

(2014) 09 GUJ CK 0156
In the Gujarat High Court
Case No : First Appeal No. 3756 of 2005

Shantidevi and Others

APPELLANT

Vs

Satish Chandulal Barai and Others

RESPONDENT

Date of Decision : 05-09-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 170, 173

Citation : (2015) 2 ACC 65

Hon'ble Judges : Bhaskar Bhattacharya, C.J.

Bench : Single Bench

Advocate : Ashok H. Trivedi, Advocate, for the Appellant

Final Decision : Allowed

Judgement

Bhaskar Bhattacharya, C.J.—This appeal under Section 173 of the Motor Vehicles Act (hereinafter referred to as "the Act") is at the instance of the claimants in a proceeding under Section 166 of the Act and is directed against an award dated 31st March, 2004 passed by the Motor Accident Claims Tribunal (Aux.), Jamnagar in MAC Petition No. 647 of 1996 thereby partly allowing the application by awarding a sum of Rs. 3,70,000 with interest at the rate of 9% per annum from the date of filing of the application till realisation. Being dissatisfied, the claimants have come up with the present appeal.

2. It may not be out of place to mention here that neither the owner of the offending vehicle nor the Insurance Company of the offending vehicle has filed either any cross-objection or separate appeal challenging the award.

3. Thus, the only question involved in this appeal is as regards the quantum of compensation.

4. It appears from the record that on 4th September, 1996 while the victim was stepping down from a Chhakdo rickshaw, a Maruti Car dashed the victim resulting in injury and subsequent death of the victim. According to the claimants, his widow and six children, the victim was a Labour Contractor and

used to earn Rs. 10,000 to Rs. 12,000 a month by supplying labour to Larsen and Toubro, a firm of repute, for various works in the Jamnagar region. The claimants, thus, prayed for Rs. 16 lakh by way of compensation.

5. In spite of service of notice, neither the driver nor the owner of the offending Maruti Car entered appearance or filed written statement. However, the National Insurance Co. Ltd., the insurer of the offending Maruti Car, entered appearance and filed written statement by taking leave under Section 170 of the Act.

6. At the time of hearing, four witnesses were examined on behalf of the claimants but none was examined on behalf of the Insurance Company. However, the witnesses of the claimants were cross-examined by the Insurance Company.

7. The learned Tribunal below, on consideration of the materials on record, came to the conclusion that the claimants could not prove the actual income of the victim. The Tribunal was of the opinion that on the basis of evidence on record a sum of Rs. 3,000 a month should be treated to be the monthly income of the victim. Although the claimants alleged that the victim was 30 years old at the time of accident, by relying upon the post-mortem report, the Tribunal below came to the conclusion that the victim was 35 years of age. The Tribunal, thereafter, deducted one-third for his personal expenditure and applied the multiplier of 15 to arrive at the figure of Rs. 3,60,000. In addition to that, a further sum of Rs. 5,000 towards funeral ceremony and Rs. 5,000 towards the religious ceremony performed by the claimants at their native village after the death were awarded. Thus, the total amount came to Rs. 3,70,000.

8. After hearing the learned Counsel for the parties and after going through the aforesaid materials on record, I find that it is well established that the victim used to work as a Labour Contractor of Larsen and Toubro, as it appears from various documents produced on behalf of the victim. Although the learned Tribunal below pointed out that in none of those documents, the name of the victim appears, I find that the witnesses for the victim specifically stated that the victim used to work as a Labour Contractor in the name of the firms, namely, Sharda Construction and Shahin Construction. No suggestion to the contrary was given to the witnesses indicating that Sharda Construction and Shahin Construction did not belong to the victim. It is true that from those documents the amount of income earned by the victim cannot be arrived at.

9. Be that as it may, the Tribunal below having fixed the monthly income of the victim at Rs. 3,000 in the year 1996, I do not find any reason to interfere with such finding after taking into consideration the fact that he was a Labour Contractor dealing with a firm of repute, more so, when the Insurance Company has accepted the award.

10. I, however, find substance in the contention of the learned Advocate for the appellant that the Tribunal below committed substantial error of law in not taking into consideration the prospective income of the victim. In view of the decision of the Supreme Court in the case of Smt. Sarla Verma and Others Vs. Delhi

Transport Corporation and Another, , I am of the view that the actual compensation should be assessed by following the principles laid down in that decision. By following the decision of Sarla Verma (supra), 50% of the existing income should be added to the existing income for the purpose of assessing the future prospective income. Thus, Rs. 3000 + Rs. 1500=Rs. 4500 should be treated to be the future prospective income for the purpose of calculation. Since the victim left seven dependents, one-fifth (Rs. 900) should be deducted and the loss of future dependency should be treated to be Rs. 3600 a month. By multiplying the said amount with 12, the yearly loss of future dependency would be Rs. 43,200.

11. As regards the age of the victim, in the claim-application itself the age having been stated to be 35 years, I propose to accept that age to be the genuine one, though in the post-mortem, the age is declared to be about 30 years. Thus, applying the multiplier of 15 to Rs. 43,200, the total amount will come to Rs. 6,48,000 to which a further sum of Rs. 20,000 should be added under the head of conventional amount and the total amount of compensation will come to Rs. 6,68,000.

12. In my opinion, having regard to the fact that the accident occurred in the year 1994, the rate of interest payable should be 12% per annum from the date of filing of the application till 31st December, 1999 and from 1st January, 2000 till payment rate of interest should be 9% per annum.

13. I, thus, modify the award by enhancing the same by Rs. 2,98,000 and also by enhancing the rate of interest, as stated above. The Insurance Company is directed to deposit the enhanced amount with interest as indicated above within two months from today before the Tribunal below. On deposit of such amount, the claimants will be entitled to withdraw the amount and the same be disbursed by account payee cheques upon proper verification. The appeal is, thus, allowed to the extent indicated above.

Registry is directed to return the Record and Proceedings to the Tribunal immediately.