
(2015) 04 GUJ CK 0119
In the Gujarat High Court
Case No : F.A. No. 161 of 2015

Reliance General Insurance Company Limited	APPELLANT
Vs	
Vipin Kumar Brijmohan and Others	RESPONDENT

Date of Decision : 22-04-2015

Acts Referred:

Citation : (2015) 3 ACC 813

Hon'ble Judges : Jayant M. Patel, J;G.B. Shah, J

Bench : Division Bench

Advocate : Vibhuti Nanavati, for the Appellant

Final Decision : Partly Allowed

Judgement

Jayant M. Patel, J—With the consent of the learned Advocates appearing for appellant and the main contesting respondent Nos. 2 and 3 (original claimants), the appeal is finally heard. Mr. Nanavati, learned Counsel, states that the respondents are served by direct service.

2. The present appeal is directed against the judgment and award passed by the Tribunal in MACP No. 5 of 2008, whereby the Tribunal has awarded compensation of Rs. 15,41,000 with interest at the rate of 8% p.a.

3. The short facts of the case appears to be that on 22nd June, 2007, when the deceased Girishkumar Sukhdevsinh was going on motorcycle bearing No. GH-02-E-7388 in Valsad from Balitha to Bramhadev Mandir, one truck bearing No. HR-47-B-1569, had dashed with the motorcycle and the deceased was injured and ultimately, succumbed to the injuries. The claim petition was filed for compensation of Rs. 40 lakh being MACP No. 5/08. The Tribunal at the conclusion of the claim petition, passed the above referred judgment and award. Under the circumstances, the present appeal before this Court.

4. We have heard Mr. Vibhuti Nanavati, learned Counsel for the appellant and Mr. Patel for the original claimants-respondent Nos. 2 and 3.

5. We may record that this Court when heard the matter for the first time on 9th February, 2015, following order was passed.

"NOTICE upon the respondent Nos. 2 and 3 herein for final disposal with respect to the amount awarded under the conventional heads only, making it returnable on 2nd March, 2015. Direct service is permitted. Respondent Nos. 2 and 3 be served at Jharkhand address by RPAD/Speed Post at the cost of the appellant."

6. It is in light of the aforesaid, as recorded earlier, the aspect of quantum awarded by the Tribunal under the head of conventional amount are to be considered in the present appeal.

7. Mr. Nanavati, learned Counsel for the appellant contended that the amount under the head of loss of estate as well as loss of love and affection are awarded on much higher side and in his submission, the Tribunal ought to have awarded the amount of Rs. 1 lakh under the joint head of loss of estate and loss of love and affection and Rs. 10,000 ought to have been awarded for the funeral expenses.

8. Whereas Mr. Patel, learned Counsel appearing for the original claimants contended that the Tribunal has awarded appropriate amount and no interference may be made by this Court.

9. We may record that the date of accident is 22nd June, 2007 and therefore, the cost structure prevailing at the relevant point of time would be required to be considered. As per various decisions of this Court including in the case of Kalpanaba Mahavirsinh Solanki v. Prop. of B. Kumar and Anr., in First Appeal No. 224/05, decided on 19th November, 2014, after considering various decision of the Apex Court, this Court found it appropriate to award the amount of Rs. 1 lakh under the combined head of loss of consortium, loss of love and affection and loss of estate and has awarded Rs. 10,000 towards funeral and post death ceremony expenses.

10. It is true that in the said case, the date of accident was 6th December, 2000 whereas in the present case, as recorded earlier, the date of accident is 22nd June, 2007. Considering the above, it would not be the same amount as was considered by this Court in the above decision since the inflation rates are also to be considered keeping in view the cost structure and the essential purpose is to compensate the original claimants. Considering the facts and circumstances, we find that it would be appropriate to award the amount of Rs. 1,50,000 towards combined head of loss of estate, loss of love and affection and loss of consortium and the amount of Rs. 15,000 already awarded by the Tribunal towards post death ceremony and funeral expenses does not deserve to be interfered with.

11. Under the above circumstances, the judgment and the award passed by the Tribunal deserves to be modified to the aforesaid extent. Hence, it is observed and directed that the original claimants shall be entitled to compensation of Rs. 14,91,000 instead of Rs. 15,41,000 with interest at the rate of 8% p.a. from the

date of the application until the amount is paid or deposited with the Tribunal and if deposited with the accrued interest.

12. The appeal is partly allowed to the aforesaid extent. However, it is observed that the order passed by this Court on 1st April, 2015 for disbursement and investment shall continue. The amount already invested and if not invested, shall be invested as per order dated 1st April, 2015 and thereafter, upon expiry of 5 years, the awarded amount minus the amount already withdrawn would be available to the original claimants.

13. The balance amount pursuant to present judgment shall be refunded by the Tribunal to the appellant, preferably within a period of two months from the receipt of the order of this Court. The appeal is allowed to the aforesaid extent. No order as to costs.