(2008) 12 GUJ CK 0065

In the Gujarat High Court

Case No : First Appeal No''s. 753 and 1873 of 2002 with Cross Objection No. 116 of 2006

United India Ins. Co. Ltd. APPELLANT

Vs

Tejuben Jerambhai Vadher and Others RESPONDENT

Date of Decision : 17-12-2008

Acts Referred:

Citation : (2008) 12 GUJ CK 0065

Hon'ble Judges : R.P. Dholakia, J;M.B. Shah, J

Bench : Division Bench

Advocate : Vibhuti Nanavati, 1 in FA No. 753/2002 with Cross Objection No. 116/2006 and A.M. Dagli, in FA No. 1873/2002, for the Appellant; Paurami B. Sheth, for respondents 1/1 to 1/8 and Ashish M. Dagli, in FA No. 753/2002 with Cross Objection No. 116/2006 and Vibhuti Nanavati, for respondent No. 10 in FA No. 1873/2002, for the Respondent

Final Decision : Dismissed

Judgement

M.D. Shah, J.—Both these appeals being First Appeal No. 753/2002 preferred by the United India Insurance Co. Ltd. and First Appeal No. 1873/2002 preferred by the Gujarat State Road Transport Corporation arise out of one and the same judgment and award dated 9-11-2001 passed by the Motor Accident Claims Tribunal (Auxi.III) at Surendranagar in M.A.C.P. No. 660/1992 awarding in all compensation of Rs. 9,98,300/- to the applicants-original claimants (the present respondent Nos. 1/1 to 1/8 who are the legal heirs of the deceased, and therefore, with the consent of the learned Counsel appearing for the respective parties, they are being disposed of by this common judgment.

2. At the outset, we may state that learned Counsel Ms. Paurami Sheth appearing for the respondent No. 1/1 to 1/8 has submitted that the present respondent No. 1/8 Valiben Khimjibhai had expired during the pendency of the appeal. Hence, the appeal abates so far as respondent No. 1/8 is concerned. The appeal qua the respondent No. 1/8 stands disposed of accordingly.

3. The brief facts giving rise to the present appeals are that the accident in question took place on 1-12-1982. It is alleged in the complaint that on that day, the deceased Jerambhai was travelling in the ST Bus No. GJ 12 1136 owned by the Gujarat State Road Transport Corporation-applicant in FA No. 1873/2002 and when the bus reached Rajkot Limbdi Road near the sign board of the village Vadod, the S.T. Bus driver lost control over the steering of the bus and the bus collided with one tanker bearing Registration No. GJ 12 T 5950 as a result of which the accident occurred. Due to the said accident some passengers received injuries while some of them lost their life. Deceased Jerambhai who received injuries in the said accident was shifted to the V.S. Hospital at Ahmedabad where he was treated for four days and during the course of treatment , he expired. Hence, the heirs and legal representatives of the deceased Jerambhai Khimjibhai filed above referred M.A.C.P. No. 660/1992 claiming compensation of Rs. 11,00,000/- with interest and costs against the Gujarat State Road Transport Corporation, Ahmedabad (appellant in FA No. 1873/2002, one Ghanshyam Malit Patel (owner of the tanker i.e. respondent No. 3 in FA No. 753/2002 and respondent No. 9 in FA No. 753/2002) and the United India Insurance Co.Ltd. (insurer of the tanker i.e. appellant in FA No. 753/2002 and the respondent No. 10 in FA No. 1873/2002.

4. After recording of evidence and hearing the parties, the Claims Tribunal partly allowed the claim petition of the respondents Nos. 1/1 to 1/8 who are the legal heirs of deceased Jerambhai and awarded in all Rs. 9,98,300/- along with interest at the rate of 9% per annum from the date of the application till realisation from the original opponents by holding them jointly and severally liable. It is against this judgment and award of the Claims Tribunal that the present appellants have approached this Court by way of the present appeals.

5. We have heard the learned Counsel for the appellants as also the respondents in each of these appeals and also examined the record.

6. Learned Counsel Mr. Nanavaty for the appellant in FA No. 753/2002 vehemently argued that it is clear from the complaint Exh.28 filed by the passengers of the ST bus that the accident has occurred due to the sole negligence of the driver of the ST Bus. The learned Counsel also drew our attention to the Panchnama Exh.29 and submitted that looking to the Panchnama also it transpires that the driver of the ST Bus was solely negligent, as a result of which, the accident took place. As such, according to the learned Counsel , the Tribunal has grossly erred in arriving at a finding that both the vehicles were equally negligent due to which the accident took place. The learned Counsel also argued that the amount of compensation awarded is excessive and exorbitant.

7. Learned Counsel Mr. Dagli for the appellant -Gujarat State Road Transport Corporation in FA No. 1873/2002 submitted that though there is no specific proof as regards income of deceased Jerambhai, the learned Tribunal has awarded Rs. 9,98,300/- as compensation to the appellants-original claimants, and therefore, compensation awarded by the Tribunal cannot be said to be a fair or just

compensation. He also submitted that the driver of the tanker was solely negligent in causing the accident and as such, the learned Tribunal has erred in holding that the drivers of both the vehicles _ the ST bus and the tanker were equally negligent. No doubt this contention is raised in the appeal memo but by filing appeal, the ST Corporation has restricted the claim to Rs. 2 Lacs only.

8. Learned Counsel Mr. Vibhuti Nanavaty took this Court through the FIR Exh.28, Panchnama Exh.29, statement of payscale of the deceased Jerambhai at Exh.32, deposition of the widow of the deceased Jerambhai at Exh.33 and the statement of gratuity of deceased at Exh.34.

9. It is true that Tejuben- the widow of the deceased Jermbhai examined at Exh.33 has no personal knowledge regarding the accident but through her evidence the documents in respect of the income of deceased Jerambhai have been proved. It is also an admitted fact that neither the ST Corporation nor the Insurance Co. has chosen to examine the driver or any other witness for proving the point as to the extent of negligence attributed to each of the drivers i.e. of the ST Bus or the tanker. The only evidence available on record to prove the extent of negligence are the FIR and the Panchnama. The learned Claims Tribunal after having examined such documentary evidence, came to the conclsuion that both the vehicles collided and it is difficult to pinpoint as to who was exactly negligent and to what extent in causing the accident, and therefore, held the drivers of both the vehicles liable for causing the accident.

10. We have closely scrutinized the entire record. There is no dispute to the fact that deceased Jerambhai died as a result of injuries received from the vehicular accident as referred to above. We are at a loss to find anything from the record which could lead us to believe that the accident in question occurred only on account of the sole negligence of one of the drivers i.e. of the ST Bus or the tanker. Under the circumstances, we hold that the Tribunal was just and proper in attributing 50% negligence to each of the drivers. In this view of the matter, the arguments canvassed by the learned Counsel for the appellants in both these appeals do not merit acceptance.

11. This brings us to the question of quantum of compensation. It is an admitted fact that deceased Jerambhai was aged 40 years at the time of the accident and was serving in the capacity of a Deputy Account with Gujarat Water Supply and Sewerage Board (GWS & SB) and was drawing monthly salary of Rs. 2811/-. The statement of payscale of deceased Jerambhai produced on record at Exh.32 shows that if the deceased would have been alive, then in September, 2009, he would have earned salary of Rs. 10,948/-. The learned Claims Tribunal had added Rs. 10,948/- to Rs. 2811/- which was the salary drawn by the deceased at the time of the accident and that worked out to Rs. 13759/-. For arriving at the average monthly income, the learned Claims Tribunal divided Rs. 13,759 by 2 to get Rs. 6880/- and rightly so. The learned Claims Tribunal then deducted Rs. 2295/- being one-third of the amount of Rs. 6880/- towards personal expenses and arrived at the round figure of Rs. 4600/- per month as the monthly future

loss of income of the deceased which would work out to actual yearly income of the deceased at Rs. 55,200/-. Then taking into consideration the age of the deceased as 40 years at the time of the accident, as also the fact that there still remained 18 years of service, the Tribunal applied the multiplier of 15 and arrived at the figure of Rs. 8,28,000/- as the dependency amount which the claimants are entitled to. Thereafter, the Tribunal took into consideration Exh.32 the statement of payscale of the deceased and going by the calculation table held that the deceased was entitled to 16.5 months pay which comes to Rs. 1,58,000/- i.e. Basic plus DA of Rs. 9588 x 16.5. The claimant was paid Rs. 15,840 as gratuity , and therefore, the Tribunal has rightly deducted Rs. 15,840/- from Rs. 1,58,000/- to get Rs. 1,42,360/- being the gross gratuity amount. Thus, the Tribunal held that the claimant was entitled to Rs. 1,42,360/- as the loss of estate on account of gratuity. The Tribunal also awarded Rs. 10,000/- under the head of pain, shock and suffering, Rs. 5,000/- for medical, transport charges etc., Rs. 10,000/- for loss of consortium and Rs. 3,000/- for funeral expenses. Thus, in all the Tribunal awarded the round figure of Rs. 9,98,300/- as compensation to the claimants, which in our opinion is quite just and proper warranting no interference.

12. The learned Counsel for the respondents in both these appeals could not point out anything from the record to justify their case that compensation awarded by the Tribunal under the different heads as stated hereinabove is excessive or exorbitant.

13. In view of the aforesaid discussion, there being no merit in both these appeals, the same fail and are hereby dismissed.

14. As observed by us earlier, the compensation awarded by the Claims Tribunal is quite just and proper, and therefore, the Cross Objections No. 116 of 2006 filed for enhancement of compensation also does not survive and stands disposed of accordingly.

