the date of the incident, it is alleged that the scooter was being driven at an excessive speed. It is the case of the claimants that a matador was proceeding ahead of the scooter and the driver of the said matador suddenly applied brakes. The scooter driver, in order to avert

an accident, applied brakes, as a result of which, the deceased slipped off the scooter on the road and sustained serious injuries. The deceased was shifted to V.S. General Hospital at Ahmedabad, was admitted in the said Hospital and was treated till he expired after about 12 days.

3.1 The claimants'' case is that the deceased was working as a goldsmith and was earning Rs. 1 Lac per annum, and because of his death, the claimants were rendered helpless. It is further the case of the claimants that they were required to spend a sizable amount on funeral and medical treatment of the deceased. Apart from the expenditure on medicines, the claimants had to spend on transportation and attendant. Keeping all these aspects in mind, the claimants initially claimed compensation of Rs. 5 Lacs and subsequently enhanced the claim to Rs. 14 Lacs.

3.2 The driver of the scooter could not be served and, therefore, his name came to be deleted vide order below application Exh.8; whereas the owner of the scooter chose not to contest the claim-petition. The claim-petition was, therefore, opposed to by the learned advocate appearing for opponent No. 3 appellant herein. Opponent No. 3 filed written-statement at Exh.14, which is more or less in the form of denials. It was contended therein that the claim was highly excessive and ultimately, a prayer for dismissal of the claim-petition was made.

4. The Tribunal assessed the income of the deceased at Rs. 5,000/- per month and assessed his annual income at Rs. 60,000/-. The Tribunal deducted 1/4th of the income as expenditure by the deceased on his own self and assessed annual dependency loss to the claimants at Rs. 45,600/-. Considering the age of the deceased and the claimants, the Tribunal adopted multiplier of 17 and thus, awarded compensation of Rs. 7,75,000/- under the head of dependency loss.

4.1 The Tribunal further awarded Rs. 20,000/- towards pain, shock and suffering, Rs. 20,000/- as compensation towards loss of expectation of life, Rs. 10,000/- as compensation towards loss of consortium and Rs. 10,000/- as compensation under the head of loss of love and affection to the children. The Tribunal then awarded Rs. 8,35,000/- as total compensation receivable by the claimants for the accidental death of deceased Kishorbhai Soni.

5. The claimants produced documents vide list Exh.16, which include certified copies of F.I.R., panchnama, inquest panchnama, postmortem examination report, death-certificate, medical bills, prescriptions, income-certificate etc. Claimant No. 1 has deposed at Exh.18. Navinchandra Hiralal Soni is also examined as a witness. He happens to be the brother of the deceased. No other oral evidence is produced on the record by either side.

6. We have scanned the record and proceedings of the case before the Tribunal, which is now before us. We notice that as per the say of claimant No. 1, the deceased was a goldsmith and was earning Rs. 1 Lac per year. She has further deposed that she had to spend Rs. 10,000/- to Rs. 15,000/- on obsequial

ceremonies. During her cross-examination, she has stated that she has no personal knowledge about the accident. She also admits that she has not produced any documentary evidence to show that her husband was treated as an indoor patient for about 10 days. She denies the suggestion that her husband did not meet with an accidental death. It has come in evidence during the cross-examination that the shop, where the deceased was working, was of his ownership.

6.1 Witness Navinchandra Hiralal Soni is examined at Exh.30. He says that when he and the deceased were going on his scooter towards Ahmedabad, a matador was going ahead of them and when they reached near Vaghjipura Patia, the matador overtook them and a cap fell on the road from the said matador. The matador driver, therefore, suddenly applied brakes and he, in turn, applied brakes, as a result of which, the scooter slipped off and the deceased fell on the road and sustained injuries. The deceased was taken by him to the V.S. Hospital, where he succumbed to the injuries while under treatment.

7. The claimants have produced on record of the Tribunal several invoices/ estimates etc. to prove the income of the deceased or to show that the deceased was engaged in the work of goldsmith. Those bills, vouchers, estimates are at Exhs.24, 25 & 26. From these bills, we find that the deceased was being treated medically and medicines were required to be purchased on various occasions. The other documents are in the form of F.I.R., panchnama etc. They do not assume much importance for the reason that the factum of accident is not denied by the other side and the question of contributory negligence does not arise for the reason that the deceased himself was not driving the vehicle, which is alleged to be responsible for the accident. The person, who is alleged to be responsible for the accident viz. driver of the matador, is not brought on record, and the scooter driver has admitted the fact that the accident occurred because of sudden application of brakes by him due to the similar action by the matador driver. The ultimate result is that the deceased is not attributed any negligence. So far as the scooter driver is concerned, he ought to have driven his scooter in a manner and at a speed where he could have controlled the scooter without any risk to any one, which he has failed to do and, therefore, he is responsible for the accident. He would, therefore, primarily responsible to pay compensation to the claimants. The owner and the insurer of the said scooter would also be vicariously responsible to pay the compensation.

8. Now, having come to the conclusion that the scooterist was responsible for the accident and that the scooter-driver, owner and the insurer of the scooter would be jointly and severally responsible to pay compensation to the claimants, let us now move on the question of quantum.

9. So far as the quantum is concerned, the claimants have not produced any authentic contemporaneous material in the form of Income Tax returns, books of accounts etc. to show the income of the deceased, but, there is material to show that the deceased was engaged in the work of goldsmith. There are order forms,

vouchers etc. issued by the persons with whom the deceased used to deal. Therefore, we agree with the view of the Tribunal that the claimants have established the fact that the deceased was engaged in the work of goldsmith.

10. The work of goldsmith (making of gold ornaments) is a skilled work and requires special skill. Therefore, we find justification in the Tribunal''s assessment of income of the deceased at Rs. 5,000/- per month, which is quite reasonable. The deceased owned a shop at Bavla, where he was running business of goldsmith and, therefore, the contention of learned advocate Mr. Shah for the appellant regarding inflated assessment of income of the deceased by the Tribunal cannot be accepted.

10.1 Assessing the income of the deceased to be Rs. 5,000/- per month, if the deduction is made for the expenditure that the deceased would have incurred for his own self, we would arrive at the dependency benefit of the claimants. The Tribunal has deducted 1/4th of the income of the deceased and then proceeded to assess the annual dependency loss. The Tribunal deducted Rs. 1200/- from Rs. 5,000/- and assessed the annual dependency loss at Rs. 45,600/-. The Tribunal adopted multiplier of 17 and assessed the dependency loss at Rs. 7,75,000/-.

10.2. In our opinion, although the assessment of income of the deceased by the Tribunal seems to us to be just, legal and reasonable calling for no interference, the Tribunal has committed an error in deducting only 25% as expenditure on his own self by the deceased. In fact, applying the rule of thumb, 1/3rd income ought to have been deducted from the said income to arrive at dependency loss of the claimants.

10.3 For arriving at the datum figure for the dependency loss, a multiplier will have to be adopted. Considering various pronouncements of the Apex Court holding that the compensation under the head of loss of dependency benefit should be so calculated that it should fetch interest income to the extent that it would be little lesser than the dependency of the dependents, which would require them to spend some money out of the corpus and at the end of the period of dependency, the entire amount should be consumed, we are of the view that a multiplier of 13 is required to be adopted considering the age of the deceased. The claimants, thus, would be entitled to compensation of Rs. 5,20,000/- as compensation under the head of loss of dependency benefit, computed as under:

Rs. 60,000/- Annual Income(5000 per month x 12) Less: Rs. 20,000/- Expenditure on Self being 1/3rd of Annual Income. -------------- Rs. 40,000/- Annual Dependency Loss x 13 being Multiplier -------------- Rs. 5,20,000/- ==============

10.4 The Tribunal has awarded Rs. 20,000/- under the head of pain, shock and sufferings, Rs. 20,000/- under the head of loss of expectation of life, Rs. 10,000/- towards loss of consortium to claimant No. 1 and Rs. 10,000/- towards loss of love and affection to the children, totalling Rs. 60,000/-.

10.5 An attempt was made by the learned advocate for the applicant to assail these amounts, but, in our view, they do not call for any interference, in light of the fact that the Tribunal has not awarded any compensation under the head of medical expenditure, transportation, attendant charges, funeral expenditure, which expenditure the claimants must and claim to have incurred.

11. Thus, an amount of Rs. 60,000/- will have to be added to Rs. 5,20,000/- as computed above. The total amount of compensation, therefore, would be Rs. 5,80,000/- receivable by the original claimants.

12. Learned advocate Mr. Sandip Shah for the appellant also attacked the judgment on the ground of grant of interest at the rate of 12%. He submitted that rate of interest awarded is on higher side, whereas it should be commensurate with the prevailing rate of interest given by the Banks on Fixed Deposits. Keeping that aspect in mind, we are of the view that interest can be awarded at the rate of 9%.

13. For the foregoing reasons, the appeal is partly allowed. The amount of compensation receivable by the claimants is reduced to Rs. 5,80,000/- with interest at the rate of 9% per annum from the date of the application till the amount was deposited. The claimants would be entitled to proportionate costs also.

13.1 The amount of compensation shall be shared by all the claimants equally. Out of the amount of compensation receivable by the claimants, 80% would be placed in Fixed Deposit in their respective names with any Nationalised Bank for a period of five years with a condition that no loan shall be raised against, or any encumbrance created on those Fixed Deposits. The claimants would be entitled to periodical interest that may accrue thereon. The remaining 20% of the amount receivable by the claimants shall be paid to the claimants by A/c. Payee Cheque after deducting court fees, if any. If Fixed Deposits are placed with the Nationalized Bank by virtue of order passed by this Court on 10.3.2003, the same would be tendered by the claimants before the Tribunal for implementation of the order passed hereinabove. The remaining amount, after disbursement of the compensation with proportionate costs and interest, will be refunded to the appellant.