
(2003) 11 GUJ CK 0057
In the Gujarat High Court
Case No : First Appeal No. 7132 of 1999

Ramilaben Bhanubhai Shah

APPELLANT

Vs

Deleted (Ex. 16)

RESPONDENT

Date of Decision : 29-11-2003

Acts Referred:

Motor Vehicles Act, 1988 — Section 163, 173

Citation : (2003) 11 GUJ CK 0057

Hon'ble Judges : M.H. Kadri, J;J.N. Bhatt, J

Bench : Division Bench

Advocate : M.T.M. Hakim, for Petitioner Nos. 1-3, for the Appellant; P.V. Nanavati and Vibhuti Nanavati, for the Respondent

Final Decision : Allowed

Judgement

J.N. Bhatt, J.—Appellants are the original claimants, who have questioned the legality of the amount of compensation awarded to them by the Motor Accidents Claims Tribunal (for short, "the Tribunal") at Vadadara (Aux) Vadodara in M.A.C.P. No. 442 of 1992 for the unfortunate and untimely demise of bread-earner of the family, Dilipkumar in a road mishap, which occurred, on 08-02-1992, at about 7.45 A.M. near Nala of Bharthana village on National Highway No. 8, with truck bearing No. R.P.F. No. 4241 coming from the opposite direction, violently dashing against it, by invoking the aids of provisions of Sec. 173 of M.V. Act 1998, inter-alia, contending that the quantification of damages assessed by the Tribunal is grossly inadequate.

2. Before entering into the merits of the quantam fixed by the Tribunal, it be recorded that the factum of accident between truck No. RPF No. 4241 and the matador No. GJ-6T-4894 on the extreme left side of the matador on N.H. No. 8 resulted into serious injuries on 08-02-1992 to deceased Dilipkumar, who was driving matador and he also owned it, and culminated into his death after six days.

3. Appellant No. 1, mother, original claimant No. 1; appellant No.2, father, original claimant No. 2; and appellant No. 3, sister, original claimant No. 3, filed the claim petition before the Tribunal, claiming an amount of Rs.8,00,000/= (Rupees Eight Lacs Only) by way of compensation for the death of Dilipkumar.

4. Respondents, herein, are the original-opponents. Respondent No. 1, driver, came to be deleted; respondent No. 2 is the insured and owner of the offending truck, whereas, respondent No. 3 is the insurance company of the offending vehicle. Respondents contested the claims as there were two claims; one by the heirs of the deceased Dilipbhai and, the other, by the insured cleaner, Rajeshbhai Babubhai driving in a matador. Factum of accident is not disputed; annual utility of income of the deceased is not admitted; plea of raising rash and negligence on the part of the driver of the truck is not denied; and, quantum is challenged.

5. Upon appreciation of evidence laid before the Tribunal, the Tribunal found a case of contributory negligence between the truck and the matador drivers in the ratio of 75:25 in the happening of unfortunate road accident. Deceased Dilipkumar was aged about 30 years, his mother, aged about 45 years and father, aged 47 years, at the relevant time. Deceased had transport business; he had borrowed money from the bank for purchase of matador and initially, he himself was driving the matador for the purpose of transport business; and he was unmarried. In support of claim of Rs.8,00,000/=: the appellants - original claimants placed reliance on the evidence of the father, the documentary evidence of loan transactions and bank accounts and the other documentary evidence showing transport business was carried on by the deceased.

6. The Tribunal, upon assessment of the evidence, found that the deceased was earning Rs.7,50,000/= as net profit. The Tribunal, also, considered the prospective income and assessed the monthly income of the deceased at Rs.11,250/=. Since deceased was unmarried, the dependency benefit is assessed at Rs.3,750/- and the annual utility of income of the deceased came to be assessed at $\text{Rs.3,750} \times 12 = \text{Rs.45,000/=}$. Since deceased himself was found to be contributorily negligent to the extent of 25%, the Tribunal adopted multiplier of 11 instead of 15 and other incidental expenses permissible and awarded an amount of Rs.3,90,000/= by way of compensation under all recognised heads, with running interest at 12%, from the date of application till realisation, with costs.

7. In this appeal before us, the first contention is referred to the adoption and applicability of the appropriate multipliers for arriving at the annual utility of the deceased to the common family funds. The Tribunal has accepted and applied 11 multipliers against the demand of 15. After having heard both the sides and considering the laid down proposition of law, we are of the clear opinion that in the factual profile we have in this appeal emerging from the record, the Tribunal has committed serious error in accepting and applying only 11 multipliers instead of 15.

8. There is no doubt about the fact that the deceased was 30 years old at the relevant time when his life was cut short by the fatal road accident. He was unmarried; he was survived by parents and an unmarried sister. At the relevant time, the age of the mother was 45 and the age of the father was 47 years. Needless to mention that the ages of mother and father will be very material and important for the purpose of consideration of adopting and applying appropriate multipliers so as to arrive at annual utility of the deceased to the family funds in case when the deceased had been unmarried. Apart from the structural formula under Sec. 163 (a) of the Motor Vehicles Act, considering the increased life-span in recent past in the country, the Tribunal ought to have accepted and applied 15 multipliers instead of 11, the view which we are very much inclined to accept relying on decision rendered by the Hon'ble Apex Court in H.S. Ahammed Hussain & Anr. v. Irfan Ahammed & Anr. 2002 (2) GLR 1825. This was a case of claim by the parents of the deceased and in similar factual situation, the multiplier of 15 was considered to be proper and applied.

9. It is, therefore, very clear that the view of the Tribunal, in not adopting and accepting 15 multipliers and only applying 11 multipliers to the annual utility of the deceased to the family, is not supportable and requires upward revision in this appeal. We have, therefore, no hesitation in finding that the appropriate multiplier, which is required to be applied, would be 15 instead of 11, as adopted by the Tribunal. Obviously, therefore, the annual dependency of the deceased to the common family funds worked out by the Tribunal at Rs.45,000/=, even if it is accepted as correct, then also, the claimants would be entitled to an additional amount of $\text{Rs.45,000/=} \times 4 = \text{Rs.1,80,000/=}$.

10. Since the Tribunal has found that the deceased Dilipkumar, who was incharge of the matador and, also, the owner thereof, was contributorily negligent to the extent of 25% in the happening of the road accident, an amount of Rs.1,80,000/= is required to be sliced down by 25%. Therefore, the claimants shall be entitled to an additional amount of Rs.1,80,000/= minus Rs.45,000/= = Rs.1,35,000/=. In our opinion, therefore, the Tribunal has committed serious error in making assessment of amount of compensation in sofaras the multiplier is concerned. We have, therefore, no hesitation in finding that the claimants shall be entitled to an additional amount of Rs.1,35,000/= by way of compensation.

11. Unfortunately, the amount of compensation under the recognised heads of loss to the estate is not considered. Needless to mention that the conventional amount for loss of expectation of life and loss to the estate is required to be revised, periodically, in tune with the rise in price and high rate of inflation and the erosion of the purchasing power of rupee, which is very common in our economy. Earlier, the conventional amount used to be Rs. 5,000/=: which came to be revised to Rs. 10,000/= and later on, it was considered appropriate to enhance it to Rs. 20,000/=. This proposition is also very clear from the decision of this Court in Gujarat State Road Transport Corporation Vs. Suryakantaben D. Acharya and Others, . The claimants, in our opinion, obviously, would be entitled

to an amount of Rs. 20,000/= under this head.

12. In all, they will be entitled to an additional amount of Rs. 1,55,000/= (Rupees One Lac and Fifty-Five Thousand Only) by way of compensation at the rate of 9% p.a. from the date of application till realisation with appropriate costs thereon, and the apportionment will be in the same ratio as considered and decided by the Tribunal between the claimants.

13. The appeal, therefore, shall stand allowed. Notice is discharged.