
(2014) 10 GUJ CK 0002
In the Gujarat High Court
Case No : First Appeal No. 1366 of 2009

Sonaben and Others

APPELLANT

Vs

Abhram Alarakha and Others

RESPONDENT

Date of Decision : 15-10-2014

Acts Referred:

Citation : (2015) 4 ACC 35 : (2015) 1 GLR 744

Hon'ble Judges : Akil Abdul Hamid Kureshi, J; V.M. Pancholi, J

Bench : Division Bench

Advocate : Jigar G. Gadhavi, Advocate for the Appellant;

Final Decision : Partly Allowed

Judgement

V.M. Pancholi, J.

1. The present appeal is filed by the appellants-original claimants against the judgment and award dated 11th December, 2007 passed by the learned Presiding Officer, Fast Track Court No. 2, Ahmedabad (Rural) at Mirzapur, Ahmedabad in Motor Accident Claim Petition No. 1718 of 1998. The brief facts of the present case are as under:

2.1. The accident took place on 16th August, 1998 at about 3-00 p.m. near Satkar (Satyam) Hotel, near Limbdi on Limbdi-Ahmedabad National Highway. The deceased Bhikhabhai Sankabhai, who died in the said accident, was driving Tata Sierra car bearing registration No. GJ-2-A-9514. The tanker bearing registration No. GJ-1-X-6573 came from the opposite direction with full speed, as a result of which, the aforesaid accident occurred. Bhikhabhai received serious injuries, as a result of which, he died on the spot.

2.2. The present appellants-original claimants filed the claim petition before the learned Motor Accident Claims Tribunal. The said claim petition was filed by the widow of the deceased and her two sons. In the said petition, they claimed an amount of Rs. 25 lacs by way of compensation. It is stated in the claim petition

that the deceased Bhikhabhai was aged about 38 years, and was serving as a driver in Sendwik Chokshi Limited and he was getting monthly salary of Rs. 9,000/- per month. He was also having agricultural income of rupees four to five thousands per month.

2.3. The said claim petition was opposed by the original respondent Nos. 3 and 5 - Insurance Companies, and they denied their liability to make any payment. It was urged that because of the sole negligence of the deceased, the accident occurred.

2.4. The learned Tribunal after considering the oral as well as documentary evidence available on record held that the deceased Bhikhabhai was negligent to the extent of twenty percent, whereas the driver of the tanker was held negligent to the extent of eighty per cent in causing the accident. Thereafter, the learned Tribunal considered the salary slip (Exh. 47) for determining the amount of compensation. While relying upon the salary slip (Exh. 47), the learned Tribunal considered Rs. 2,520/- per month as the income of the deceased, and based on the said income, the Tribunal granted an amount of Rs. 3,93,120/- after applying multiplier of 13. The Tribunal also awarded Rs. 20,000/- towards loss of consortium and loss of love and affection. Whereas, Rs. 10,000/- was awarded towards loss of estate. Further, an amount of Rs. 5,000/- was also awarded under the head of funeral expenses. Thus, the total amount of Rs. 4,28,120/- was awarded by the Tribunal.

2. We have heard Mr. Jigar G. Gadhavi, learned Advocate for the appellants, Mr. Dakshesh Mehta, learned Advocate for the respondent No. 5 - The National Insurance Company Limited, Mr. Sunil B. Parikh, learned Advocate for respondent No. 3 - The New India Insurance Company Limited, and Mr. Dipen K. Dave, learned Advocate for the respondent No. 2.

3. The judgment and award of the Claims Tribunal is challenged by the original claimants in the present appeal mainly on two grounds. Mr. Gadhavi, learned Advocate for the appellants submitted that the learned Tribunal has wrongly held that the deceased was negligent in driving the car, and thereby, wrongly held that he was negligent to the extent of twenty percent. It was further submitted by the learned Advocate for the appellants that the learned Tribunal has wrongly relied upon the judgment and award given by the Claims Tribunal in another case, i.e. in Motor Accident Claim Petition No. 1266 of 2004, and thereby, wrongly held that the deceased was negligent to the extent of twenty percent. It is submitted by him that the present appellants - original claimants were not party to the aforesaid proceedings, and therefore, the said judgment cannot be relied upon by the learned Tribunal in the present case. So far as the income of the deceased is concerned, Mr. Gadhavi has submitted that the Tribunal has committed an error by determining the income of the deceased at Rs. 2,520/-, and wrongly deducted the amount of provident fund and the amount deposited in the credit society. Learned Advocate further submitted that the learned Tribunal has wrongly applied the multiplier of 13. He has relied upon the decision of the

Hon"ble Supreme Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another,], and submitted that the age of the deceased was 38 years, and therefore, the multiplier of 15 ought to have been applied by the learned Tribunal.

4. Learned Advocates appearing on behalf of the respondents-Insurance Companies have submitted that no error whatsoever has been committed by the learned Tribunal. While observing that the deceased was negligent to the extent of twenty percent in causing the accident the amount of compensation awarded by the learned Tribunal is just and proper, and therefore, the appeal deserves to be dismissed.

5. We have perused the record and the judgment and award passed by the learned Tribunal. In our opinion, the learned Tribunal has rightly relied upon a certified copy of the judgment and award in Motor Accident Claim Petition No. 1266 of 2004 in which panchnama of the place of the accident is referred to. If the panchnama of the place of accident in the present case is seen, it is clear that the deceased was also negligent in driving his car, as a result of which, the accident has occurred, and therefore, the Tribunal has rightly held that he was negligent to the extent of twenty percent. Therefore, we are not interfering with the said observation of the learned Tribunal.

6. If the salary slip (Exh. 47) is carefully seen, it is stated therein that the gross pay of the deceased was Rs. 3,948/- i.e. approximately Rs. 4,000/- per month. As per the case reported in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another,], relied upon by the learned Advocate for the appellants, looking to his age of the deceased, i.e. 38 years, fifty percent of rise is required to be given in the prospective income of the deceased. Hence, the income of the deceased can be considered at Rs. 6,000/- per month. Further, there are three dependents of the deceased Bhikhabhai, and therefore, one third income is required to be deducted for personal expenses of the deceased. Accordingly, the dependency benefit would come to Rs. 4,000/- per month, and the annual income of the deceased can be considered as Rs. 48,000/-, i.e. Rs. 4,000/- x 12. Thereafter, if multiplier 15 is applied, as per the decision of the Hon"ble Supreme Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another,], looking to the age of the deceased, the total loss of dependency would come to Rs. 7,20,000/-.

7. At this stage, learned Counsel Shri Gadhavi for the claimants urged that in terms of the judgment of the Supreme Court in the case of Rajesh and Others Vs. Rajbir Singh and Others, , the claimants would be entitled to Rs. 1 lac under the head of consortium, and Rs. 1 lac towards loss of care and guidance to the children. He pointed out that in a later decision in the case of Vimal Kanwar and Others Vs. Kishore Dan and Others, , the Supreme Court once again granted Rs. 1 lac under such heads. It was also pointed out that in the case of Sanobanu Nazirbhai Mirza and Others Vs. Ahmedabad Municipal Transport Service, , the Supreme Court awarded similar amounts relying on the decision in the case of

Rajesh and Others Vs. Rajbir Singh and Others,].

Learned Counsel for the Insurance Company also drew our attention to a decision of the Supreme Court in the case Minu Rout and Another Vs. Satya Pradyumna Mohapatra and Others, in which a sum of Rs. 50,000/- was awarded under conventional heads. He pointed out that this Court in the case of United India Insurance Co. Ltd. v. Naynaben, Wd/o. Bharatkwnar Bhalchandra Patel, in First Appeal No. 481 of 2001, referring to the decision in the case of Minu Rout and Another Vs. Satya Pradyumna Mohapatra and Others,] awarded a combined sum of Rs. 50,000/- towards loss of consortium, loss of estate and funeral expenses.

In the case of Rajesh and Others Vs. Rajbir Singh and Others,] the Supreme Court Advocated for increase in the amount of consortium being awarded in fatal cases. It was observed as under:

"17. The ratio of a decision of this Court, on a legal issue is a precedent. But an observation made by this Court, mainly to achieve uniformity and consistence on a socio-economic issue, as contrasted from a legal principle, though a precedent, can be, and in fact ought to be periodically revisited, as observed in Santosh Devi. We may therefore, revisit the practice of awarding compensation under conventional heads: loss of consortium to the spouse, loss of love, care and guidance to children and funeral expenses. It may be noted that the sum of Rs. 2500 to Rs. 10,000 in those heads was fixed several decades ago and having regard to inflation factor, the same needs to be increased. In Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , it was held that compensation for loss of consortium should be in the rage of Rs. 5,000 to Rs. 10,000. In legal parlance, "consortium" is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our Courts. The loss of companionship, love, care and protection, etc. the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for loss of consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English Courts have also recognized the right of a spouse to get compensation even during the period of temporary disablement. By loss of consortium, the Courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are if the view that it would only be just and reasonable that the Courts award at least rupees one lac for loss of consortium."

In the said judgment, the Supreme Court awarded a sum of Rs. 1 lac separately for loss of care, guidance for the minor children. One may, however, notice that

no separate amount was awarded for loss of estate. Later, in the case of Vimal Kanwar and Others Vs. Kishore Dan and Others,] the Supreme Court once again awarded compensation in following manner:

"33. Having regard to the facts and evidence on record, we estimate the monthly income of the deceased Sajjan Singh at Rs. 9,000 x 2 = Rs. 18,000/- per month. From this his personal living expenses, which should be 1/3rd, mere being three dependents has to be deducted. Thereby, the "actual salary" will come to Rs. 18,000 - Rs. 6,000/- = Rs. 12,000/- per month or Rs. 12,000 x 12 = Rs. 1,44,000/- per annum. As the deceased was 28 1/2 years old at the time of death the multiplier of 17 is applied, which is appropriate to the age of the deceased. The normal compensation would then work out to be Rs. 1,44,000/- x 17 = Rs. 24,48,000/- to which we add the usual award for loss of consortium and loss of the estate by providing a conventional sum of Rs. 1,00,000/-; loss of love and affection for the daughter Rs. 2,00,000/-, loss of love and affection for the widow and the mother at Rs. 1,00,000/- each i.e. Rs. 2,00,000/- and funeral expenses of Rs. 25,000/-."

Likewise, in the case of Sanobanu Nazirbhai Mirza and Others Vs. Ahmedabad Municipal Transport Service,] also, the Supreme Court awarded such amounts without separately awarding any compensation for loss of estate.

It is true that in the case of Minu Rout and Another Vs. Satya Pradyumna Mohapatra and Others,] a Division Bench of the Supreme Court confined the compensation under conventional heads to Rs. 50,000/-. This Court has, as noted above, adopted such a modality in the case of United India Insurance Company v. Naynaben, [First Appeal No. 481 of 2001 decided on 18/19-9-2013].

8. It can thus be seen that the compensation to be awarded towards consortium and loss of love and affection to the children is not rigidly standardized. Nevertheless, the trend and the indications available from different decisions of the Supreme Court are in favour of increasing such compensation under conventional heads to keep in tune with the reducing purchasing power of the rupee as also bearing in mind the concept of sudden tragic and needless loss of life resulting into trauma and mental agony to the family members of the deceased. If it happens to be the wife, she would be deprived of life long love, affection and protection and companionship. The children at tender age would lose parents, without whom, their upbringing and parenting would indefinitely be incomplete. The judgments of the Supreme Court noted above, including one in the case of Minu Rout and Another Vs. Satya Pradyumna Mohapatra and Others,] cited by the Counsel for the opponents do suggest a break from the present trend of awarding rather conservative amounts towards consortium or loss of love and affection to the children.

In the facts of the present case, therefore, we adopt a sum of Rs. 1 lac towards combined heads of loss of consortium and loss of love and affection to the children. No separate amount is being awarded to the loss of estate. This would

be added by Rs. 10,000/- towards funeral expenses. Thus, the total compensation payable to the claimants would work out to Rs. 8,30,000/-. This would be in substitution of the direction of compensation of Rs. 4,28,120/- awarded by the Claims Tribunal.

It is required to be noted that the learned Tribunal has rightly considered the negligence of the deceased to the extent of twenty percent, and therefore, the amount of Rs. 1,66,000/- is required to be deducted from the aforesaid total amount of Rs. 8,30,000/-. In our opinion, the appellants-original claimants are entitled to get a total amount of Rs. 6,64,000/- with interest at the rate of nine per cent from the date of the claim petition. Therefore, the respondent No. 3 - The New India Insurance Company Limited is directed to deposit the additional amount of compensation awarded in this judgment within a period of eight weeks before the Claims Tribunal. It is further directed that out of the additional amount which would be deposited by the respondent No. 3 - The New India Insurance Company Limited before the learned Claims Tribunal, sixty percent amount shall be deposited in a nationalized bank for a period of five years in a Fixed Deposit in the name of the claimants, and the claimants are entitled to get periodical interest that would accrue on the Fixed Deposit. Remaining forty percent of the additional amount shall be paid to the claimants by an account payee cheque after proper verification. Respondent No. 5-The National Insurance Company Limited, the insurer of the deceased is exonerated. The amount already deposited by respondent No. 5 shall be returned to it. With these directions, the First Appeal is partly allowed and stands disposed of accordingly.