

(1998) 03 GUJ CK 0017
In the Gujarat High Court

Case No : F.A. No's. 218 and 219 of 1997 with Civil Application No's. 8474 and 8475 of 1997

Oriental Insurance Co. Ltd. and Others APPELLANT

Vs

Abbas Kasambhai Ghanchi RESPONDENT

Date of Decision : 24-03-1998

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 168, 173

Citation : (1999) ACJ 1030 : (1999) 1 GLR 543

Hon'ble Judges : J.N. Bhatt, J;A.M. Kapadia, J

Bench : Division Bench

Advocate : Arun H. Mehta, for the Appellant; Shakeel A. Qureshi, for the Respondent

Judgement

J.N. Bhatt, J.—The road accident giving rise to this group of two appeals u/s 173 of the Motor Vehicles Act, 1988 ("the Act" for short hereinafter), occurred on 14.7.1994 between 4 and 5 p.m., near village Rajpara on Bhavnagar-Rajkot Highway. In the said accident, deceased Keshavbhai Devsibhai sustained serious injuries and succumbed to the same and, therefore, his heirs and legal representatives claimed an amount of Rs. 7,00,000 by way of compensation, by filing M.A.C.P. No. 317 of 1994, against the appellants-original opponents and the injured claimant, Abbas Kasambhai, has claimed an amount of Rs. 2,50,000 by way of compensation, by filing M.A.C.P. No. 357 of 1994, against the appellants, under the provisions of Section 166 of the Act.

2. The respondents, who are original claimants, inter alia, contended that the injured Abbas Kasambhai was proceeding on his moped at the relevant time and deceased Keshavbhai was the pillion rider and both of them were proceeding towards Sihor from Bhavnagar. When the said moped reached near the village Rajpara, Khodiar, on Rajkot-Bhavnagar Highway, at that time, a jeep No. GAQ 5480, driven by the appellant No. 2-original opponent No. 1, came from opposite direction, with excessive speed and on wrong side and dashed against the

moped, as a result of which both the riders were thrown off the moped on to the road and the deceased Keshavbhai, who was aged 29, sustained serious injuries and succumbed to the injuries and Abbas Kasambhai sustained serious injuries, resulting into permanent partial disablement.

3. The opponent Nos. 1 and 2, i.e., the driver and owner of the jeep, did not appear and contest the claim. The original opponent No. 3-appellant No. 1 herein, the insurer, filed written statement, at Exh. 11, inter alia, controverting the allegations and averments made in the claim petitions.

4. The Tribunal, after raising issues and considering the evidence, partly allowed the claim petitions by passing its common judgment and award dated 12.9.1996, whereby heirs of deceased Keshavbhai. in M.A.C.P. No. 317 of 1994, came to be awarded an amount of Rs. 4,04,000 by way of compensation under both the heads which is precisely challenged in the First Appeal No. 219 of 1997, whereas, in M.A.C.P. No. 357 of 1994, the injured claimant came to be awarded an amount of Rs. 1,20,000 by way of compensation for personal injuries, which is questioned before us in First Appeal No. 218 of 1997, by invoking the powers of Section 173 of the Act.

5. Upon joint request and considering the facts and circumstances of the case, both the appeals are heard today. We have, extensively gone through the evidence by calling the record and proceedings of the Tribunal.

6. Insofar as the merits of First Appeal No. 218 of 1997 are concerned, the amount of award of Rs. 1,20,000 under both the heads awarded to the injured claimant, appears to be on a higher side in view of the fact that permanent partial disablement of anatomy, as a whole, was not more than 7 per cent and considering the age and avocation of the claimant, in our opinion, the amount of Rs. 1,00,000 under both the heads, pecuniary loss and personal loss, will be just and reasonable in the facts and circumstances of the case. Therefore, First Appeal No. 218 of 1997 is required to be partly allowed.

7. As far as merits of First Appeal No. 219 of 1997 are concerned, following aspects need elaboration, which in our opinion, the Tribunal has not seriously taken into consideration, as a result of which the amount of compensation is awarded on higher side:

(i) There was no reliable documentary evidence with regard to the income of the deceased except the income certificate issued by Sarpanch and produced at Exh. 28.

(ii) No supporting independent evidence was adduced.

(iii) The multiplier of 12 adopted by the Tribunal in the case of a young man of 29 is also not proper, being on lower side.

8. The Tribunal has considered the income of the deceased including the prospective income at Rs. 4,000 per month and assessed an amount of Rs.

32,000 out of Rs. 48,000 per annum, as dependency value, which in our opinion is slightly on higher side, requiring our interference so as to slice it down to make it just and reasonable as envisaged by the provisions of Section 168 of the Act and the law of Tort. It is needless to say that the loss of life or loss of limb cannot be evaluated in terms of money as being otherwise invaluable or immeasurable. However, the Tribunal is required to consider as to what economic loss the heirs of the deceased are likely to suffer on account of the untimely demise of the breadwinner of the family in a road accident. So, the attempt of the Tribunal in such a case like the one in our hands, is to see that the victims of the road accident are placed as nearly as possible in the same monetary situation or status as they would have been had there been no road accident. Precise and mathematical calculation of an amount of compensation in such cases is hardly obtainable. However, the Tribunal has to make endeavour in the light of evidence on the record to see that the tortfeasors are saddled with the award of an amount of compensation which ought to be just and reasonable. The award should neither be luxurious nor it should be pernicious. It should be just and reasonable in the circumstances of the case. These basic concepts of the law of Tort must be reflected in the decision making process while awarding the amount of compensation.

9. After having taken into account the material facts, age and avocation of the deceased, future chances of augmentation of income and other relevant incidental circumstances, the amount of compensation to the tune of Rs. 4,04,000 is slightly on higher side.

10. In this case, the deceased was dealing with the building contract work and he was aged about 29. Some documentary evidence is produced to show that he was engaged in some building contract work in past. It is equally true that the deceased's avocation is not questioned before us. Therefore, taking into consideration the age, the then prevalent income of the deceased, the prospective chances, imponderables of life and other incidental circumstances, in our opinion, the net contribution to the common family funds, in any case in the absence of any reliable documentary evidence, would not exceed Rs. 2,000 per month. Therefore, the claimants shall be entitled to an amount of Rs. 2,000 x 12 = Rs. 24,000 per annum. The Tribunal has, unfortunately, taken 12 as multiplier, which, in our opinion, is on a lower side. Even if the deceased was in the bracket of age-group of 30-32, the multiplier should be at least 14, if not 15. In the circumstances, the claimants would be entitled to Rs. 24,000 x 14 = Rs. 3,36,000 and, obviously, the claimants are also entitled to the conventional amount of Rs. 20,000 for loss of expectation of life and Rs. 4,000 for treatment, transportation and after-death ceremonies. Consequently, the claimants shall be entitled to only an amount of Rs. 3,60,000 by way of compensation under both the recognized heads, loss to the estate and loss to the dependants, against the total amount of award of Rs. 4,04,000. With the result, First Appeal No. 219 of 1997, arising out of M.A.C.P. No. 317 of 1994, is required to be partly allowed with the aforesaid modification.

In the result, First Appeal No. 218 of 1997 is partly allowed and the amount of Rs. 1,20,000 awarded by the Tribunal in M.A.C.P. No. 357 of 1994, with interest at the rate of 15 per cent per annum from the date of the application till the payment and cost, is reduced to Rs. 1,00,000 only with proportionate cost and interest and to that extent the award stands modified and the appeal is allowed. No order as to costs.

Insofar as First Appeal No. 219 of 1997, arising out of M.A.C.P. No. 317 of 1994, is concerned, it is partly allowed and the award of the Tribunal of Rs. 4,04,000 shall stand reduced to an amount of Rs. 3,60,000 with proportionate costs and same rate of interest, i.e., 15 per cent from the date of the application till its payment. Accordingly, the award in M.A.C.P. No. 317 of 1994 stands modified and First Appeal No. 219 of 1997 is partly allowed with no order as to costs.

Before parting, our attention was drawn by Mr. Mehta to the fact that an amount of Rs. 25,000 in each matter has been deposited along with appeals u/s 173 of the Act and, therefore, the said amount deposited in each appeal shall be transmitted to the Tribunal for passing appropriate orders. Rs. 25,000 each shall be deducted from the aforesaid awards and the Tribunal shall pass appropriate orders in terms of the impugned awards, pro rata, along with remaining amount of compensation, which shall also be deposited as directed by us hereinabove, within a period of four weeks from today.

In civil application, rule is made absolute in terms of the aforesaid order.