

(2017) 09 GUJ CK 0064
In the Gujarat High Court
Case No : 1928 of 2015

RELIANCE GENERAL INSURANCE COMPANY LTD	APPELLANT
Vs	
YASHPAL SINGH MARISINGH (DELETED) & 3	RESPONDENT

Date of Decision : 07-09-2017

Acts Referred:

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

Citation : (2017) 09 GUJ CK 0064

Hon'ble Judges : R.M.Chhaya

Bench : Single Bench

Advocate : VIBHUTI NANAVATI

Final Decision : Dismissed

Judgement

1. Being aggrieved and dissatisfied by the judgment and award dated 29.04.2015 passed by the Motor Accident Claims Tribunal (Main), Valsad in MACP No. 206/10, the appellant insurance company has filed the present appeal under section 173 of the Motor Vehicles Act, 1988.

2. The following facts emerge from the record of the petition

2.1 The son of the respondent claimants viz. Sandeep along with his friend Khernar were travelling from Selvas to Vapi on motorcycle bearing RTO registration No. GJ15AA5671 on 09.06.2010 at about 8.30 in the morning. The record shows that deceased Sandeep was driving the said vehicle as per traffic rules in a slow speed on the left hand side of the road and when the motorcycle driven by the deceased reached Dungara Falia, abetting on Vapi Selvas main road, the truck container bearing registration No. HR671773 was being driven in excessive speed in a rash and negligent manner and had dashed with the motorcycle from behind resulting into fatal injuries upon deceased Sandeep. The record indicates that deceased Sandeep was 26 years old and was working as Junior Engineer in Ipco Laboratories drawing monthly salary of Rs.11,000/and was possessing Master of Science degree. The respondents claimants are parents of the deceased

Sandeep. The FIR was also lodged and panchnama was drawn. Ultimately, the respondents claimants preferred application under section 166 of the Act and claimed compensation of Rs.10,00,000/-. The record of the Tribunal indicates that the driver was deleted from the array of the petition and even though notice was published by substituted served in Government Gazette, the owner did not appear before the Tribunal and therefore, the Tribunal ex parte proceeded further.

2.2 The respondent claimant Dhanraj Mayaram Patil was examined at Exhibit 38. Even the Senior Manager of Ipco Laboratories where deceased Sandeep was serving one Nikhilbihari Sinha was also examined at Exhibit 42. Over and above such oral evidence, documentary evidence was also led in form of FIR at Exhibit 25, Panchnama at exhibit 26, inquest panchnama at exhibit 27, PM report at 28. The respondents claimants had also relied upon further documentary evidence such as School Leaving Certificate of the deceased at Exhibit 34, degree Certificate of deceased at exhibit 35 and 36 and salary slip of the deceased Sandeep at exhibit 43. The learned Tribunal by the impugned judgment and award, awarded total compensation of Rs.15,22,460/-. Being aggrieved by the same, the present appeal is filed.

3. Respondent no.1 is deleted. Though served, respondents have not appeared and therefore, this Court was left with no option but to hear the learned counsel for the appellant and on the basis of the record, passed appropriate order.

4. Mr. Nanavati, learned counsel appearing for the appellant has raised the following contentions Page 1) That the Tribunal has erred in holding that the driver of the truck was solely negligent in causing the accident. Mr. Nanavati contended that the accident has occurred also because of contributory negligence on the part of the deceased and therefore, the appeal deserves to be allowed on that count alone.

2) Mr. Nanavati further contended that the deceased rider of the motorcycle took Uturn at the intersection straightway without following traffic rules and even without waiting for the truck to pass which was loaded and it was difficult for the truck to stop abruptly.

3) It was also contended that thus by wrongly applying multiplier and not considering the age of the deceased, the Tribunal has awarded a huge amount of Rs.15,02,460/under the head of dependency loss.

4) Mr. Nanavati contended that the Tribunal has also erred in appreciating the evidence on record and more particularly even the deposition of the manager of the laboratory at exhibit 42 and has wrongly come to the conclusion that the income per month of the deceased was Rs.9,819/and therefore, the Tribunal has wrongly calculated the compensation under the head of dependency loss.

5. No other or further submissions have been made.

6. Perused the original record and proceedings and have also gone through the impugned award.

7. Upon examining the contention raised by Mr. Nanavati on the aspect of contributory negligence of the deceased Sandeep, it would be appropriate to refer to panchnama of the accident at exhibit 26. Upon reappreciation of the evidence in the form of panchnama at exhibit 26, it reveals that after the accident, the truck driver ran away from the scene of offence. It is recorded in the panchnama that it is eastwest road with a divider and the spot of accident is on the southern side boundary. The panchnama has also recorded that the front portion of motorcycle was damaged and even the steering had been dislodged and the signal light of left side was broken and the carrier (additional accessory) fitted to the motorcycle was also broken and even the petrol tank was damaged. Considering the said piece of evidence, and as rightly considered by the learned Tribunal, the accident occurred only because of the driver of the truck. It also deserves to be noted that as far as pillion rider is concerned, he has filed MACP before Dadranagar Haveli & Selvas Tribunal and the Tribunal has also considered the deposition of the pillion rider who was eyewitness to the accident. The record and proceedings before the Tribunal clearly reveals that the appellant has not examined any other witness to show that the deceased Sandeep who was riding the motorcycle was negligent. Upon reappreciation of the evidence on record and the motorcycle in which the accident has occurred, the Tribunal has rightly come to the conclusion that the insurance company has not been able to adduce any evidence to show that the driver of the motorcycle deceased Sandeep was in any manner responsible for the accident and has rightly held that the accident occurred only because of sole negligence on the part of the driver of the truck and therefore, the contention raised by Mr. Nanavati that deceased Sandeep who was driving the motorcycle also should be made contributorily liable is a contention dehors the evidence on record and upon reappreciation of the evidence, the conclusion arrived at by the Tribunal that the driver of the truck was solely negligent deserves to be upheld and the contention raised by Mr. Nanavati, learned counsel appearing for the appellant insurance company deserves to be negated.

8. Even upon reappreciation of the evidence on record, the deceased was possessing degree in Organic Chemistry and had a very bright future. The driving license as well as School Leaving Certificate at exhibit 32 and 34 establishes the fact that deceased Sandeep was born on 30.03.1984 and was thus 26 years of on the date of the accident being 09.06.2010. The payslip at Exhibit 43 and the oral testimony of the officer of Ipco Laboratories Shri Sinha reveals that pay packet of the deceased was Rs.10,851/per month. The Tribunal has rightly deducted 10% of the said amount towards compulsory deduction such as contribution of PF, professional tax, etc., and has rightly determined the monthly income of the deceased at Rs.9,819/-. It further appears that the Tribunal has not erred in providing for additional benefit of prospective income and following the ratio laid down by the Apex Court in the case of Sarla Verma vs. Delhi Road Transport Corporation reported in (2009) 6 SCC 121, the Tribunal has deducted 50% of the income and has rightly applied multiplier of 17 as the deceased was

26 years old on the date of the accident and has correctly determined an amount of Rs.15,02,460/as compensation under the head of loss of dependency.

9. The respondents claimants have lost their son aged 26 years who had a promising career and therefore, such compensation awarded is just and proper. It deserves to be noted that as far as other heads are concerned, the same is not even resisted by the learned counsel for the appellant. However, the amount of Rs.20,000/is granted under the head of consortium, which obviously does not require any alteration and/or modification. This Court finds that even the Tribunal has rightly and correctly provided for 7.5% interest. On all counts therefore, the contention raised by the learned counsel appearing for the appellant upon reappreciation of evidence on record, both oral as well as documentary evidence led by the respondents claimants before the Tribunal is rightly appreciated by the Tribunal and in facts of this case, no interference is called for in exercise of the appellate jurisdiction of this Court.

10. Appeal being meritless deserves to be dismissed and is hereby dismissed. However, there shall be no order as to costs. Record & Proceedings be transmitted to the Tribunal forthwith.