

(2017) 09 GUJ CK 0043
In the Gujarat High Court
Case No : 2363 of 2015

PUSHPABEN WD/O RATILAL BHEEMSINGH & Ors APPELLANT
Vs
LALSING RANCHODBHAI CHAVLA & Ors RESPONDENT

Date of Decision : 20-09-2017

Acts Referred:

[Motor Vehicles Act, 1988](#), [Section 173](#),
[Section 173](#) - Appeals

Citation : (2017) 09 GUJ CK 0043

Hon'ble Judges : R.M.Chhaya

Bench : Single Bench

Advocate : V B MALIK, PALAK H THAKKAR, VIBHUTI NANAVATI

Judgement

1. Feeling aggrieved by and dissatisfied with the judgment and award dated 31.01.2014 passed by learned Motor Accident Claims Tribunal (Aux.), Vadodara, in Motor Accident Claim Petition No.160 of 1997, the appellants - original claimants preferred present appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act" for short).

2. Heard Mr.Hiren Modi, for Mr.V.B.Malik, learned counsel for the appellants - original claimants, Mr.Vibhuti Nanavati, learned counsel for respondent No.3 and Mr.Palak Thakkar, learned counsel for respondent No.6. Though served, no one appears for respondent Nos.4 and 5.

3. The following noteworthy facts, which emerge from the record of the appeal:-
3.1 That on 23.09.1996, at about 06:00 P.M, while the deceased Ratilal and his friend were sitting near culvert (Nala) situated between Tarsali cross road and Unity Petrol Pump, at that time, one truck bearing registration No.GJ-12-T-6965 was also parked near the said culvert. At that time, another truck bearing registration No.GJ-16-T- 8330 came from Ahmedabad side, which was driven by respondent No.1 in excessive speed in rash and negligent manner and it lost control and dashed with the back side of the stationary truck being No.GJ-12-T-6965 and because of which, the said truck dashed with the deceased Ratilal

and his friend. In the said accident, the deceased Ratilal sustained severe injuries and was admitted to SSG Hospital and during treatment, he died.

4. Learned counsel for the appellants - original claimants has raised the following contentions:- (I) That the learned Tribunal has not considered prospective income and therefore, the impugned judgment and award is erroneous and the same deserves to be enhanced.

(II) That the learned Tribunal has wrongly calculated the income at Rs.1,500/- per month and the same should suitably enhanced.

(III) That the learned Tribunal has not appreciated the evidence on record and has awarded meagre amount of Rs.10,000/- under the head of consortium and Rs.10,000/- under the head of loss of estate, which should be enhanced at least to Rs.1,00,000/-.

On the aforesaid contention, learned counsel for the appellants - claimants has submitted that, the appeal deserves to be allowed to the aforesaid extent by enhancing compensation awarded under all the heads.

5. Per contra, Mr.Vibhuti Nanavati and Mr.Palak Thakkar, learned counsel for respondent Nos.3 and 6 respectively have supported the impugned judgment and award. Mr.Vibhuti Nanavati, learned counsel for respondent No.3 has contended that the claimants have not adduced any evidence whatsoever as regards the income and considering the fact that the deceased was 25 years old and considering the date of accident being 23.09.1996, learned Tribunal has committed no error in assessing notional income of the deceased at Rs.1,500/- per month and the same does not require any consideration. He further contended that, learned Tribunal relying upon the evidence on record has assessed the amount under the head of consortium and loss of estate and therefore, no modification is required. On the said grounds, learned counsel for respondent No.3 - Insurance Company submitted that, the appeal being meritless, deserves to be dismissed.

No other or further submissions are made by learned counsel for the parties.

6. Learned counsel for the parties have also made available the copies of the documentary evidence, which were lead before learned Tribunal and have perused the same. Upon considering the submissions made and considering the documentary evidence, it appears that the claimants have not been able to prove that the income of the deceased, who was 25 years old on the date of accident was Rs.6,000/-. On the contrary, learned Tribunal has rightly noted that, not a single piece of evidence has been produced by the claimants to prove the income of the deceased. In the facts of the case, learned Tribunal is correct in assessing notional income of the deceased at Rs.1,500/-, however, learned Tribunal has erred in not considering the benefit of prospective income.

7. Following the ratio laid down by the Apex Court in the case of Sarla Verma (Smt) & Ors. Vs. Delhi Transport Corporation & Anr. [2009 (6) SCC 121] and

considering the age of the deceased to be 25 years, the claimants would be entitled to the benefit of 50 % prospective income. Upon re-appreciation of the evidence on record and re- calculating the compensation under the head of future loss of income, the appellants would be entitled as under:-

Rs.1,500/- Income Per month

Rs.750/- 50 % Prospective income

Rs.2,250/- Total

Rs. 750/- Less 1/3rd deduction towards personal expenses

Rs.1,500/-

X 12 Months

Rs.18,000/-

X 18 Multiplier

Rs.3,24,000/-

8. Considering the law laid down in the case of Sarla Verma (Smt) & Ors. (supra), as the deceased was 25 years old on the date of accident, multiplier of 18 would be applicable and hence, compensation under the head of loss of future income would come to Rs.3,24,000/-.

9. Upon re-appreciation of the evidence on record and on perusal of the record of this case, even though the date of accident is 23.09.1996, in opinion of this Court, learned Tribunal has awarded only Rs.10,000/- under the head of consortium and Rs.10,000/- under the head of loss of estate, in the facts of the case the same deserves to be enhanced to Rs.20,000/- each head i.e. Rs.20,000/- under the head of consortium and Rs.20,000/- under the head of loss of estate.

10. In light of the aforesaid, the appellants - original claimants would be entitled to total compensation as under:-

Rs.3,24,000/- Under the head of Future loss of income

Rs.20,000/- Under the head of Consortium

Rs.20,000/- Under the head of Estate

Rs.5,000/- For Funeral expenses

Rs.3,69,000/- Total

11. As the learned Tribunal has already awarded Rs.2,41,000/-, the appellants - claimants would be entitled to get additional amount of Rs.1,28,000/-.

12. The appeal is thus partly allowed. Respondent No.3 - Insurance Company shall deposit additional amount of Rs.1,28,000/- along with 9 % interest from the date of application till its realization with the learned Tribunal within a period of 8 weeks from the date of receipt of this order. No order as to costs.