(2017) 11 GUJ CK 0031

In the Gujarat High Court

Case No : 1141 of 2014

SHANTABEN DOLATSINH SINDHA & 4 — APPELLANT

Vs

HASAMBIN ALI SAIYED & 2 — RESPONDENT

Date of Decision : 09-11-2017

Acts Referred:

Citation : (2017) 11 GUJ CK 0031

Hon'ble Judges : Akil Kureshi, A.Y. Kogje

Bench : Division Bench

Advocate : MOHSIN M HAKIM, P P LAKHANI

Final Decision : Disposed

Judgement

1. This appeal is against the judgment and award dated 30.10.2012 passed by Motor Accident Claims Tribunal (Aux) Vadodara in MACP No.1525/1996. The appeal is preferred by the claimants for enhancement of the compensation awarded by the Tribunal.

2. Brief facts are as under. On 31.3.1996, deceased Daulatsinh Sindha was travelling in a luxury bus bearing registration No.GJ1V9951 along with other relatives. According to the claimants when the bus was near Valsad on National Highway No.8 crossing the bridge, the driver of the bus lost the control of the bus and the bus fell into the river as a result of which Daulatsinh Sindha expired. The claimants therefore, filed the abovementioned claim petition.

3. The Tribunal believed the income of deceased who was a teacher at Rs.6523/ per month and granted 30% increase for prospective income and computed the same at Rs.8480/per month or Rs.1,01,760/per annum. After deducting the amount towards the income tax liability, the Tribunal arrived at a figure of Rs.71,232/. The Tribunal deducted 1/4th thereof for the personal expenditure leaving Rs.53,424/by way of dependency benefits. The Tribunal adopted a multiplier of 9 and arrived at a figure of Rs.4,80,816/by way of loss of dependency benefits. The Tribunal also believed that the deceased earned

Rs.80,000/from agriculture. The Tribunal granted Rs.10,000/towards loss of estate, Rs. 10,000/towards loss of consortium and Rs.5,000/towards funeral and transportation expenses. The Tribunal thus awarded a total sum of Rs.5,85,816/ by way of compensation to be recovered from the opponents jointly and severally with 7.5% interest from the date of claim petition till realisation.

4. This judgment and award, the claimants have challenged in the present first appeal.

5. Learned advocate Shri Hakim for the appellantsclaimants taking us through the evidence on record and the impugned judgment contended that deceased Daulatsinh Sindha was aged 49 years at the time of the accident and was working as a Government teacher in Dabka High school. He submitted that the income as a teacher of the deceased was considered at Rs.6523/as against the salary which was otherwise payable. He relied on the the evidence of Mulrajsinh Daulatsinh Sindha at exh.15, son of the deceased, wherein it is stated by the said witness that deceased was a passenger in the said bus which was driven rashly and negligently by the driver. The witness has further deposed that at the time of accident deceased was aged 49 years and was working as a teacher in a school. Learned advocate pointed out the birth date of the deceased to be 16.5.1947 from the service book of the deceased. He contended that the date of accident being 31.3.1996, it is established that at the time of accident the age of the deceased was 49 years. Learned advocate for the claimants placed reliance on judgment in case of Sarla Verma (Smt) and others v. Delhi Transport Corporation and another reported in (2009) 6 Supreme Court Cases 121 to point out that the multiplier of 9 adopted by the Tribunal is on lower side considering the fact that the age of deceased at the time of accident was 49 years and that he would have continued to earn even after the date of his retirement. Counsel also placed reliance on the judgment in case of National Insurance Company Limited. v/s. Pranay Sethi and ors. [SLP No.25590/2014, judgment dated 31.10.2017] in support of his contention that the amount awarded by the Tribunal towards conventional head is inadequate and ought to have been granted in accordance with the said decision of the Apex Court.

6. Having heard the learned advocates and having considered the evidence on record, the assessment of income at Rs.6523/per month appears to have been based on evidence led before the Tribunal. Nothing is appearing on the record to establish that the applicant was earning more than what has been held by the Tribunal. Hence the assessment of income of the deceased per month at Rs.6523/ by the Tribunal is proper. Considering the age of deceased at the time of accident being 49 years, 30% increase towards prospective income is appropriate and needs no interference. However, insofar as the multiplier of 9 adopted by the Tribunal requires reconsideration. In consonance with the judgment of Sarla Verma (Smt) and others (supra), considering the age of the deceased at the time of accident, we adopt the multiplier of 13. We are also of the view that the Tribunal has awarded lesser amount under the conventional heads and therefore,

we are inclined to increase the amount under the conventional heads in consonance with the judgement of Apex Court in case of Pranay Sethi and ors. (supra).

7. The modified formula for compensation would read as under :

Dependency Benefits

Actual income Rs. 78,276/(Rs.6523x12)

Prospective Income /(30% increase) [Rs.78,276 + Rs.23,483]

Rs.1,01,759

Deduction towards income tax (30%) [1,01,75930527]

Rs,71,232/

Deduction for personal expenditure (1/4th)

Rs.17,808/

Dependency benefit [Rs.71,23217808]

Rs.53,424/

Loss of dependency benefits (multiplier of 13)

[Rs.53,424x13] Rs. 6,94,512/

Compensation

Loss of dependency benefits Rs.6,94,512/

Consolidated sum towards conventional heads

Rs.70,000/

Total compensation Rs.7,64,512/

8. In the result, the appeal is allowed in part. In substitution of the compensation of Rs.5,85,816/awarded by the Claims Tribunal, the claimants would be entitled to receive compensation of Rs.7,64,512/.

9. Thus Rs.1,78,696/(Rs.7,64,512Rs. 5,85,816) is awarded by way of additional compensation to be recovered from the opponents jointly and severally with 7.5% interest from the date of filing of the claim petition till realisation.

10. First appeal is disposed of accordingly R&P may be transmitted back to the concerned Court.