

(2011) 12 GUJ CK 0040

In the Gujarat High Court

Case No : First Appeal No. 1850 of 1994 with Cross Objection No. 36 of 2009 in First Appeal No. 1850 of 1994

Reshamsing Lahorasing Rajpur and 2

APPELLANT

Vs

Hansaben Rajendrabhai Patel and 3
Rajendrabhai Patel and 3 and Reshamsing Lahorasing Rajpur
and 2

RESPONDENT

Date of Decision : 02-12-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2011) 12 GUJ CK 0040

Hon'ble Judges : R.M. Chhaya, J; Jayant M. Patel, J

Bench : Division Bench

Advocate : Sunil Parikh for Mr. Rajni H. Mehta, for the Appellant; C.J. Vin for Defendant(s) 1 - 4, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice R.M. Chhaya

1. The present appeal arises out of the judgment and award rendered by the Motor Accident Claims Tribunal (Main), Surat (the Tribunal) in MACP No.626 of 1988 dated 02.05.1994.

2. The facts arising in the present appeal can be summarized as under:

3. That deceased- Rajendrakumar Patel was driving scooter bearing RTO registration No.GJU-4954 at about 3:00 pm on 24.07.1988 and was traveling with one of his friends Shri Sanjaybhai as a pillion rider and was passing by Village Titva and was proceeding towards Village Madhi. While the deceased and Shri Sanjaybhai were near Village Titva, truck driven by appellant No.1 bearing RTO registration No. ABT- 917 came from the other side of the road, on wrong side and dashed with the scooter. Because of the said accident the deceased as well as Shri Sanjaybhai received serious injuries and ultimately Shri Rajendrabhai

succumbed to the said injuries.

4. Respondents herein filed a claim petition before the Tribunal and claimed compensation of Rs.12 lacs, which came to be registered as MACP No.626 of 1988. It was the case of the respondents-original claimants that deceased was 34 years old and had a degree of Bachelor of Arts and was engaged in the wholesale business of medicines in the name and style of Dahayabhai Makandas Patel & Sons and was earning Rs.1 lac p.a. That the deceased was the sole bread winner of the family. That the accident has resulted into a colossal economic loss to the family and thus, claimed Rs.12 lacs as total compensation.

5. Both the parties adduced evidence before the Tribunal and after appreciating the same, the Tribunal partly allowed the petition and awarded Rs.4,60,000/- as total compensation along with interest @ 12% p.m. from the date of the claim petition till realization with proportionate cost.

6. Being aggrieved by the same, the driver of the truck, the owner of the truck as well as the insurance company have preferred the present appeal u/s 173 of the Motor Vehicles Act, 1988 (the Act). Respondents- original claimants have also filed cross- objection for enhancement of the compensation to the tune of Rs.7,40,000/-.

7. We have heard Mr. Sunil Parikh for Mr. R.H. Mehta, learned counsel for the appellants and Mr. C.J. Vin, learned counsel for the respondents-original claimants.

8. Mr. Parikh, learned counsel for the appellants, have taken us through the impugned judgment and award and submitted that the Tribunal has erred in coming to the conclusion that the truck driver was solely negligent for the accident. It was further submitted that the Tribunal has not appreciated the evidence on record and more particularly the panchnama of the scene of offence (Exh.30) and the F.I.R. lodged after the accident (Exh.29). It was submitted that the reasons given by the Tribunal for arriving at the conclusion that the driver of the truck was solely responsible for the accident is erroneous reading of evidence. It was submitted that because of the heavy vehicle the liability of the truck driver may be higher than that of the deceased who was driving the scooter, however, the Tribunal ought to have made both drivers contributory liable for the accident. It was submitted that the Tribunal has also erred in coming to the conclusion that the dependency loss of the respondent- original claimants would be Rs. 2,500/- p.m. even though it has come on record that the business run by the deceased was not at all affected by demise of Rajendra kumar and the medical business, which was run under the name and style of Dahayabhai Makandas Patel & Sons is now being run by respondent No.1. It was also submitted that the Tribunal has erred in awarding interest @ 12% p.a. and on failure to deposit the amount within six months interest @ 18% p.a. from the date of the claim petition till realization. It was submitted that the impugned judgment and award therefore, deserves to be suitably modified on both the

counts.

1. It was further submitted that the cross-objections filed by the respondents are meritless. It was submitted that as already pointed out the Tribunal has wrongly assessed the income of the deceased as Rs.2,500/- p.m. and, therefore, the ground raised in the cross- objection based upon the income- tax assessment, to show that the income of the deceased at the time of accident was Rs.86,000/- p.a. is rightly not believed by the Tribunal. It was further submitted that the Tribunal has rightly awarded amount of Rs.10,000/- as a conventional figure for loss of expectation of life and the respondents- original claimants are not entitled to any further compensation on any other heads. It was, therefore, submitted that the cross-objections deserve to be dismissed.

9. As against that Mr. Vin, learned counsel appearing for the respondents-original claimants relied upon the F.I.R. (Exh.29) and panchnama of the scene of accident (Exh.30) and pointed out that the Tribunal has recorded the finding that the accident had occurred only because of rash and negligent driving by the truck driver. It was further submitted that even though there was cogent evidence on record to show that the income of the deceased was to the tune of Rs.86,000/-p.a. the Tribunal has wrongly fixed the dictum figure of Rs.2,500/- p.m. as the income of the deceased. It was, therefore, submitted that the cross-objections filed by the respondents-original claimants deserves to be allowed. It was further submitted that the Tribunal has not awarded any amount towards the damage of scooter and has wrongly awarded interest only @ 12% p.a. as the bank rate prevailing at the time of the accident was 15%. It was therefore submitted that the appeal filed by the driver of the truck, owner of the truck as well as the insurance company is devoid of any merits and the same deserves to be dismissed and the cross- objections deserve to be allowed in toto.

10. Upon perusing the evidence on record and more particularly F.I.R. (Exh.29) and panchnama of the scene of accident (Exh. 30), we find that the Tribunal has rightly come to the conclusion that the accident has occurred only due to rash and negligent driving by the truck driver. It also reveals from the record that the truck was coming at a high speed on wrong side and dashed with the scooter, we therefore find that the Tribunal has rightly come to the conclusion that the driver of the truck is solely negligent. Upon perusal of the deposition given on behalf of the respondents- original claimants and other documentary evidence, we find that the deceased was engaged in the wholesale business of medicines under the name and style of Dahayabhai Makandas Patel & Sons and that even after demise of the deceased the business is being run in the same manner. Upon reading the deposition of original claimant- Hansaben Rajendrakumar Patel (Exh. 41), we find that she has stated that the business of selling medicines is being run in the name and style of Dhayabhai Makandas Patel & Sons and the said business was formerly run by her brother- in-law i.e. elder brother of the deceased. We also find that she has stated that she has no information about the exact income of her deceased- husband. We also find that she has stated in her

cross- examination that the shop is now being run by one Sirajbhai and that she pays salary of Rs.500/- p.m. We find that the Tribunal has correctly assessed the income after considering the evidence on record, including deposition of original claimant- Hansaben Rajendrakumar Patel (Ex h. 41) as well as deposition of Shri Nandkishor Dhansukhlal Vankawala, Income Tax Consultant, (Exh.43). We also find that the Tribunal, taking into consideration age of the deceased as 38 years on the date of the accident, has rightly applied multiplier of 15 and has rightly awarded compensation of Rs. 4,50,000/- under the head of total loss of estate and dependency.

11. Considering the evidence on record we find that the cross- objections filed by the respondents-original claimants are meritless. The Tribunal has rightly awarded interest @ 12% that was prevailing bank rate at the time of accident and on re- appreciation of the evidence on record we find that there is no scope of any enhancement on any of the grounds raised by the respondents-original claimants in their cross- objections.

12. We, therefore, find that the appeal filed by the driver of the truck, owner of the truck as well as the insurance company as well as the cross- objection filed by the respondents- original claimants are meritless and the same deserve to be dismissed.

13. Appeal, therefore, fails and is hereby dismissed. Cross- objections are also hereby dismissed. The judgment and award passed by the Tribunal is hereby confirmed. However, in the facts and circumstances of the case, there shall be no order as to costs.

14. Registry is directed to send back record and proceedings forthwith.