(2008) 04 GUJ CK 0039

In the Gujarat High Court

Case No : First Appeal No. 3417 of 1997

Pratibha Chetankumar Mehta and Others APPELLANT

Vs

Mangalsinh Rana (Deleted) and Others RESPONDENT

Date of Decision : 09-04-2008

Acts Referred:

Citation : (2008) 04 GUJ CK 0039

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

Bench : Division Bench

Advocate : Premal Rachh, for Thakkar Assoc, for the Appellant; Avani S. Mehta, for the Respondent

Judgement

A.L. Dave, J.—The appellants challenge the Award passed by the Motor Accident Claims Tribunal (Auxi.), Kutch at Bhuj, in Motor Accident Claims Petition No. 93/1989, on 1st July, 1997.

1.1 The appellants, who were claimants before the Tribunal, had preferred the said claim-petition claiming a compensation of Rs. 20,40,000/- on account of accidental death of Chetankumar P. Mehta, aged 32 years. The claimants are widow, minor son and parents of deceased Chetankumar P. Mehta. The accident occurred on 24th December, 1988 at about 7.30 P.M. on Kandla-Gandhidham Road. The deceased was riding his motor-cycle at the time of the accident and was knocked down by Truck bearing Registration No. GTF-2044, allegedly driven by the driver in a rash and negligent manner.

1.2 As per the case of the claimants, the deceased was 32 years of age and was engaged in business as well as was doing the work of surveyor. According to the claimants, the deceased was earning Rs. 1,95,000/- per annum.

1.3 The driver of the truck having expired, the case abated against him as per the order made below Exh. 44 by the Tribunal. Opponent No. 2 - owner of the truck, though served with the summons, chose not to contest the claim-petition before the Tribunal; whereas opponent No. 3 - Insurance Company filed writtenstatement at Exh.62 and denied all the averments made in the claim-petition. According to the Insurance-Company, the motor-cycle was being driven by Narendrabhai and because of his negligence, he collided with the bridge and the accident occurred.

2. The parties led their evidence, and the Tribunal, after considering the evidence, came to the conclusion that the accident occurred because of the sole negligence on the part of the driver of the Truck. The Tribunal considered the evidence on income of the deceased and awarded a total compensation of Rs. 3,75,000/- to the claimants, with proportionate costs and interest at the rate of 15% per annum.

2.1 Aggrieved by the award, the original claimants have preferred this appeal seeking enhancement of the award.

3. We have heard the learned advocates for the parties viz. the appellant and the respondent-insurer.

4. Learned advocate Mr. Premal Rachh for the appellant submitted that the Tribunal has committed an error in assessing the income of the deceased and in spite of positive evidence on record, the Tribunal has not accepted the income of the deceased from other sources, like surveyorship, etc. He also submitted that the Tribunal has not taken into consideration the prospective rise in income of the deceased while awarding compensation and, therefore, the award may suitably be enhanced.

5. Learned advocate Mr. Mrudul Barot appearing for Ms. Avani S. Mehta, learned Counsel for respondent No. 3-Insurance Company, submitted that the Tribunal has discussed the evidence threadbare and has viewed it from every possible angle. The Tribunal has come to the conclusion that the evidence on income of the deceased from other sources is not reliable and then assessed the income of the deceased and, therefore, no mistake can be said to have been committed by the Tribunal in assessing the income of the deceased and hence, no interference is called for.

5.1 Learned advocate Mr. Barot submitted further that the Tribunal has, while awarding compensation under the head of loss of dependency, adopted a higher multiplier and, therefore, the claimants cannot have any grievance against the award. The appeal, therefore, may be dismissed.

6. We have examined the judgment and award rendered by the Tribunal and the record and proceedings of the case.

7. Since this is an appeal by the claimants for enhancement of award, and not an appeal by the original respondents, there is no question of re-examining the question of negligence.

8. So far as the quantum aspect is concerned, we find that the claimants have claimed that the deceased was working with G.P. Dave & Co. as a trainee

surveyor, and before he could complete his training, he met with the unfortunate accident. The claimants also claimed that the deceased was earning by surveying Containers of J.M.Baxi & Co. In this regard, the Tribunal noticed, rightly so, that the claimants have not produced any independent or cogent evidence contemporaneous in nature. There is no evidence obtained from J.M.Baxi & Co. regarding income of the deceased. The documents, which are produced by the claimants, are produced by them, and not registered anywhere to lend contemporaneousness and authenticity to the same. It is also to be noted that deceased Chetankumar had not yet acquired the qualification of being a surveyor and, therefore, the income by surveying Refer-Containers could not have been reliably accepted by the Tribunal as has been done. Besides this, no books of account were produced before the Tribunal; so also, there is absence of evidence to show any Bank Account. Income Tax Returns were also not filed for earlier years. In our view, therefore, the Tribunal has taken into consideration all relevant aspects and then has rejected the case of the claimants on the aspect of income of the deceased from other sources. We are in agreement with the reasons adopted by the Tribunal on this count. No interference is called for on finding on that aspect.

8.1 However, so far as the evidence relating to the income of the deceased from Olimpus Engineers, a Firm in which the deceased claimed to be a partner, is concerned, Exh.55, partnership-deed, indicates 90% share of deceased Chetankumar P.Mehta and 10% share of Muktmaniben Mehta in the profit of the Firm. The evidence indicates that the profit of the Firm was Rs. 72,000/- per annum. The partnership-deed indicates that the profit was to be shared by the deceased to the extent of 90%. The Tribunal has, however, come to the conclusion that the share of the deceased would be only 50%. For coming to this conclusion, the Tribunal has considered the fact that the deceased had contributed only 50% of the capital and, therefore, he would be a partner only to the extent of 50% and not 90% as aggrieved. The Tribunal also noticed that the deceased was to look-after Field-work and the other partner was to look-after office administration work. We, therefore, find justification in the reasons assigned by the Tribunal. Besides this, it is also to be noted that there is no cogent evidence to show the exact income/profit of the Firm. Under the circumstances, we find justification in the Tribunal''s finding that the income/ profit of the Firm was Rs. 72,000/- per annum, and the share of the deceased in the profit was Rs. 36,000/- per annum i.e. Rs. 3000/- per month.

9. The Tribunal has, however, taken this figure of Rs. 3,000/- as a basis for calculating the dependency loss. In our view, this is where the Tribunal has committed an error. The Tribunal ought to have taken into consideration prospective rise in the income of the deceased, benefit of which would have gone to the deceased''s family (orig. claimants).

9.1 For assessing the prospective income of the deceased, the accepted method is to add double the income to the existing income, then to divide it by two, which would bring to us a figure of Rs. 4,500/-[Rs. 3000/- + Rs.6000/- = Rs. 9000/- ? 2 = Rs. 4500/-] as prospective income of the deceased. After deducting 1/3rd therefrom as expenses on self, dependency loss can be assessed at Rs. 3,000/- per month.

9.2 Considering the fact that the deceased was aged 32 years and the claimants are widow, minor sons and parents, a multiplier of 15 can reasonably be adopted in view of the decision of the Apex Court in the case of Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya and Others,

9.3 If the amount of annual dependency loss of Rs. 36,000/- is multiplied by 15, the claimants would be entitled to Rs. 5,40,000/- as dependency loss. In addition thereto, the claimants would be entitled to Rs. 10,000/- towards loss of consortium, Rs. 10,000/-towards loss of expectation of life, and Rs. 5,000/- towards obsequies, totalling to Rs. 5,65,000/-, as against the total compensation of Rs. 3,75,000/- awarded by the Tribunal. The claimants would be entitled to proportionate costs and interest at the rate of 9% on the enhanced amount of compensation from the date of the application till satisfaction of the award.

The appeal stands partly allowed. No order as to costs. Award accordingly.

