

(2011) 06 GUJ CK 0051
In the Gujarat High Court

Case No : F.A. No. 1251 of 2002 along with cross-objection 100 of 2010

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Sunandaben Narendrakumar Joshi and Others

RESPONDENT

Date of Decision : 23-06-2011

Acts Referred:

Citation : (2012) 1 TAC 180

Hon'ble Judges : Jayant M. Patel, J;J.C. Upadhyaya, J

Bench : Division Bench

Advocate : Shalin N. Mehta, for the Appellant; J.V. Japee, Advocate for the respondent Nos. 1 and 2, Notice served for the respondent Nos. 3 to 5 and Mr. Dakshesh Mehta, Advocate for the respondent No. 6, for the Respondent

Judgement

Jayant Patel, J.—The present appeal is filed against the judgment and award passed by the Tribunal dated 10th December, 2001 in MACP No. 503 of 1999 whereby the Tribunal has awarded compensation of Rs. 6,56,738/- with interest @ 9% per annum.

2. The relevant facts are that the deceased Narendrakumar Joshi with his wife Sunandaben Narendrakumar Joshi were going in Maruti car, bearing No. GJ-1-AR-7268, from Mandvi to Ahmedabad through Limbdi. When they reached near Limbdi at about 4.00 a.m. on 6th November, 1998, a truck, bearing No. GJ-8-U-1177, driven in rash and negligent manner, dashed with the maruti car. As a result thereof, the maruti car was damaged and deceased Narendrakumar as well as his wife Sunandaben sustained injuries. Initially, they were admitted in the Limbdi Government Hospital and thereafter for further treatment they were shifted to Ahmedabad. Deceased Narendrakumar was operated by Dr. Hitesh Mehta and after the operation, in the hospital itself, within seven days, he expired. It gave rise to filing of two claim petitions, one being MACP No. 503 of 1999, preferred by the legal heirs of the deceased Narendrakumar Joshi on account of his death and another was preferred by injured Sunandaben, being MACP No. 504 of 1999. The Tribunal at the conclusion of the proceedings, as

stated above, awarded compensation in MACP No. 503 of 1999 and also awarded compensation in MACP No. 504 of 1999 amounting to Rs. 1,09,000/- and interest @ 9% per annum. We may record that no appeal is preferred by the Insurance Company against the award passed in MACP No. 504 of 1999 and the appeal is preferred only against the award passed in MACP No. 503 of 1999, which is the present appeal before this Court. We may also record that the cross objections, being cross objections No. 100 of 2010, have been filed by the original claimants for enhancement of the compensation.

3. We have considered the judgment and the reasons stated by the Tribunal. We have also considered the record and proceedings. We have heard Ms. Fozadar, learned Advocate for Mr. Shalin N. Mehta for the appellant in the appeal preferred by the Insurance Company and Mr. J.V. Japee, learned Advocate, for the original claimants, appearing for the respective parties in the appeal and cross-objections.

4. The first contention raised on behalf of the Insurance Company is that the nexus of the death of the deceased on account of the accident was not proved and, therefore, the Tribunal has committed error on the said aspect.

5. On examination of the said contention it appears that the Tribunal has recorded the observations on the said aspect at para-17 of the judgment, which reads as under :

Dr. Hitesh Mehta has stepped into the witness box and as per his evidence, the deceased was admitted in hospital on 6th November, 1998 and was operated upon on 8th November, 1998. Thereafter, he died on 15th November, 1998. The injury certificate issued by him is on record at Ext.-63. The contents of the injury certificate is also explained by him. It is true that as per his evidence more particularly in cross-examination, he has accepted that on 15th November, 1998 the patient suffered cardiac arrest and died. But, the fact remains that during the course of treatment in the hospital, the patient died. In my opinion, had the deceased not sustained any injury, he might not have got himself admitted in the hospital and took treatment and/or got operated. Unfortunately, he sustained serious injuries, he was under the treatment of Dr. Hitesh Mehta and during the treatment he died on account of cardiac arrest. Therefore, it is an unacceptable submission that there is no nexus between the injury and death of the deceased.

6. It appears that no evidence had come on record to show that the deceased had any heart disease or any history pertaining thereto, which might have culminated into the heart attack or cardiac arrest. No other opinion of the expert has come on record on the aspect that the cardiac arrest could not be resulted on account of the accident and the operation made thereafter. It is not the matter where if a person was admitted and subsequently was discharged from the hospital and after sometimes he has expired on account of cardiac arrest, but, while the treatment was going on in the hospital the person has expired. Under the circumstances, in absence of any other evidence to the contrary, if the Tribunal has taken a reasonable view of getting nexus with the injury and the

death of the deceased, the same cannot be said as perverse view on the part of the Tribunal. Hence, the said contention cannot be accepted.

7. It was next contended by the learned Counsel for the appellant that the quantum awarded to the claimants is on much higher side since the deceased was aged 58 years and on the verge of retirement and there was no evidence to show that after retirement he would have earned income. Whereas on behalf of the claimants, it was submitted by the learned Counsel that, on the contrary, the quantum is on much lower side and the same is required to be enhanced because the prospective income is not considered and further the multiplier applied is only of five and, therefore, it was submitted that the cross-objections be allowed.

8. The reasonings recorded by the Tribunal in the impugned judgment shows that the Tribunal has considered the salary certificate and has rounded off the income at Rs. 15,000/- per month, since the income, as per the salary certificate, was at Rs. 14,625/-. Even if we consider the contention of the learned Counsel for the appellant-Insurance Company that HRA could not be considered, then also, the said amount of HRA is only Rs. 400/- and the remaining income is basic salary and the dearness allowance, comes to Rs. 14,122/- which, in our opinion, was required to be considered and, if rounded off, it could be Rs. 15,000/-. The another aspect is that since the age of the deceased was 58 years, the multiplier applied is only of five keeping in view the post retiral income one may have after retirement since the deceased is an educated person and holding the Degree of Engineering. Further, as the deceased was on the verge of retirement, non-consideration of the prospective income, could not be said as unreasonable on the part of the Tribunal. Under the circumstances, it appears that, the Tribunal has not taken any perverse view in the assessment of the income and applying the multiplier of five for the loss of income of an educated person who could earn income even after retirement for some time. Hence, we find that, the contention of the Insurance Company as well as of the claimants on the aspect of quantum, deserves to be rejected.

9. No other contention is raised.

10. In view of abovesaid observations and discussions, both, the appeal as well as the cross objections, are meritless and hence, dismissed. Considering the facts and circumstances of the case, there shall be no order as to costs.

11. The interim relief granted pending the appeal, if any, shall stand vacated. Consequently, the amount of compensation, if it remains with the Tribunal, the same shall be paid to the original claimants.