

(2019) 07 GUJ CK 0069
In the Gujarat High Court
Case No : R/First Appeal No. 699 Of 2013

Oriental Insurance Company Ltd Thro' APPELLANT
Vs
Narendrabhai Kantilal Hatt Since Decd. Through Heirs And 2 RESPONDENT

Date of Decision : 05-07-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2019) 07 GUJ CK 0069

Hon'ble Judges : R.M.Chhaya, J;B.N. Karia, J

Bench : Division Bench

Advocate : Maulik J Shelat, Amrita Ajmera

Final Decision : Dismissed

Judgement

1. Being aggrieved and dissatisfied by the judgment and award dated 14.03.2012 passed by the Motor Accident Claims Tribunal (Main),

Surendranagar in MACP No. 107 of 2010, the insurance company has preferred this appeal under section 173 of the Motor Vehicles Act, 1988

(hereinafter referred to as the "Act" for the sake of brevity).

2. The following facts emerge from the record of the appeal :

2.1 That the accident took place on 15.12.2009. The record indicates that the deceased was travelling in the luxury bus hired by the school for trip to

Dwarka. The record further indicates that due to the rash and negligent driving of the driver of the luxury bus, the bus moved away from the road and

had gone down in the ground known as Panchvati Yojna Compound. The said bus dashed with the iron angle stored in the ground. As the seat of the

deceased was nearby the passenger door, due to the accident, door was broken and the deceased was thrown out of the bus and had received fatal

injuries and succumbed to the same. FIR was lodged by the owner of the bus at Exhibit 39.

2.2 The respondents' original claimants preferred claim petition under section 166 of the Act and claimed compensation of Rs.25,00,000/-.

One of the claimant, wife of the deceased, was examined at Exhibit 30. It is the case of the original claimants that the deceased was aged 50 years

and was working as Peon in DT Shah Vinay Mandir High school, Danavada and was earning monthly pay of Rs. 13,300/-. The Tribunal considered

the income of the deceased at Rs. 14,000/- and after deducting 1/4th towards personal expenses and applying the multiplier of 13, awarded Rs.

16,38,000/- as compensation under the head of loss of dependency. Over and above the same, the Tribunal also awarded in all Rs.90,000/-

additionally as compensation under the different conventional head and thus awarded Rs. 17,28,000/- with 9% interest from the date of filing of the

claim\ petition till its realisation. Being aggrieved by the said award, the insurance company has preferred this appeal.

3. Heard Mr. Maulik J. Shelat, learned advocate for the appellant and Ms. Amrita Ajmera, learned advocate for the respondents' original claimants.

4. Mr. Shelat, learned advocate appearing for the appellant has raised the following two contentions :-

1) That the date of birth of the deceased as per the birth certificate at exhibit 43 was 05.01.1959 and hence, on the date of the accident, i.e., on

15.12.2009, the deceased was aged 51 years and hence, the Tribunal ought to have applied the multiplier of 11.

2) It was next contended that the two sons who were also the original claimants before the Tribunal were both major and not dependent on the

deceased and therefore, the deduction towards personal expenses should be 1/3rd and not 1/4th as calculated by the Tribunal.

On the aforesaid grounds, Mr. Shelat contended that the impugned judgment and award be modified and the appeal be allowed to the aforesaid extent.

5. Per contra, Ms. Ajmera, learned advocate for the respondents' original claimants has supported the impugned award. On the contrary, Ms. Ajmera

contended that the Tribunal has not granted any prospective income and therefore, the award passed by the Tribunal is just and adequate and

reasonable. Ms. Ajmera further contended that even the Tribunal has rightly given multiplier of 13 as on the date of the accident, the deceased had not

completed 51 years. Ms. Ajmera further contended that even though the two sons were major, they were studying and were dependent on the deceased and therefore, the Tribunal has rightly deducted 1/4th towards personal expenses. Ms. Ajmera candidly submitted that the Tribunal has in facts of this case, rightly awarded 90,000/Â in toto as compensation under different conventional heads and the same does not require any modification or alteration. It was contended by Ms. Ajmera that the appeal being meritelss, the same deserves to be dismissed.

6. No other or further submissions have been made by the learned counsel appearing for the parties.

7. Having considered the submissions made and on perusal of the Record and Proceedings, the date of birth of the deceased as per the birth

certificate at exhibit 43 is 05.01.1959 and the accident has occurred on 15.12.2009 and therefore, the deceased had completed 50 years, but had not

completed 51 years and therefore, as per the judgment of the Apex Court in the case of Sarla Verma vs. Delhi Road Transport Corporation reported

in (2009) 6 SCC 121, the correct multiplier would be 13. The Hon'ble Apex Court in the said judgement has observed thus Â?

â??42. We therefore hold that the multiplier to be used should be as mentioned in column (4) of the Table above (prepared by applying Susamma

Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by

one unit for every five years, that is MÂ17 for 26 to 30 years, MÂ16 for 31 to 35 years, MÂ 15 for 36 to 40 years, MÂ14 for 41 to 45 years, and

MÂ13 for 46 to 50 years, then reduced by two units for every five years, that is, MÂ11 for 51 to 55 years, MÂ9 for 56 to 60 years, MÂ7 for 61 to 65

years and MÂ?5 for 66 to 70 years.â??

While considering the multiplier, age is to be counted in years and not months and days and in the case on hand, the deceased had completed 50 years

only and not 51 and hence, the contention raised by Mr. Shelat that multiplier of 11 would be applicable deserves to be negatived.

8. Considering the second contention as regards number of dependents and deduction towards personal expenses is concerned, it is no doubt true that

both the sons were major. However, considering the deposition of the wife of the deceased, one of the original claimants at exhibit 30, the Tribunal

considering the cross examination of Hansaben, has rightly come to the conclusion that on the date of the accident, both the sons were studying and were dependent on the deceased and therefore, the Tribunal has rightly deducted 1/4th towards personal expenses.

9. We further notice that in fact learned Tribunal has not given benefit of prospective income, which would be at least 15%, following the ratio laid down by the Apex Court in the case of National Insurance Company Ltd. Vs. Pranay Sethi, reported in 2017 (16) SCC 680. Hence, even deduction of Rs.20,000/Â under conventional head would not be necessary. In facts of this case and we find that the Tribunal has awarded just and adequate compensation and the same is not required to be altered or modified.

10. While not interfering with the impugned judgment and award, it is also stated that it is decided strictly on the facts and circumstances arising in this appeal and on the principles and basis of just and adequate compensation.

11. The appeal therefore fails and is dismissed. However, there shall be no order as to costs.