(2023) 09 GUJ CK 0007

In the Gujarat High Court

Case No : R/First Appeal No. 212 Of 2020

Patel Alpaben Yogeshkumar APPELLANT

Vs

Jadeja Bhanvarsinh Umedsinh RESPONDENT

Date of Decision : 04-09-2023

Acts Referred:

Citation : (2023) 09 GUJ CK 0007

Hon'ble Judges : Gita Gopi, J

Bench : Single Bench

Advocate : Yogendra Thakore, Deepak G Aloria

Final Decision : Partly Allowed

Judgement

Gita Gopi, J

[1] The widow and the minors are the appellants who have challenged the judgment and award dated 27.8.2019 passed by the MACT (Aux), Mehsana at Visnagar in MACP no.1337/2012, which was originally registered as MACP no.512/2011 primarily on the ground that the income of the deceased has not been assessed in right perspective. Mr. Thakore, learned advocate for the applicants submitted that the deceased was an agriculturist and he was owning the agricultural land. The relevant documents by way of village form no.7/12 were produced on record at Exh.18 and the learned Tribunal by taking into consideration the date of the accident should have assessed the income for the loss of managerial skill. Mr. Thakore stated that the amount of Rs.3,000/- assessed as notional income does not commensurate to the documents produced on record for the loss sustained by the family of the managerial skill of the deceased to look after the agricultural land.

[2] Mr. Thakore further stated that the learned Tribunal was also required to grant consortium amount as per the decision in the case of Magma General Insurance Company Limited Vs. Nanu Ram alias Chuhru Ram & Ors., reported in (2018) 18 SCC 130 to all the claimants.

[3] Countering the arguments, Mr. Deepak Aloria, learned advocate for respondent no.2 stated that the claimants had failed to prove any evidence on record to show the income generated from the agricultural property for the Court to assess a managerial skill and thus, stated that the amount of Rs.3,000/- as granted by the Tribunal is just and proper. It is submitted that the loss of consortium has been granted to the widow and the total amount is reasonable to consider it as just and proper.

[4] The claim petition was filed on the facts that on 28.6.2011 at about 03:00 O'Clock in the noon, the deceased – Yogeshkumar was traveling on a motorcycle bearing registration no. GJ-2– AR-5448 as a pillion rider and the motorcycle was driven by Ankitkumar and at that time, one S.T. bus came in a full speed in a rash and negligent manner and dashed the motorcycle. The motorcyclist died on the spot while the pillion rider Yogeshkumar died during the course of treatment.

[5] At the time of the accident, the deceased was 35 years of age. The documents on record shows that village form no.7/12 have been produced at Exh.18. The deceased was holding the agricultural land and the claimant during the course of examination-in-chief had stated that her husband was earning Rs.10,000/- per month by doing agricultural activities. The learned Tribunal while deciding the income at Rs.3,000/- per month has observed that the claimants have not produced any documentary evidence on record showing the income, while record suggests that at Exh.18, revenue extracts were produced which are reflected in the judgment. The learned Tribunal should have granted the amount under the head of loss of managerial skill of the deceased who was looking after the agricultural property. Taking into consideration the date of accident as 28.6.2011 and keeping in mind the minimum wages schedule, Rs.4,500/- ought to be granted as just and reasonable amount and the age of the deceased was 36 years at the time of the accident which was proved by way of school leaving certificate at Exh.19 and multiplier of 15 will be applicable. Since he was below 40 years of age, 40% prospective rise in income is to be considered and thus accordingly, Rs.4,500/- + 40% = Rs.1,800/- = Rs.6,300/-. One-third is deducted for personal expense considering 3 dependents. Thus, from Rs.6,300/- dependency amount of Rs.2,100/- is deducted. Hence, the monthly dependency would be considered as Rs.4,200/-. Considering the annual dependency of Rs.50,400/- with multiplier of 15, loss of dependency would be assessed at Rs.7,56,000/-.

[6] In the case of Magma General Insurance Company Limited Vs. Nanu Ram alias Chuhru Ram & Ors., reported in (2018) 18 SCC 130, it has been observed as under:-

"8.7 A Constitution Bench of this Court in Pranay Sethi (supra) dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is Loss of Consortium.

In legal parlance, "consortium" is a compendious term which encompasses ‘spousal consortium’, ‘parental consortium’, and ‘filial consortium’.

The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family.

With respect to a spouse, it would include sexual relations with the deceased spouse. (Rajesh and Ors. vs. Rajbir Singh and Ors. (2013) 9 SCC 54) Spousal consortium is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of “company, society, co-operation, affection, and aid of the other in every conjugal relation.” BLACK'S LAW DICTIONARY (5th ed. 1979)

Parental consortium is granted to the child upon the premature death of a parent, for loss of “parental aid, protection, affection, society, discipline, guidance and training.”

Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.

Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world-over have recognized that the value of a child’s consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child.

The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of Filial Consortium. Parental Consortium is awarded to children who lose their parents in motor vehicle accidents under the Act.”

[7] The dependents – claimants are 3 in number, widow and two minor children and hence, an amount under the head of loss of consortium of Rs.1,20,000/- (Rs.40,000/- X 3) is required to be granted.

[8] Considering the decision in the case of National Insurance Company Limited Vs. Pranay Sethi & Ors. reported in (2017) 16 SCC 680, Rs.15,000/- for loss of estate and Rs.15,000/-for funeral expenses have been granted. Thus, the computation of the compensation would be as under:-

Rs.7,56,000/-

Loss of dependency

+ Rs.1,20,000/-

Loss of consortium

+ Rs. 15,000/-

Loss of estate

+ Rs.15,000/-

Funeral expenses

= Rs.9,06,000/-

Total compensation

[9] As the Tribunal has granted compensation of Rs.5,74,000/- with interest at the rate of 9% per annum, the appellants – claimants would be entitled to the enhanced amount of compensation of Rs.3,32,000/- with interest at the rate of 7.5% per annum from the date of filing of the claim petition till its realization. The insurance Company is directed to deposit the said amount within eight weeks from the date of receipt of writ of this Court. The enhanced amount shall be disbursed as per the proportion laid down by the Tribunal in the award.

[10] The impugned judgment and award be modified accordingly. The appeal is partly allowed.

Registry is directed to send the record and proceedings back to the Tribunal, if received.