(2005) 02 GUJ CK 0012

In the Gujarat High Court

Case No : First Appeal No''s. 2982 and 3839 of 1996

United India Insurance Co. Ltd. APPELLANT

Vs

Shilpa Jigishbhai @ Jignesh Vyas RESPONDENT

Date of Decision : 23-02-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 170

Citation : (2005) 4 ACC 485 : (2005) 4 ACC 112 : (2005) 3 ACC 343 : (2005) ACJ 1645 : (2005) 2 GLR 1784

Hon'ble Judges : Bhawani Singh, C.J;H.K. Rathod, J

Bench : Division Bench

Advocate : P.V. Nanavati, in First Appeal No. 3839 of 1996 and B.S. Patel, in First Appeal No. 2982 of 1996, for the Appellant; B.S. Patel, for Respondent Nos. 1-2 and Ranjan B. Patel, in First Appeal No. 3839 of 1996, for the Respondent

Judgement

Bhawani Singh, C.J.—These appeals have arisen out of the award passed by the MACT (Aux) Baroda in MACP No. 386 of 1990 dated April 30, 1996.

2. Briefly stated, Jigishbhai alias Jignesh Patel (deceased) was going from Baroda to Dabhoi driving his Fiat Car No. GA 8799 on correct side of the road. When his car reached between village Thuvavi and Fertikui, truck bearing Registration No. GTP 7094 driven by opponent No. 1 came from opposite direction at full speed It went on the wrong side of the road and dashed with the front right portion of the Fiat Car. Car was completely smashed and deceased died on the spot due to injuries sustained by him. The allegation is that the death was caused due to rash and negligent driving by opponent no. 1 owner and driver of the truck, insured with M/s. United India Insurance Co. ltd. (opponent No. 2). Further, it is stated that the deceased was earning Rs. 17,000.00 p.m. He was young person of 23 years, quite healthy. His grand father (70) was alive at the time of accident, so also his grand mother. His father was aged 47 year old at that time. Initially, deceased was working honorary in Kishan Multipurpose Coop. Society Ltd. at Dabhoi dealing in agricultural, vegetable produce, fertilizers, seeds,

insecticides etc. and was supplying grams and fodder to the police department in the city of Baroda (Rural), Districts of Surat, Bharuch, Anand and Idar etc. through other registered Cooperative Societies. After rendering honorary service for six months, society was satisfied with his work, therefore, by resolution dated 7.8.88, appointed him in the society on salary of Rs. 3000.00 p.m. plus 7% commission on sale proceeds. Security of Rs. 25000.00 was also obtained from the deceased. During the year 1988-89, deceased was paid commission of Rs. 79,119.75 ps. plus Rs. 36000.00 as salary. For the period from 1.7.1989 to 31.12.1989, he was paid Rs. 37,337.01 towards commission and Rs. 18,000.00 as salary for six months. Besides, deceased was cultivating land admeasuring 18 acres situated at village Tatarpura, Taluka Baroda in the joint names of deceased, his grand mother and mother. It was irrigated land and the deceased was taking crop of Jivar and Batoo for horses. The total gross income for the year 1988-89 out of the agricultural work was Rs. 62,000.00. He was the only child in the family, therefore, family suffered great shock on his death. They claimed compensation for love and affection to the tune of Rs. 30,000.00 and Rs. 20,000.00 for loss of expectancy of life. Initially, claimants claimed the compensation of Rs. 30 lac but later doubled the claim by amending the claim petition (Exh. 23)

3. Owner and driver did not file written statement nor appeared at any stage before the claims tribunal to contest the claim. The Insurance Co. did not seek permission u/s 170 of the Motor Vehicles Act, 1988 to contest the claim on all available grounds. However, it filed the written statement Exh.14 and submitted that the claimants were not entitled to get the compensation. Taking place of accident has been disputed. The manner in which the accident took place has also been disputed. It is denied that the truck dashed with the car and the deceased suffered injuries on account of which he died. Alternatively, it is submitted that the Fiat Car was being driven at excessive speed and negligently by the deceased, therefore, he was responsible for the accident. The claim is, otherwise, excessive and both, car driver and truck driver contributed to the accident, car driver should be held more responsible for the accident.

4. On the pleadings of the parties, the Claims Tribunal framed issues (Exh.22). After recording the evidence, the tribunal held that the claimants have proved that the deceased died due to rash and negligent driving by driver of truck. Compensation of Rs. 29,15,000.00 with proportionate costs and interest at the rate of 15 % p.a. has been allowed. The owner-driver and Insurance Co. have filed this appeal challenging the judgment as to the income of the deceased, assessment of compensation, extent of interest, while claimants (Appeal No. 2982 of 1996) are seeking enhancement of compensation. Therefore, both the appeals are being taken up for disposal.

5. In National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others, the apex court has overruled the decision in United India Insurance Co. Ltd. Vs. Bhushan Sachdeva and Others, referred to by Mr. Nanavati. [See New India

Assurance Co. Ltd. Vs. Tara Sundari Phauzdar, Full Bench and National Insurance Co. Ltd. Vs. Challa Bharathamma and Others, ; Chinnama George and Others Vs. N.K. Raju and Another, Undisputedly, the Insurance Company has not sought permission u/s 170 of the MV Act, 1988 to contest the claim on all available grounds, therefore, such challenge without permission u/s 170 of the MV Act, 1988 is not permissible. In the present case, the appeal is filed by the Insurance Company challenging quantum which is not available defence under these provisions, therefore, it cannot be raised by the Insurance Company. Owner did not file written statement nor appeared at any stage before the Claims Tribunal to contest the claim petition. Therefore, owner also cannot challenge the award on merits as no contention was raised by the owner before the Claims Tribunal. For these reasons, the appeal filed by the Insurance Co. is not maintainable.[See Oriental Insurance CO. Ltd. versus Manjulaben Jayantibhai Patel and Ors. { 2003 (3) GLH 204}].

6. Shri P.V. Nanavati contended that the income of the deceased is not rightly reflected in the records of the society and his personal account, therefore, income tax return cannot be believed. Precisely, submission is that the deceased was from good family, therefore, he is shown to have been employed in the society against the payment of salary of Rs. 3,000.00 p.m. and 7% commission on sales. Resolutions passed by the society do not reflect the correct position and transactions of sale are not accurate as observed by the auditor. It is also submitted that the deceased could not attend the agricultural operations in case he was employed in a society and these operations were being attended by his parents and other labourers. That apart, the land was joint family property, therefore, deceased could not have earned to the extent being said by the claimants. There can be no loss from tractor income because it can be used by the family after his death. These contentions are opposed by the learned counsel Shri B.S. Patel for the claimants. It is submitted that the deceased was only son in the family. It is reputed family with irrigated and non irrigated agricultural lands. He possessed tractor for cultivation and for rent. Crops were being sold through the society on commission and he was employed by the society after watching his work for six months, therefore, resolutions to this effect were passed by the executive committee and the general body of the society.

7. Giving consideration to the matter, we find that the deceased was young man 23 year old. He was possessing good health and could survive long looking to the longevity in the family. Consequently, he had potential to earn more in future through agricultural operations and employment. The Kishan Multi Purpose Society is an autonomous body. It acts through resolutions. Its actions are, therefore, regulated by the Act, Rules framed under the Act and its by-laws. Consequently, it cannot be said that the resolutions passed by the society with respect to his employment, payment of salary and commission are fake. Merely because the auditor made some remark with regard to procedural lapse, it cannot be said that the transactions were not genuine. Besides, the deceased possessed agricultural lands in the village, some of which were irrigated and

giving crop of Jivar and Batoo for horses. He used to sell the crops through society and earn 7% commission. It has been specifically stated that the supply was to local police department, Baroda and other districts and places mentioned hereinabove. There is no rebuttal to these assertions from the opponents by production of witnesses or documents demonstrating that such supplies were not being made. Further, the deceased had income from tractor. He was utilizing it for cultivating his land and lending it for rent in the area. In absence of the evidence to the contrary, income from the tractor is also justified. Deceased was the only child in the family, therefore, his death caused immense mental pain and suffering to the members of the family. His mother could not bear the shock of his death, therefore, she died immediately after the accident.

8. Considered on the principles laid down by the Apex Court in Smt. Sarla Dixit and another Vs. Balwant Yadav and others, and Division Bench of this Court in Ritaben alias Vanitaben and Anr. v. Ahmedabad Municipal Transport Service and Anr. (2000 ACJ 153) the amount of compensation payable to the claimants is computed.

9. After examining the judgment rendered by the Claims Tribunal, we find that the total income of the deceased has been taken at Rs. 19,500.00 p.m. from all sources. Income of the deceased used to be recorded by accountant Rameshbhai Kanaiyalal. He deposed that he used to keep the record of income of the deceased. He prepared income tax return of the deceased for the period from 23.10.1987 to 31.3.1989, total comes to Rs. 3,53,830.00 from all sources, paying income tax of Rs. 18,045.00 on 31st August, 1989. Best evidence to assess the compensation is to accept the income reflected in the income tax return filed before death, instead of income otherwise shown. Income of Rs. 3,53,830.00 is for 17 months. Therefore, his net income for 17 months after deducting income tax of Rs. 18045.00 would be Rs. 3,35,785 and divide it by 17, monthly income would be Rs. 19,752.00.00. [See:Damages for Personal Injuries and Death by John Munkman, Fifth Edition page 110]. Consequently, income is assessable thus 19,752x12=2,37,024.00+4,74,048[Double]=7,11,072.00 and one half thereof would come to Rs. 3,55,536.00. Deducting one third therefrom [3,55,536.00 less 1,18,512.], two third would come to Rs. 2,37,024.00.

10. As regards multiplier, at the time of death, deceased was 23 year old. As per the Second Schedule, multiplier of 17 is applicable but looking to the extent of compensation worked out, we choose lower multiplier of 14 instead of 17. Thus, applying the multiplier of 14 [2,37,024.00 x 14], compensation comes to Rs. 33,18,336.00. The claimants are also entitled to Rs. 5,000.00 towards loss to the estate, Rs. 5000/towards funeral expenses, loss of expectancy of life Rs. 10,000/-, Rs. 15000/- pain and suffering, total amount of compensation comes to Rs. 33,53,336.00.

11. Last submission advanced by the learned counsel Mr. P.V. Nanavati pertains to rate of interest. ON the basis of the decision of the apex court in United India Insurance Co. Ltd. Vs. Patricia Jean Mahajan and Others Etc. Etc., it is submitted

that the rate of interest be reduced to 12% from the date of the application till the date of payment. Shri B.S. Patel submits that it may not be reduced. However, taking into consideration the extent of compensation payable to the deceased, present rate of interest, rate of interest is reduced to 12% from the date of application till the date of payment from 15%, awarded by the Claims Tribunal. No other point has been urged. Consequently, appeals are disposed of in the terms indicated hereinabove leaving the parties to bear their own costs in this Court.

12. Insurance Company is directed to deposit the balance amount of compensation as per this judgment within three months which shall be disbursed by the Claims Tribunal to the claimants by way of an account payee cheque on proper verification. Registry to draw decree/award and transmit the same to the Claims Tribunal.