(2014) 09 GUJ CK 0058

In the Gujarat High Court

Case No : First Appeal No. 644 of 2009

Oreintal Insurance Co. Ltd. APPELLANT

Vs

Amarba Revtubha Jadeja RESPONDENT

Date of Decision : 23-09-2014

Acts Referred:
Motor Vehicles Act, 1988 — Section 166, 173
Succession Act, 1925 — Section 306

Citation : (2014) 09 GUJ CK 0058

Hon'ble Judges : Bhaskar Bhattacharya, C.J

Bench : Single Bench

Advocate : K.K. Nair, Advocate for the Appellant; Hina Desai, Advocate for the Respondent

Judgement

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Bhaskar Bhattacharya, C.J.—This appeal under section 173 of the Motor Vehicles Act, 1988, is at the instance of an Insurance Company and is directed against an award dated 16th June 2008 passed by the Motor Accident Claims Tribunal [Main], Banaskantha, at Palanpur in M.A.C.P. No. 705 of 1998 thereby awarding a sum of Rs. 3,92,200/- with interest at the rate of 9% per annum along with proportionate costs, after holding that the Insurance company is liable to pay the said amount.

2. Being dissatisfied, the Insurance Company has come up with the present appeal.

3. Mr. Nair, the learned advocate appearing on behalf of the appellant, has, at the very outset, submitted that he will confine his submissions only on the question of quantum of compensation. According to him, the Tribunal below awarded excessive compensation by not following the well-settled law laid down by the Supreme Court.

4. It appears from the materials on record that on 17th August 1998, while the

deceased was driving a motor cycle, another vehicle, a jeep bearing registration No. GRN 1208, came in a rash and negligent manner, with excessive speed from the wrong side and collided with the motor cycle, as a result, the victim was seriously injured resulting in his death.

5. According to the claim-application, the deceased was aged 24 years at the time of his death and was unmarried, and was doing business of transport by letting out his vehicle on contract basis with ONGC, Ahmedabad, and used to earn Rs. 10,000/- to Rs. 12,000/- a month, and after deducing the expenses incurred towards the salary of the driver, cost of fuel and other miscellaneous expenses, the victim used to earn a net profit of Rs. 4000/- to Rs. 4500/- a month. The claimants, parents of the victim prayed for compensation to the tune of Rs. 4,00,000/-.

6. The learned Tribunal, on consideration of the materials on record, found that the driver of the offending jeep was solely responsible for the accident and the victim had no negligence of his own. It was further found that the offending vehicle was insured by the Oriental Insurance Company Limited, the appellant before this Court.

7. While calculating the amount of compensation, the learned Tribunal below, on consideration of the materials on record, came to the conclusion that it would be just and proper to treat the monthly income of the victim to be Rs. 1700/-. According to the Tribunal, from the birth certificate produced, it would appear that the victim was aged 27 years and 7 months at the time of his death. While calculating the prospective income, the learned Tribunal below doubled the said amount of Rs. 1700/- and added the same to the monthly income and thereafter divided the total amount by 2 and thus, arrived at a conclusion that Rs. 2500/- would be the prospective monthly income of the deceased. The Tribunal thereafter deducted 1/3rd there from towards personal expenditure of the victim and arrived at the figure of Rs. 1700/- monthly loss of dependency, which is equal to the yearly loss of Rs. 20,400. To this, the Tribunal applied the multiplier of 18 and awarded Rs. 3,67,200/- [Rs. 1700 X 12 X 18 = Rs. 3,67,200/-] under the head of dependency loss. In addition thereto, the Tribunal also awarded a sum of Rs. 5000/- towards funeral expenses and transportation charges, and Rs. 20,000/- towards conventional amount under the head of loss of expectation of life. Thus, the Tribunal awarded a total sum of Rs. 3,92,200/-.

8. Mr. Nair, the learned advocate appearing on behalf of the appellant, has attacked the order impugned by contending that the Tribunal below committed substantial error of law in deducting only 1/3rd towards personal expenditure, by totally overlooking the fact that the deceased was a bachelor and, therefore, in the present case, half of the amount should have been deducted towards personal expenditures.

8.1 Secondly, Mr. Nair also contended that in this matter, the mother of the victim being the sole heir and legal representative of the deceased, while assessing the amount of compensation, the age of the mother should be the decisive factor and not the age of the victim. According to Mr. Nair, the victim being 27 years of age at the time of his death, his mother should be at least 46 years and on that basis, the multiplier should be applied.

9. None appears on behalf of the claimants.

10. After hearing Mr. Nair appearing on behalf of the appellant and after going through the materials on record, I agree with the submission of Mr. Nair that the deceased being a bachelor aged 27 years, the learned Tribunal should have deducted half of the amount from the prospective income of the deceased, instead of 1/3rd deducted by the Tribunal. Thus, the Tribunal committed substantial error in that respect.

11. Regarding the application of multiplier, I find that after the decision of the Supreme Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , the law is now settled that in a proceeding under 166 of the Motor Vehicles Act, the principles laid down in the said decision should be followed. In the chart given in that decision for application of multiplier, the reference is of the age of the victim. Further, in the said decision, there is also a reference to the decision of the Supreme Court in the case of U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, by quoting a portion of the judgment wherein the three-judges-bench of the Supreme Court indicated that in the case of death of a bachelor, where the claimants are parents, the age of the parents should also be taken into consideration. However, in the judgment in the case of Sarla Verma [supra], the Supreme Court did not specifically make any observation as to whether in the case of a bachelor, instead of the age of the victim, the age of parents should be taken into consideration.

12. I, however, find that in a subsequent decision of the Supreme Court in the case of Amrit Bhanu Shali and Others Vs. National Insurance Co. Ltd. and Others, , after taking note of the decision of the Supreme Court in the case Sarla Verma [supra] and UPSRTC v. Trilok Chandra [supra], the Bench made the following observations in paragraph 18:-

"18. In the case of Sara Verna (supra) this Court held that the multiplier to be used should be as mentioned in Column (4) of the table of the said judgment which starts with an operative multiplier of 18. As the age of the deceased at the time of the death was 26 years, the multiplier of 17 ought to have been applied. The Tribunal taking into consideration the age of the deceased rightly applied the multiplier of 17 but the High Court committed a serious error by not giving the benefit of multiplier of 17 and bringing it down to the multiplier of 13.

12.1 In my view, the aforesaid observation of the Supreme Court is also in conformity with the provisions of section 306 of the Indian Succession Act, according to which, in a proceeding for compensation for personal injuries leading to death, the right to sue survive upon the legal heirs or the executor of the deceased. Thus, not only any compensation ultimately granted should form part of the estate of the deceased and is heritable but even the cause of action before culminating into an award or decree would also be heritable and would survive on the heirs and legal representatives. Therefore, there is no question of applying multiplier on the basis of the age of the claimants when the compensation forms part of the estate of the deceased like any other property and the right of inheritance is not restricted to the life of the heir.

12.2 In view of the aforesaid decision of the Supreme Court in the case of Amrit Bhanu Shali V. National Insurance Co. Ltd. interpreting the decision in the case of Sarla Verma [supra], I find no substance in the contention of Mr. Nair that the appropriate multiplier should have been applied on the basis of the age of the parents as would appear from the following observations in paragraph 17 of the judgment:

"17. The selection of multiplier is based on the age of the deceased and not on the basis of the age of dependent. There may be a number of dependents of the deceased whose age may be different and, therefore, the age of dependents has no nexus with the computation of compensation.

[Emphasis supplied]

13. Moreover, if the object of the trial of the claim-application under Section 166 of the Act is to find out the loss suffered by the estate of the deceased due to negligence of the driver of the offending vehicle, the age of the heir and legal representative cannot, at any rate, be a factor for deciding the amount. The tribunal is required to find out what should be the amount which the estate of the victim has suffered for the curtailment of the life of the victim by the accident, which necessarily means, the amount that he would have earned less the amount which the victim himself would have spent for his own expenditure. The said amount is the real loss of the estate of the deceased.

13.1 This Court also cannot lose sight of the fact that according to the provisions of the Act, an application for compensation can be made only by the heirs and legal representatives of the victim and it is not necessary that in addition to his status as the heir and legal representative, he should be also financially dependent on the victim. (See Smt. Manjuri Bera Vs. The Oriental Insurance Company Ltd. and Another, Therefore, even though we refer to the expression loss of "future dependency" while calculating the amount of compensation, the question whether the applicant is really dependent on the on the estate of the victim is immaterial for the purpose of determination of compensation.

13.2 For instance, a widow of the victim even after remarriage will be entitled to maintain an application for compensation as an heir to inherit the estate and enjoy the award according to her share in terms of the law of succession notwithstanding the fact that he is no longer dependent upon the estate of her deceased husband. Therefore, if an aged mother as a sole heir and legal representative applies for compensation, the real loss of the estate of the deceased cannot be cut short merely because the aged mother would not be alive for a long for enjoyment whereas in case of a young widow, her necessity of money would continue for a long time. The only valid reason for variation of the amount is that in case of a bachelor victim, the tribunal should presume that the victim would have spent more amounts for his own necessity than in a case, if he had more financially dependents as heirs. Thus, the observations of the Supreme Court in paragraph 18 in the case of Amrit Bhanu Shali V. National Insurance Co. Ltd.(supra) after taking into consideration both Sarla Verma(supra) and UPSRTC v. Trilok Chandra [supra] is binding upon this court. Even in the case of UPSRTC v. Trilok Chandra [supra], the Supreme Court while making remarks upon the defects in the Schedule II of the Act made the observations about the importance of consideration of the age of the parents as quoted earlier but at the same time, hastened to add the following observations:

"What we propose to emphasise is that the multiplier cannot exceed 18 years'' purchase factor. This is the improvement over the earlier position that ordinarily it should not exceed 16."

13.3 There is another major difficulty in assessing the compensation based on the principle of multiplier according to the age of the claimant. If a person dies leaving more than one legal heir, in that event, the ages of all the heirs should be added and then a mean is to be calculated and if the said mean age is more than the age of the deceased, the same is to be considered to be the basis of finding out the multiplier if I accept the contention of the learned Advocate for the Insurance Company. In my opinion, to find out the loss of estate suffered by the deceased, the mean age of the heirs will be a totally irrelevant factor and thus, such approach would be totally erroneous as would appear from the following example:-

13.4 Let us take a case where a brilliant young person having very bright prospect has died at the age of 25 before his marriage leaving his father aged 52 years and mother aged 47 years, one brother aged 23 years and a sister aged 20 years. Let us assume that he is a member of the Indian Administrative Service. If the deceased happens to be a Hindu, his mother aged 47 years will be the sole heir. If he happens to be a Muslim, all the four persons will be the heirs. On the other hand, if he happens to be a Christian, his father will be the sole heir, while if the deceased is a Parsi, both his parents will be the heirs. The result will be that the value of loss of estate will depend upon the religion he belongs to. However, that cannot be the guiding factor for assessing the loss of an estate. I appreciate that the assessed loss occurred to an estate can be divided among the heirs and legal representatives according to the rules of succession based on the religion of the deceased but the value of the loss of an estate cannot vary depending upon the religion to which the deceased belongs and the tortfeasor cannot be asked to pay different amount of compensation calculated on the basis of the religion of the victim. In my view, the loss suffered by the estate of a member of Indian Administrative Service aged 25 should be the same based on future prospect whether he is a Hindu, or a Muslim or a Christian or a Parsi.

Similarly, if the deceased, by executing a Will, has bequeathed his entire estate in favour of a particular person appointing him also as the executor, the amount of loss will depend upon the age of the said person.

13.5 In view of the aforesaid decision of the Supreme Court interpreting the decision in the case of Sarla Verma [supra], I find no substance in the contention of Mr. Nair that the appropriate multiplier should have been applied on the basis of the age of the parents.

13.6 It further appears that having regard to the age of the victim, the Tribunal should have applied multiplier of 17, instead of 18 applied by it.

14. As regards the prospective income, applying the principles laid down by the Supreme court in the case of Sarla Verma [supra], as the age of the deceased was 27 years and 7 months at the time of his death, 50% should be added to the monthly income of Rs. 1700/- of the deceased. Thus, the prospective monthly income of the deceased would be Rs. 2550/- [Rs. 1700 + Rs. 850 = Rs. 2550]. From this, the deceased being a bachelor, half should be deducted towards personal expenses. Thus, the monthly loss of dependency would be Rs. 1275/- [Rs. 2550-Rs. 1275 = Rs. 1275], i.e. Rs. 15,300/- per annum. Applying thereto a multiplier of 17, the claimants would be entitled to an award of Rs. 2,60,100/- under the head of loss of dependency. I do not, however, disturb the award of Rs. 5000/- towards funeral expenses and transportation charges, and Rs. 20,000/- towards conventional amount under the head of loss of expectation of life. The claimants, thus, would be entitled to the following award:

14.1 The award is, thus, modified to Rs. 2,85,000/- by reducing it from Rs. 3,92,200/-, with proportionate costs and interest at the rate of 9% per annum from the date of filing of the application till the date of actual payment.

14.2 The appeal is allowed accordingly. No order as to costs.

14.3 It appears from the orders dated 17th February 2009 and 1st May 2009 passed in Civil Application No. 1719 of 2009, the appellant-Insurance Company has deposited the entire awarded amount and 30% thereof has been paid over to the claimant No. 2. In view of the fact that the award is now reduced to Rs. 2,85,000/- by virtue of this judgment, the Tribunal is directed to refund the balance amount with interest accrued thereon to the appellant Insurance Company by accounts payee cheque. The Tribunal is directed to pay the remaining amount, with interest accrued thereon, to the claimants, upon proper verification, by accounts payee cheque, in the proportion that may be determined by the Tribunal.

14.4 The Registry is directed to forthwith return the Record and Proceedings to the Tribunal.

