
(2014) 04 GUJ CK 0001
In the Gujarat High Court
Case No : F.A. Nos. 1122 and 164 of 2006

New India Assurance Co. Ltd.

APPELLANT

Vs

Ramesh Devshi Shah and Others

RESPONDENT

Date of Decision : 07-04-2014

Acts Referred:

Citation : (2015) 4 ACC 352 : (2015) ACJ 2077

Hon'ble Judges : M.R. Shah, J;R.P. Dholaria, J

Bench : Division Bench

Advocate : Palak H. Thakkar, Advocate for the Appellant; Arpit A. Kapadia, Advocate for the Respondent;

Final Decision : Partly Allowed

Judgement

M.R. Shah, J.

1. As both these appeals arise out of the impugned common judgment and award passed by the learned Motor Accidents Claims Tribunal (hereinafter referred to as "the Tribunal") and as such they are cross-appeals, both these appeals are decided and disposed of by this common judgment and order. Feeling aggrieved and dissatisfied with the impugned judgment and award passed by the learned Tribunal, Gandhidham, Kutch, dated 27.12.2005 passed in M.A.C.P. No. 31 of 2002, by which the learned Tribunal has partly allowed the said claim petition preferred by the original claimants and has awarded a total sum of Rs. 14,15,000 as compensation to the original claimants for the death of Kaushik Rameshbhai Shah with interest at the rate of 9 per cent per annum from the date of filing of the petition till realization, the original opponent No. 3, insurance company of vehicle involved in the accident, has preferred the present first appeal.

1.1. Feeling dissatisfied with the amount of compensation awarded by the learned Claims Tribunal at Rs. 14,15,000, the original claimants have preferred First Appeal No. 164 of 2006 to enhance the amount of compensation.

2. In a vehicular accident which took place on 25.10.2001 between scooter No. GJ 12-C 6974 (driven by the deceased Kaushik) and dumper No. GJ 12-V 5569 driven by the original opponent No. 2, the deceased Kaushik had died. That the original claimants-parents of deceased filed M.A.C.P. No. 31 of 2002 before the learned Tribunal, Gandhidham, Kutch for getting compensation at Rs. 80,00,000 for the death of their son Kaushik.

2.1. It was the case on behalf of the original claimants that Kaushik died due to accident, which took place due to rash and negligent driving on the part of the driver of the dumper who was driving the dumper on the wrong side of the road at an excessive speed.

2.2. It was the case on behalf of the original claimants that Kaushik on the date of accident was aged about 25 years. That he was doing part-time job and was earning Rs. 7,750 per month. It was also the case on behalf of the claimants that the deceased was also having income from his business at Rs. 27,000 per month and thus, the deceased was earning Rs. 34,750 per month.

2.3. That the claim petition was opposed by the appellant herein-original opponent No. 3, insurance company, only. Though served, nobody appears on behalf of the original opponent Nos. 1 and 2 and claim petition proceeded ex parte against the opponent Nos. 1 and 2. The claim petition was opposed by the insurance company by filing written statement at Exh. 16. It was denied that the deceased died due to negligence on the part of driver of the dumper. The insurance company had also denied that the deceased was aged about 25 years on the date of accident and was earning Rs. 27,000 per month from trading and Rs. 7,750 by way of monthly salary by doing part-time job.

2.4. That learned Tribunal framed the issue at Exh. 25.

2.5. On behalf of claimants, original claimant No. 1 - father of Kaushik Rameshbhai Shah came to be examined at Exh. 28. The claimants also examined one Vasant S. Mehta at Exh. 44 and one Rohit Shantilal Kothari at Exh. 48. The original claimant No. 1 - father of the deceased stated in his affidavit/deposition that the deceased was doing part-time job and for the year 2000-01 he was paid total salary of Rs. 36,000 by Mepabhai Mandan and Rs. 57,000 by Shantinath Developers, Gandhidham. He further stated that income of the deceased in the year 2000-01 as per the income tax return was Rs. 93,000 per annum. He further stated that deceased joined a partnership firm, S.R. Warehousing & Trading Co., w.e.f. 21.7.2001 and he was 25 per cent partner in profit and loss of the said firm. However, in cross-examination, he admitted that at his instance 25 per cent of the profit and loss of S.R. Warehousing & Trading Co., of which deceased was 25 per cent partner, is now being paid to his daughter, sister of the deceased. That the claimants also produced following documentary evidence:

2.6. That on appreciation of evidence, the learned Tribunal has considered the age of deceased at 24 to 25 years on the date of accident.

2.7. That on appreciation of evidence on record, the learned Tribunal has considered income of deceased at Rs. 7,750. That on appreciation of the evidence and considering the cross-examination of the original claimant No. 1, in which original claimant No. 1 admitted that with his consent share of the deceased in S.R. Warehousing & Trading Co. is transferred to his daughter, namely, Deval and, therefore, considering the fact that due to the death of the deceased there is no loss of income from S.R. Warehousing & Trading Co., the learned Tribunal has held that income of the deceased from the above firm is not required to be taken into consideration while determining the amount of loss of dependency. That thereafter, adding prospective income, the learned Tribunal has considered the income of the deceased at Rs. 11,625 per month and deducting 1/3rd for personal expenditure of the deceased, the learned Tribunal has considered the loss of dependency at Rs. 7,750 per month and applying multiplier of 15, the learned Tribunal has held that claimant shall be entitled to Rs. 13,95,000 under the head of future economic loss and further awarding Rs. 20,000 under the head of conventional amount by impugned judgment and award, learned Tribunal has awarded a total sum of Rs. 14,15,000 towards compensation for death of Kaushik Rameshbhai Shah.

2.8. Feeling aggrieved and dissatisfied with the impugned judgment and award passed by the learned Tribunal, the insurance company as well as original claimants have preferred present first appeals.

3. Mr. Palak Thakkar, learned advocate for the insurance company, has vehemently submitted that while considering the dependency for future economic loss, the learned Tribunal has materially erred in making deduction of 1/3rd for personal expenditure of the deceased. It is submitted that as the deceased was bachelor, as per the decision of the Hon''ble Apex Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , more particularly, para 25 of the said judgment, learned Tribunal ought to have deducted 50 per cent for personal expenditure of the deceased.

3.1. Mr. Palak Thakkar, learned advocate for the insurance company, has further submitted that as the deceased was bachelor and/or a young person, while applying multiplier, age of the claimants-parents is required to be considered and not the age of the deceased. It is submitted, therefore, that the learned Tribunal ought to have applied the multiplier of 5 looking to the age of the claimants-parents. In support of his above submissions, he has relied upon the decision of the Hon''ble Supreme Court in the case of Kishan Gopal and Another Vs. Lala and Others, , as well as decision of the Hon''ble Supreme Court in the case of National Insurance Company Ltd. Vs. Shyam Singh and Others, .

3.2. Making above submissions and relying upon the above decisions, it is requested to allow the present appeal and modify the impugned judgment and award passed by the learned Tribunal to the aforesaid extent.

4. Mr. Arpit Kapadia, learned advocate for the original claimants, has vehemently

submitted that the learned Tribunal has not committed any error and/or illegality in deducting 1/3rd towards personal expenditure of the deceased. In support of his above submission, he has relied upon the decision of the Hon''ble Supreme Court in the case of Fakeerappa and Another Vs. Karnataka Cement Pipe Factory and Others, .

4.1. It is further submitted by Mr. Kapadia, the learned advocate for the original claimants, that even otherwise the learned Tribunal has materially erred in not awarding any amount towards loss caused to the claimants of the income derived from the partnership business/firm of which the deceased was having 25 per cent share. It is submitted that after the death of the deceased, his 25 per cent share in the profit of the partnership firm would go to the daughter of the claimants (sister of the deceased) and, therefore, as such it will be a loss to the claimants. It is submitted, therefore, that while awarding the future economic loss, loss of 25 per cent share in the profit of partnership firm is required to be awarded.

4.2. Now, so far as contention on behalf of the insurance company relying upon the decision of the Hon''ble Apex Court in the case of Shyam Singh (supra) and Kishan Gopal (supra) that as the deceased was bachelor and young person and, therefore, while awarding future economic loss the multiplier is required to be applied considering the age of the claimants (parents) and not the deceased is concerned, Mr. Kapadia, learned advocate for the claimants, has submitted that as such in the aforesaid two decisions there is no absolute law laid down by the Hon''ble Supreme Court that while applying the multiplier while awarding future economic loss, in case of death of bachelor/young person the age of the claimants-parents is required to be considered and not of the deceased. It is submitted that on the contrary the decision of the Hon''ble Apex Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , is a direct decision on the said issue. It is submitted that in the case of Sarla Verma (supra) the Hon''ble Supreme Court has specifically observed and held that while applying the multiplier the age of deceased alone/only is required to be considered.

4.3. Making above submissions and relying upon the decisions of the Hon''ble Apex Court, it is requested to dismiss the present appeal preferred by the insurance company and allow cross-appeal preferred by the claimants and enhance the amount of compensation awarded by the learned Tribunal.

5. Heard the learned advocates for the respective parties at length. Perused the judgment and award passed by the learned Tribunal and considered the entire evidence on record documentary as well as oral from the record and proceedings/ paper book received by the learned Tribunal. At the outset, it is required to be noted that the claimants are the parents of the deceased. At the relevant time they were aged 54 and 49 years respectively. At the relevant time, the deceased was aged 25 years and was a bachelor. It has also come on record that the income of the deceased at the time of death/accident was Rs. 7,750 per month

which in the facts and circumstances of the case considering the evidence on record is not required to be interfered with. As per the decision of the Hon''ble Supreme Court in the case of Sarla Verma (supra) and at the relevant time deceased was aged 25 years, 50 per cent of the income at the time of death is required to be added towards future prospects. Thereafter, considering the decision of the Hon''ble Supreme Court in the case of Sarla Verma (supra), more particularly para 25, as the deceased was bachelor, 50 per cent of the aforesaid is required to be deducted towards personal expenditure of the deceased instead of 1/3rd as deducted by the learned Tribunal. Therefore, the dependency for the purpose of awarding future economic loss would come to Rs. 5,812.50 per month and as the deceased was 25 years of age, multiplier of 18 is required to be applied and, therefore, the amount of compensation under the head of future economic loss would come to Rs. 12,55,500.

6. Now, so far as the contention on behalf of the insurance company that as the deceased was a bachelor and young person and, therefore, while awarding future economic loss the multiplier is required to be applied considering the age of claimants-parents and not the age of the deceased and the reliance placed upon the decision of the Hon''ble Supreme Court in the case of Shy am Singh (supra) and Kishan Gopal (supra) is concerned, the aforesaid cannot be accepted. In the aforesaid decisions, there is no absolute proposition of law laid down by the Hon''ble Apex Court that while considering the future economic loss, the age of the deceased is not required to be considered and age of the parents is required to be considered. On the contrary, in the case of Sarla Verma (supra) the Hon''ble Supreme Court has specifically observed and held that while applying the multiplier the age of the deceased only is required to be considered. Under the circumstance, looking to the age of the deceased at 25 years while awarding future economic loss, multiplier of 18 is required to be applied.

7. Now, so far as submission made by the learned advocate for the claimants that the learned Tribunal has materially erred in not awarding any amount towards loss of 25 per cent profit in the partnership firm business as the deceased was having 25 per cent share in the partnership firm business which would now go to the daughter of the claimants and, therefore, there would be a loss to the claimants is concerned, the aforesaid has no substance. It is required to be noted and even it is admitted by the original claimant No. 1 in his deposition that at his instance the 25 per cent share of the deceased would now go to his daughter (sister of the deceased). Therefore, when at his instance 25 per cent of the profit in the partnership firm would go to his daughter, thereafter the claimants cannot make a grievance and/or cannot be permitted to say that there would be loss to them. If the aforesaid 25 per cent of the share in the profit of the partnership firm is not given to their daughter at their instance the same would have been received by the claimants. Under the circumstances, as such no error and/or illegality is committed by the learned Tribunal.

8. Considering the aforesaid facts and circumstances of the case, the claimants

shall be entitled to Rs. 12,55,500 under the head of future economic loss, Rs. 10,000 towards loss of consortium and Rs. 5,000 towards funeral expenses, etc., i.e., in all Rs. 12,75,500. In view of the above and for the reasons stated above, F.A. No. 1122 of 2006 preferred by the insurance company is hereby partly allowed and cross-appeal, i.e., F.A. No. 164 of 2006 preferred by the original claimants is hereby dismissed. The impugned judgment and award passed by the learned Tribunal is hereby modified to the extent and it is held that original claimants are entitled to Rs. 12,75,500 with 9 per cent interest from the date of application till realization instead of Rs. 14,15,000 as awarded by the learned Tribunal. The impugned judgment and award passed by the learned Tribunal is modified to the aforesaid extent. Under the circumstance, it is observed that insurance company shall be entitled to get back any amount deposited in excess of Rs. 12,75,500 with 9 per cent interest thereon and same shall be returned to the insurance company from the fixed deposits deposited/invested pursuant to the earlier order passed by this court with interest accrued thereon. No order as to costs.