(2012) 01 GUJ CK 0039

In the Gujarat High Court

Case No : First Appeal No. 1814 of 2005

New India Assurance Company Ltd. APPELLANT

Vs

Kanji Bach Ayar and Others RESPONDENT

Date of Decision : 09-01-2012

Acts Referred:

Citation : (2012) 01 GUJ CK 0039

Hon'ble Judges : K. S. Jhaveri, J

Bench : Single Bench

Advocate : Shalin N. Mehta, for the Appellant; C.H. Vora for Defendant(s) : 1 - 2 and Rule Served for Defendant(s) : 3 - 4, for the Respondent

Final Decision : Allowed

Judgement

Honourable. Mr. Justice K.S. Jhaveri

1. This appeal is directed against the judgment and award dated 06.01.2004, passed by the Motor Accident Claims Tribunal(Main), Kachchh at

Bhuj, in M.A.C.P. No. 103 of 2003, whereby the Tribunal has awarded compensation in the sum of Rs.02,04,500/- to the claimants with interest

at the rate of 9% from the date of filing of the petition till realization.

2.0. On 24.08.2002 when one Amit Kanji Ayar was coming from Village Kotada to Anand Restaurant situated on Kotada Dudhai road along

with his cousins at about 5.30 hours, Truck bearing registration No. GRX- 5439 came from opposite direction in a rash and negligent manner and

lost the control of the vehicle and collided with Amit as a result of which, he sustained grievous injuries and subsequently succumbed to the said

injuries on the spot. The respondents No.1 and 2- parents of the deceased have preferred the aforesaid claim petition before the learned Tribunal for compensation in the sum of Rs. 2, 04, 500/-.

2.1. The Tribunal after hearing learned advocates for the respective parties and after considering the evidence on record decided the claim petition

and passed the award as stated hereinabove against which the present appeal is preferred by the appellants-original opponent No.3.

3.0. Learned Advocate for the appellant submitted that the learned Tribunal has not properly appreciated the evidence on record. He further

contended that the learned Tribunal has erred in taking the annual income of the deceased between Rs. 12, 000/- p.a. and Rs.18,000/- p. a. and

then taking the mean of Rs.2, 40, 000/- and Rs. 3,60, 000/- i.e. Rs. 3, 00, 000/- for calculating dependency.

4.0. I have heard learned Advocate appearing for the appellant and perused the materials produced on record. From the record it is clear that the

deceased was aged about 11 years at the time of accident. Therefore, I am of the opinion that Tribunal has committed an error in assessing the

annual income of the deceased at Rs.18,000/-. The Tribunal ought to have assessed the annual income of the deceased at Rs.15,000/- as the

deceased was minor at the time of accident. Therefore, annual income of the deceased is considered at Rs.15,000/-. If 15,000/- is taken as annual

income, 1/3rd amount is required to be deducted towards her personal expenses, as per the ratio laid down in the in the case of Smt. Sarla Verma

and Others Vs. Delhi Transport Corporation and Another, . Thus, the annual income comes to Rs.10,000/-. If multiplier of 15 is adopted, as per

the decision of Sarla Varma and Others (supra), the net income comes to Rs.1,50,000/-. Therefore, the original claimants are entitled to Rs.

1,50,000/- towards future loss of income.

5.0 The Tribunal has awarded Rs.4500/- under the heads of loss of estate and funeral expenses, which is in my opinion is just and proper.

Therefore it is held that the claimants will be entitled to a sum of Rs. 1,54,500/-. The excess amount will be refunded to the appellant-Insurance

company, if the same is deposited by the appellant-Insurance company with the Tribunal. The award of the Tribunal is modified accordingly.

Appeal is partly allowed to the aforesaid extent with no order as to costs.