(2008) 02 GUJ CK 0004

In the Gujarat High Court

Case No : First Appeal No''s. 4303 of 2006 and 1565 of 2007, Civil Application No. 12879 of 2006 in First Appeal No. 4303 of 2006 with Civil Application No. 4056 of 2007 in First Appeal No. 1565 of 2007

Oriental Insurance Co. Ltd. APPELLANT

Vs

Jignaben and Others RESPONDENT

Date of Decision : 05-02-2008

Acts Referred:

Citation : (2008) 02 GUJ CK 0004

Hon'ble Judges : Sharad D. Dave, J;A.L. Dave, J

Bench : Division Bench

Advocate : K.K. Nair, for the Appellant; M.M. Tirmizi, for Defendants 1 - 3 and Vasavdatta Bhatt, for Defendant 4, for the Respondent

Judgement

A.L. Dave, J.—Both the appeals are admitted and pursuant to the notice for final disposal, they are taken up for final hearing together as they arise out of the same judgment.

2. Both these appeals arise out of a judgment and award rendered by the Motor Accident Claims Tribunal (Auxiliary), Ahmedabad (Rural) at Ahmedabad on 14.10.2005 in Motor Accident Claim Petition No. 994 of 1993 decided along with Motor Accident Claim Petition No. 995 of 1993. It would be relevant to note that First Appeal No. 1566 of 2007 preferred by the Gujarat State Road Transport Corporation came to be dismissed at admission stage on 15.3.2007 by coordinate Bench of this Court.

3. Respondent No. 1 is the widow of Manoj Kumar K Mehta and respondent No. 3 is the mother of said Manoj Kumar who met with a vehicular accident on 25.3.1993 near Fatehpura village at about 9.00 a.m. The accident involved ST Bus No.GJ-EZ-722 and Luxury Bus No.GJ-4T-3050. The two vehicles had a head on collision which resulted into injuries to the deceased Manoj Kumar as well as his wife Jignaben who were travelling in the ST Bus. Manoj Kumar succumbed to the injuries and, therefore, Claim Petition No. 994 of 1993 came to be filed by his

widow Jignaben, Krishnamukhbhai Himatlal Mehta and Maharprabha Krishnamukhbhai parents of the deceased whereas Motor Accident Claim Petition No. 995 of 1993 was preferred by Jignaben for the injuries sustained by herself.

3.1. An amount of Rs. 12 lacs was claimed as compensation for death of Manoj Kumar and Rs. 25,000/- were claimed as damages for the injuries sustained by Jignaben.

4. The Tribunal, after considering the evidence led before it, came to the conclusion that both the drivers were equally responsible for the mishap and apportioned the quantum of negligence equally between the two drivers. The respondents were held responsible to pay the compensation jointly and severally.

4.1. The Tribunal awarded a compensation of Rs. 11,16,600/- for the death of Manoj Kumar with interest @ 7.5% p.a., and a compensation of Rs. 5,000/- to Jignaben for the injuries sustained by her.

5. In these appeals, this Court is concerned with the award passed in Motor Accident Claim Petition No. 994 of 1993 to the tune of Rs. 11,16,600/- for the death of Manoj Kumar. We have heard learned advocates Mrs. Bhatt, Mr. Nair and Mr. Tirmizi.

6. The sum and substance of the arguments by learned advocates for the appellants is that the Tribunal has erred in adopting a multiplier of 16 which is on higher side considering the age of the deceased. The deceased was aged 41 and, therefore, the multiplier ought to have been less than 10 in light of the decision of the Apex Court in case of Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya and Others, and, therefore, the appeal may be allowed. The appellants do not press the appeal on any other count.

7. On the other hand, learned advocate Mr. Tirmizi submitted that the deceased was aged 41 at the time of his death. He was serving in the bank and the age of superannuation in the bank is 60 years. Differently put, he had yet to put in 19 years of service during which span his income would have increased not only on account of regular increments but likely promotions and likely revision of pay scales and, therefore, the multiplier adopted by the Tribunal is just, legal and proper and may not be interfered with.

8. Since only the question of multiplier is under challenge, we may refer to the views expressed by the Apex Court in case of S. Rajapriya where their Lordships have observed thus :

para 12 the multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalizing the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased (or that of the claimants whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed-up over the period for which the dependency is expected to last. It was also observed in para 16 that after considering the decision in the case of General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, and U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, respectively that the higher multiplier has to be for the age group of 21 to 25 years when an ordinary Indian citizen starts independently earning and the lowest would be in respect of a person in the age group of 60-70 years which is the normal retirement age.

9. Keeping the above observations of the Apex Court in mind, we are of the view that the multiplier of 12, if adopted in the instant case, considering that the age of the deceased was 41 and the age of superannuation was 60, the ends of justice would be met.

10. The Tribunal has assessed the annual dependency loss of the deceased at Rs. 66,667/-. Now, if the multiplier of 12 is adopted, it would fetch an amount of Rs. 8,00,004/- as compensation receivable by the claimants under the head of dependency loss over and above the compensation awarded by the Tribunal for non-pecuniary damages which would be Rs. 50,000/- as conventional amount under all heads like pain, shock and suffering, loss of consortium etc. The total amount of compensation that the claimant would be entitled to would be Rs. 8,50,004/- with interest and cost as awarded by the Tribunal.

11. The appeals, thus, stand partly allowed. The excess amount deposited by the appellants would be refundable to the appellants with proportionate costs and interest. There shall be no order as to costs. Award accordingly.

11.1. Out of the compensation of Rs. 8,00,040/- with proportionate costs and interest, claimant No. 1 Jignaben wd/o Manoj Kumar K Mehta will be entitled to 80% and claimant No. 3 Manharprabha K Mehta will be entitled to 20% of the composite amount.

11.1.1. Out of the amount going to the share of each claimant as stated above, 80% will be placed in Fixed Term Deposit with any nationalized bank for a period of seven years in the name of the claimants with a direction to the Bank and on condition that no charge or encumbrance shall be created on the Deposit Receipts and that no loan shall be permitted/granted/given against the Deposit Receipts.

The remaining 20% of the amount going to the share of each claimant shall be paid to them by crossed A/c Payee Cheque after deducting amount of Court Fees, if any.

12. Civil Applications stand disposed of accordingly in view of the order passed in the main appeals.

