

(2024) 08 GUJ CK 0001
In the Gujarat High Court
Case No : First Appeal No. 4121 of 2023

Reliance General Insurance Company Limited, Surat Versus APPELLANT
Vs
Shambhubhai Ramsharansing Rajput & Ors. RESPONDENT

Date of Decision : 22-08-2024

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2024) 08 GUJ CK 0001

Hon'ble Judges : Sandeep N. Bhatt, J

Bench : Single Bench

Advocate : Masumi V Nanavaty, Vibhuti Nanavati, Nishit A Bhalodi

Final Decision : Dismissed

Judgement

Sandeep N. Bhatt

1. The present appeal is filed by the appellant – Insurance Company under Section 173 of the Motor Vehicles Act, being aggrieved by and dissatisfied with the judgment and award dated 31.3.2023 passed by the Motor Accident Claims Tribunal (Aux.), Surat in Motor Accident Claim Petition No.213 of 2008, by which, the Tribunal has partly allowed the claim petition by awarding Rs.18,17,624/- with 9% p.a. interest to be paid to claimant/s, by holding opponents liable, jointly and severally.

2. The facts of the present appeal are as under :

2.1 The claim petition is filed by the claimants stating that on 12.2.2008 at about 9.45 p.m., the deceased was going to his home on Motorcycle bearing Registration No.GJ.05.FB.2750 and while driving his motorcycle at a very slow speed, on his left side of the road, following the traffic rules and when he reached at the place of incident, the opponent no.1 who was driving tempo bearing No.GJ.05YY.6538 owned by opponent no.2, while opponent no.1 drove the said tempo at very high speed and very rash and negligent manner and came on wrong side and hit the motorcycle of the deceased from behind and as a

result of which, deceased fell down on the road due to which the deceased sustained severe injuries and he died. Therefore, the claim petition was filed by the claimants claiming compensation.

2.2 The notices were served to the opponents. The opponent nos.1 and 2 did not file reply. Opponent no.3-insurance company filed the written statement contesting the contents of the claim petition. The issues were framed by the Tribunal. Oral as well as documentary evidence were led before the Tribunal. After hearing the submissions made by the rival parties, the Tribunal has partly allowed the claim petition(s) and awarded compensation as noted above.

2.3 Hence, the insurance company has filed the present appeal before this Court.

3. Learned advocate for the appellant – Insurance Company has assailed the impugned judgment and award on the ground of negligence and quantum. He submitted that the deceased was driving his motorcycle on the extreme right side of the road in zig zag manner and therefore the learned Tribunal needs to hold the deceased solely negligent for the accident. That the learned Tribunal has also erred in awarding the amount of compensation, which is on the higher side. He, therefore, prayed to allow this appeal on both these grounds.

4. Per Contra, learned advocate for the claimants has submitted that the learned Tribunal has, after considering the evidence led before it, has come to the conclusion that the tempo driver was negligent for the accident. On the point of quantum, the learned Tribunal has considered the age of the deceased, future prospects, number of dependents, loss of estate etc. and thereafter awarded the compensation, which is just and proper. He, therefore, submitted that this appeal is required to be dismissed.

5. I have considered the submissions made by the respective parties. I have perused the record and proceedings. I have gone through the impugned judgment and award passed by the Tribunal. I have also considered the pleadings of the parties before the Tribunal.

6. It is stated in the claim petition that the accident occurred due to the negligency of the tempo driver; that the tempo driver has not stepped into the witness box to rebut the say of the claimants who could have been the best person to throw light on the actual facts and therefore there is no reason to disbelieve the say of the claimants; further, from the FIR lodged against the tempo driver and the panchanama of the scene of offence, the tempo hit the deceased from behind and so he died due to the said accident. From all this, it can be gathered that the tempo driver was solely negligent for the accident, which is held by the learned Tribunal and therefore there is no reason to interfere with the said finding of the learned Tribunal.

7. As regards the point of quantum raised by the appellant-insurance company, even if it is believed that the income of the deceased which is assessed is on a bit higher side, the multiplier applied is not correct and therefore the future loss

of dependency should have been awarded less than that awarded by the learned Tribunal, the compensation awarded under other heads like loss of estate, funeral expenses, loss of consortium would have to be increased in view of the judgment of National Insurance Company Ltd. V/ s Pranay Sethi & Ors. reported in (2017)16 SCC 680 and Magma General Insurance Company Ltd. V/s Nanu Ram and Others reported in (2018)18 SCC 130 and therefore, the total amount which is required to be awarded will be more or less the same as awarded by the learned Tribunal in the impugned judgment and award. Therefore, this Court is not finding it proper to interfere with the same.

8. In view of above, the following order is passed.

8.1 The present appeal is dismissed with no order as to costs.

8.2 The amount lying with the Tribunal and/or in the FDR, pursuant to the order of this Court if any, shall be disbursed to the claimant, along with accrued interest thereon if any, by account payee cheque, after proper verification and after following due procedure, within a period of six weeks from today.

8.3 Record and proceedings be sent back to the concerned Tribunal, forthwith.