

(2012) 02 GUJ CK 0076
In the Gujarat High Court
Case No : First Appeal No. 2093 of 2002

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Jitendra Yashwantbhai Patil and 5

RESPONDENT

Date of Decision : 21-02-2012

Acts Referred:

Citation : (2012) 02 GUJ CK 0076

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

Bench : Single Bench

Advocate : Rajni H. Mehta, for the Appellant; Ashutosh R. Bhatt for Defendants 1-4, for the Respondent

Judgement

Honourable Mr. Justice K.S. Jhaveri

1. The appellants herein have challenged the award dated 02.04.2002 passed by the Motor Accident Claims Tribunal (Aux.), Ahmedabad in Motor Accident Claims. Petition No. 693 of 1996 so far as the Tribunal awarded Rs. 8,75,000/- by way of compensation to the original claimants along with 12% interest. It is the case of the appellants that while the victim was driving police van no. GJB 9111, a truck bearing registration no. RJ 19 G 5662 came driven by the original opponent no. 1 in a rash and negligent manner came from the opposite direction and hit the police van as a result of which the victim sustained serious injuries. He succumbed to those injuries. The claimants being legal heirs and representatives of the deceased therefore filed claim petition for compensation to the tune of Rs. 10,00,000/-. The Tribunal after hearing the parties passed the aforesaid award.

2. Mr. Sunil Parikh, learned advocate appearing for Mr. Rajni Mehta for the appellant submitted that the Tribunal erred in quantifying the award at Rs. 8,75,000/-. He submitted that the dependency loss of Rs. 8,10,000/- awarded by the Tribunal is on the higher side and therefore the same is required to be reduced.

3.1 Mr. Parikh submitted that the Tribunal erred in considering the monthly

income of the deceased at Rs. 7000/- in absence of any cogent evidence on record. He submitted that infact even if the certificate of the concerned police station is perused the income ought to have been considered at Rs. 3624/- per month and considering the age of the victim at the time of accident and the decision of the Apex Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , 30% ought to have been added to the present income to arrive at prospective income.

3.2 Mr. Parikh further submitted that the multiplier adopted by the Tribunal is on higher side. He submitted that the Tribunal has awarded Rs. 50000/- for pain shock and suffering and for other expenses as well which is required to be reduced.

4. Mr. Bhatt, learned advocate appearing for the respondent supported the impugned award and submitted that the award having been passed after considering the evidence in detail does not call for any interference by this Court. he submitted that the Tribunal has rightly assessed the income.

5. The Tribunal has gone into the evidence in detail and has come to the conclusion that the accident in question happened because of the negligence of the driver of the truck. However, the income assessed by the Tribunal seems. to be on a higher side. No concrete evidence is produced on record to substantiate the claim of the claimants as far as income is concerned. The certificate by the concerned police station stated the income of the deceased as Rs. 3624/-.

5.1 In the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, it is held as under:

In Susamma Thomas this Court increased the income by nearly 100%. In Sarla Dixit the income was increased only by 50% and in Abat Bezbaruah the income was increased by a mere 7%. In view of the imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the decased towards future prospects, whee the deceased had a permanent job and was below 40 years. (Where the annual income is in the taxable range, the words "actual salary" should be read as "actual salary less tax"). The addition should be only 30% if the age fo the deceased was 40 to 50 years. There should be no addition, where the age of the deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardize the addition to avoid different yardsticks being applied or different methods of calculation being adopted. Where e the deceased was self-employed or was on a fixed salary (without provision for annual increments, etc.) the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances.

Where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family numbers is 2 to 3, one-fourth (1/4th), where the number of

Dependant family members is 4 to 6, and one-fifth (1/5th) where the number of Dependant family members exceed six.

Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parents/s and siblings is likely to be cut drastically. Further subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a Dependant and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be Dependant on the father. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a Dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where family of the bachelor is large and Dependant on the income of the deceased, as in the case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third.

6. Accordingly, considering the monthly income of the deceased as Rs. 3700/-, the prospective income per month shall come to Rs. 4810/- (Rs. 3700 + Rs. 1110). Deducting 1/4th from the total income for personal expenses, the amount dependency loss per month shall come to Rs. 3610 which is rounded off to Rs. 3600/- which is Rs. 43200/-. The multiplier of 15 adopted in the present case is on higher side. This court is of the view that the just and proper multiplier shall be 14 and accordingly the future dependency loss shall come to Rs. 6,04,800/-. Against this, the Tribunal has awarded Rs. 8,10,000/- which is excessive.

7. As regards the rest of the award under various heads, Rs. 10000/- ought to have been awarded under the head of loss of estate, Rs. 10000/- under the head of loss of consortium and Rs. 5000/- for funeral expenses, Rs. 5000/- for pain shock and suffering and Rs. 15,000/- for other expenses thereby totalling to Rs. 45,000/-. Therefore the claimants are in all entitled to Rs. 6,49,800/- as compensation (Rs. 6,04,800 for future loss of income + Rs. 45000 under various heads) which is rounded off to Rs. 6,50,000/-. Accordingly, appeal is partly allowed. The claimants shall be entitled to only Rs. 6,50,000/- by way of total compensation. The balance amount along with proportionate interest shall be refunded to the insurance company. The award of the Tribunal is modified accordingly. No order as to costs.