
(2016) 04 GUJ CK 0065

In the Gujarat High Court

Case No : First Appeal No. 1814 of 2015 and Civil Application No. 9953 of 2015
in First Appeal No. 1814 of 2015

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Himliben and Others

RESPONDENT

Date of Decision : 11-04-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 158, Section 166

Citation : (2016) 04 GUJ CK 0065

Hon'ble Judges : S.G. Shah, J.

Bench : Single Bench

Advocate : Rathin P. Raval, Advocate, for the Appellant; Hiren M. Modi, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

S.G. Shah, J.—1. Pursuant to order dated 17.10.2015 by my predecessor, matter is taken up for final disposal. Hence, admit.

2. Heard learned advocate Mr. Rathin Raval for the appellant - Insurance Company and learned advocate Mr. Hiren Modi for respondents No. 1 to 8 being original claimants. The respondents No. 9 and 10 being driver and owner of the vehicle in question and opponent Nos. 1 and 2 in claim petition, are though duly served, remained absent. Amongst them, respondent No. 9 i.e. opponent No. 1 - driver was absent before the Tribunal also; whereas respondent No. 10 i.e. opponent No. 2 was represented by an advocate before the Tribunal. However, he did not appear before this Court, though duly served.

3. The appellant - Insurance Company has challenged the judgment and award dated 30.4.2015 by Motor Accident Claims Tribunal (Main), Dahod in Motor Accident Claim Petition No. 110 of 2013. By such judgment, the Tribunal has awarded total Rs. 12,32,000/- as compensation with 9% interest and costs, which is ordered to be recovered by the claimants from the respondents jointly

and severally for the accidental death of one Jadiyabhai Virjibhai Palas. The Insurance Company has, however, challenged the award mainly on the ground of quantum of compensation contending that very excessive amount of compensation has been awarded by the Tribunal.

4. Therefore, minute details of nature of incident, its result and history of litigation are not much material to be produced herein when it is well described in the impugned judgment as well as in the pleading before both the Courts.

5. So far as quantum of compensation is concerned, following facts are relevant to be recollected here to ascertain that whether the Tribunal has awarded just and reasonable compensation and that whether there is any scope of reduction in amount of compensation based upon the submission by the appellant.

5.1 Incident:--

"On 20.2.2013, when victim Jadiyabhai Virjibhai Palas was walking on his foot and going towards Village: Tindori on left side of road near Usarvan Patiya, the respondent No. 8 came driving his motorcycle from Limbdi and going towards Dahod, because of rash and negligent driving, he dashed with the victim, who sustained serious injuries and succumbed during the treatment. The FIR was lodged and proceedings were initiated against the driver of the vehicle. Therefore, since this is a simple case of accident whereby a vehicle has dashed the victim, which resulted into his death, the driver, owner and Insurance Company are absolutely liable to pay compensation to the legal heirs of the victim, who died due to accidental injuries."

6. For quantum, following details are relevant:--

7. As against above award, it is contended by Insurance Company that since there is no proper proof of income of the victim, his income cannot be considered as Rs. 5,000/- p.m. and thereafter, there cannot be 30% increase as prospective income, but notional income of Rs. 3,000/- can only be considered. It is also contended that in absence of suitable job, no prospective income should be considered. It is also contended that when claim is only for Rs. 8 Lacs, the award cannot be more than Rs. 8 Lacs. It is further contended that as per the judgment of different Courts, the personal dependency is to be deducted between $\frac{1}{3}$ rd and $\frac{1}{2}$, whereas Tribunal has deducted only $\frac{1}{10}$ and therefore, the award needs to be modified by reducing the amount of compensation from Rs. 12,32,000/- to some just and reasonable amount. For the purpose, Insurance Company has restricted its claim for Rs. 8 Lacs only and thereby, they agreed that Rs. 4,32,000/- can certainly be paid to the claimants.

8. If we consider the rival submissions and settled legal position, and even if we rely upon the submission by the learned advocate for the appellant, the total amount of compensation would be around approximately Rs. 7 Lacs, wherein minimum income and maximum deduction for personal expenses is taken into consideration. As against that, if we peruse the quantum of compensation

awarded, which is listed herein above, at least for loss of estate, meagre amount has been awarded i.e. Rs. 10,000/- though the Hon''ble Supreme Court of India has in several cases awarded Rs. 1 Lac towards loss of estate.

9. So far as deduction for personal expenses are concerned, it is settled legal position that there is no statutory provision or rule of thumb that how to calculate the dependency of victim, who died all of a sudden because of tortuous act of someone. Generally there are two principles based upon which different Courts have awarded compensation for decades together.

"(a) the unit method where total number of family members and dependents are considered for deciding the quantum of compensation and;

(b) to arrive at fixed amount of dependency and to calculate that which amount would be sufficient if invested in FDR to support the victim by getting interest on amount of compensation awarded towards such dependency."

10. Strictly speaking, these principles are practically interconnected and not alternative to each other, inasmuch as the deduction of any percentage towards personal expenses as suggested by Hon''ble the Supreme Court of India or any other Court in different judgments between 1/3rd for married person having widow and children and 1/2 for unmarried person when claimants are only parents, is practical and guesswork; whereas unit theory has some logic and arithmetical calculation to decide actual dependency of such victim. The unit theory, which was followed for long time by all the Courts, is quite simple and clear wherein income of the victim is divided by total number of units, wherein two units are counted for major dependent and one unit is counted for minor dependent and thereafter, dependency is calculated considering the total income equals to total unit and thereafter, deducting the amount equal to two units as personal expenditure. There is logic in such system inasmuch as, if the family is bigger one, then, each family member must be getting benefit of victim's earnings and therefore, it is unwarranted to deduct lump sum 1/3rd amount towards personal expenditure. The Hon''ble Supreme Court of India discussed the unit method of calculation of compensation in the judgments of U.P. State Road Transport Corporation & Ors. v. Trilok Chandra & Ors. reported in , (1996)4 SCC 362, which is followed in several other cases, including Urmila v. Rashpal Kaur reported in , (2011)15 SCC 291. In the present case, there are as many as 7 minor children of the victim and therefore, as per unit method, the total income of the victim is to be considered as 2 (+) 2 unit for victim and his wife, now widow (+) 7 units for children, thereby, total 11 units and therefore, the total income of the victim is to be divided into 11 units out of which, for his personal expenditure, amount equals to two units can be deducted. Thereby, two units out of 11 units would be equal to 18% of the income of the deceased and to that extent, the deduction of only 10% by the Tribunal is certainly improper. However, if we consider the overall circumstances, such difference would be almost approximately Rs. 1 Lac. As against that, the Tribunal has not awarded any amount towards actual medical expenses though bills of Rs. 24,450/- are

produced on record at Exh. 26 and meagre amount is awarded under the head of pain, shock and suffering, so also for loss of estate. Therefore, on one hand, if we reduce Rs. 1 Lac from the award and then on other hand, if we award just and fair compensation towards loss of estate relying upon different decisions of the Hon"ble Supreme Court of India and add compensation for medical expenses when bills of Rs. 24,450/- are already proved on record, the difference of award amount would be either meagre or negligible. In view of such fact, I do not intend to interfere with the impugned award.

11. So far as issue regarding awarding more compensation than claimed is concerned, the fact remains that practically, Motor Vehicle Act, now makes it clear that in fact there is no need for the claimant to file a separate application, but he has to simply furnish the information as per the prescribed form, otherwise, the Tribunal is empowered to award just and fair compensation based upon the information received as per Form No. 54 prescribed under the Rules and therefore, there is no substance in such submission that there cannot be more award than actual claim, more particularly in such cases of compensation where claimants are not litigants in its true sense, but they are victim of mishap and some time they do not have proper wisdom to evaluate their injuries and damages. Otherwise also, there are several judgments of Hon"ble the Supreme Court of India, which confirms that Tribunal is empowered to award more compensation than claimed. In this regard, reference may be made to the judgments rendered by Hon"ble Supreme Court of India in -

"(1) Nagappa v. Gurudayal Singh reported in , AIR 2003 SC 674;

(2) Raj Rani & Ors. v. Oriental Insurance Co. Ltd. reported in , (2009)13 SCC 654;

(3) Ningamma v. United India Insurance Co. Ltd. reported in , AIR 2009 SC 3056;

(4) Ibrahim v. Raju reported in , AIR 2012 SC 534; and

(5) Balram Prasad v. Kunal Saha reported in , (2014)1 SCC 384."

Paragraph 21 from Ibrahim v. Raju reported in , AIR 2012 SC 534 is relevant, which reads as under:--

"21. We are conscious of the fact that in the petition filed by him, the appellant had claimed compensation of Rs. 3 lacs only with interest and cost. It will be reasonable to presume that due to financial incapacity the appellant and his family could not avail the services of a competent lawyer and make a claim for adequate compensation. However, as the Tribunal and the High Court and for that reason this Court are duty bound to award just compensation, we deem it proper to enhance the compensation from Rs. 1,89,440/- to Rs. 6 lacs. This approach is in tune with the judgment in Nagappa v. Gurudayal Singh , (2003) 2 SCC 274 : (AIR 2003 SC 674 : 2002 AIR SCW 5348). In that case, the Court considered a similar issue, referred to the judgments of the Bombay High Court in Municipal Corporation of Greater Bombay v. Kisan Gangaram Hire , 1987 ACJ

311 (Bombay), Orissa High Court in Mulla Mod. Abdul Wahid v. Abdul Rahim , 1994 ACJ 348 (Orissa) and Punjab and Haryana High Court in Devki Nandan Bangur v. State of Haryana , 1995 ACJ 1288 (Pandh) and observed:

"For the reasons discussed above, in our view, under the MV Act, there is no restriction that the Tribunal/court cannot award compensation amount exceeding the claimed amount. The function of the Tribunal/court is to award "just" compensation which is reasonable on the basis of evidence produced on record. Further, in such cases there is no question of claim becoming time-barred or it cannot be contended that by enhancing the claim there would be change of cause of action. It is also to be stated that as provided under subsection (4) to Section 166, even the report submitted to the Claims Tribunal under subsection (6) of Section 158 can be treated as an application for compensation under the MV Act. If required, in appropriate cases, the court may permit amendment to the claim petition."

12. So far as income of the deceased is concerned, it cannot be ignored that there is no evidence in rebuttal to disprove the version of the claimant that deceased was earning Rs. 7,000/- p.m. from masoning and agricultural work. It is now well-known that charges by such skilled workers are sufficient enough and not meagre amount, may be because of shortage of such skilled workers and because of inflation and devaluation of price of rupee from time to time. Therefore also, since the notional income suggested in the Act is before more than two decades, it requires reconsideration by enhancing the same. Similarly, for the same reason, even if it is stated that deceased was not having a permanent job and thereby, there cannot be a consideration of future prospects, the fact remains that future prospects are not to be considered only because in case of salaried persons, but in any case every person in his life would certainly earn better by passage of time and otherwise also, inflation and fall in value of rupee is generally continued day after another and therefore, on that count, it would be appropriate to consider some prospective income of the victim of such cases. In this respect, the following judgments of the Hon"ble Supreme Court of India may be referred:--

"(1) Smt. Neeta Kallappa Kadolkar & Ors. etc. v. Divisional Manager, M.S.R.T.C., Kolhapur reported in AIR 2015 SC (Supp.) 565; and

(2) Asha Verman v. Maharaj Singh reported in , (2015) 42 SCD 537: , AIR 2015 SC (Supp.) 1841."

13. In the present case, though claimants have claimed that victim was earning Rs. 7,000/- p.m., the Tribunal has taken only Rs. 5,000/- as monthly earning capacity and for prospective income, though Tribunal may add Rs. 2,500/-, the Tribunal has simply added Rs. 1,500/- and considered Rs. 6,500/- as average monthly dependency for considering the quantum of compensation, though claimants have claimed Rs. 7,000/- as monthly income and thereby, average income for dependency would be more than Rs. 10,000/-.

14. The Tribunal has awarded meagre amount for loss of consortium so also for loss of love and affection and also for loss of estate, which amount would be now minimum Rs. 1 Lac on such head as decided by Hon''ble the Supreme Court of India in the case of Jiju Kurivila v. Kunjujamma Mohan reported in , (2013) 9 SCC 166 and therefore, there is no reason to interfere with the award even if there may be marginal difference in calculation, if we recalculate the quantum, not as suggested and pressed by the appellant, but considering the overall facts and circumstances emerging from record.

15. It cannot be ignored that the Tribunal has taken care of all relevant evidence and factual details available on record and that the victim was a young man and therefore, they had ample opportunity to earn more and to help their relatives being claimants herein. It is also clear that an unhappy early death certainly results into set-back in the life of parents and widow of the victim and his children therefore, they are also entitled to reasonable amount of compensation on all such counts which otherwise cannot be quantified or compensated in terms of money.

16. The law is now well settled on such issues and therefore, it would not be appropriate and required to recollect and reproduce all decisions on such count, which otherwise confirm that there is nothing in the impugned award which entitles this Court to interfere with such award in the present appeal, more particularly to reduce the quantum of compensation awarded to the claimants as per such award. For such determination, I am placing reliance on following judgments of the Hon''ble Supreme Court of India:--

"(1) Anjani Singh v. Salauddin reported in , 2014 (6) SCALE 55;

(2) Asha Verman v. Maharaj Singh reported in (2015) 42 SCD 537;

(3) Kala Devi v. Bhagwan Das Chauhan reported in , (2015) 2 SCC 771; and

(4) Chanderi Devi v. Jaspal Singh reported in , 2015 (4) SCALE 390;

(5) Ashwani Kumar Mishra v. P. Muniam Babu & Ors. reported in , AIR 1999 SC 2260"

17. In view of above facts and circumstances, there is no substance in the appeal so as to reduce the amount of compensation and therefore, the appeal is dismissed.

18. In view of order passed in First Appeal, the Civil Application does not survive and stands disposed of accordingly.