(2019) 07 GUJ CK 0088

In the Gujarat High Court

Case No : R/First Appeal No. 2343 Of 2011

United India Insurance Co.Ltd — APPELLANT

Vs

Suthar Niruben Widow Of Kantibhai And 7 Other(S) — RESPONDENT

Date of Decision : 10-07-2019

Acts Referred:
Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2019) 07 GUJ CK 0088

Hon'ble Judges : R.M.Chhaya, J;B.N. Karia, J

Bench : Division Bench

Advocate : Gc Mazmudar, Hg Mazmudar, Jm Barot, Mp Prajapati, Nagesh C Sood

Final Decision : Partly Allowed

Judgement

1. Feeling aggrieved and dissatisfied by the judgment and award dated 4.10.2010 passed by the Motor Accident Claims Tribunal (Aux), Mehsana in

Motor Accident Claim Petition no.746 of 2008, the insurance Company of the Car has preferred this appeal under section 173 of the Motor Vehicles

Act, 1988 (hereinafter referred to as the â??Actâ??).

2. Following facts emerge from the record of the appeal:Â?

2.1 That, the accident took place on 5.9.2008 between Maruti Car bearing registration no. GJÂ20 AÂ1069 and motorcycle bearing registration no.

GJÂ17 SÂ4430. It is the case of the original claimants that at about 09:15 p.m., on 5.9.2008, the deceased â?" Kantibhai was driving the motorcycle

belonging to respondent no.7 herein bearing registration no. GJÂ17 SÂ4430 between Godhra and Vadodara Highway. Record indicates that when the

motorcycle reached Khadki Village, respondent no.5 herein came from other side driving Maruti Car bearing registration no. GJÂ20 AÂ 1069 being driven in a rash and negligent manner from wrong side and dashed with the motorcycle because of which the deceased â?" Kantibhai sustained

serious injuries and died on the spot. An FIR was lodged with the jurisdictional Police Station at Exh.37 and the original claimants preferred a claim

petition under Section 166 of the Act and claimed compensation of Rs.40,00,000/Â?.

2.2 The original claimants relied upon the FIR at Exh.37, Panchnama at Exh.38, postmortem note of the deceased at Exh.40 in particular and also

relied upon the oral evidence of respondent no.7. The claimants also produced the school leaving certificate of the deceased at Exh.42, wherein it is

indicated that the date of birth of the deceased was 1.6.1954 and relied upon the pay slip of the deceased who was working as Assistant Director in

Gujarat Stat Land Development Corporation Ltd. On the basis of the pay slip at Exh.43, it is the case of the original claimants that the deceased had a

salary of Rs.16,698/Â per month. The Tribunal, considering the deduction towards taxes, determined the income of the deceased at Rs.16,400/Â per

month and granted benefit of prospective income and after deducting oneÂthird towards personal expenses, applied multiplier of 11 and granted

compensation of Rs.21,64,800/Â under the head of future loss of income. Over and above the same, the Tribunal also granted Rs.55,000/Â under

different conventional heads and thus, granted total compensation of Rs.22,19,800/Â, which is rounded off to Rs.22,20,000/Â with 7.50% interest from

the date of filing of the claim petition till its realization. As the deceased was himself driving the motorcycle, the Tribunal awarded Rs.11,10,000/Â as

net compensation to the original claimants with 7.50% interest per annum. Considering the Panchnama Exh.38 and the manner in which the accident

has occurred, the Tribunal came to the conclusion that the driver of both the vehicles i.e. Maruti Car and the motorcycle are equally liable and

negligent for the accident and thus, the Tribunal came to the conclusion that both the drivers are equally negligent. As the insurance Company of the

Maruti Car felt aggrieved, the present appeal is filed. No appeal is filed by the insurance Company of the motorcycle.

3. Heard H.G. Mazmudar, learned advocate for the appellant, Mr. J.M. Barot, learned advocate for respondents no.1 to 4 â?" original claimants, Mr.

M.P. Prajapati, learned advocate for respondent no.7 and Mr. Nagesh Sood, learned advocate for respondent no.8 and have also perused the original record and proceedings.

4. Mr. H.G. Mazmudar, learned advocate for the appellant has contended that considering the manner in which the accident has occurred, the

Tribunal has considered equal negligence of both the drivers. It is submitted that the Tribunal has committed an error in considering the prospective

income to the tune of 50%. It is further contended that the Tribunal has also not considered the deduction towards incomeÂtax which should at least

be considered to be 10% of the income and according to Mr. Mazmudar therefore, no incomeÂtax was taken into consideration for determining the

dependency benefit, is incorrectly considered. It is therefore submitted that the award is erroneous and the same deserves to be modified. Mr.

Mazmudar relied upon the judgment of the Hon'ble Apex Court in the case of National Insurance Company Limited Vs. Pranay Sethi & Ors. reported

in (2017) 16 SCC 680 to buttress his argument. On the aforesaid grounds, it was therefore contended that the appeal may be allowed to the aforesaid

extent and the judgment and award may be modified accordingly.

5. Per contra, Mr. J.M. Barot, learned advocate for respondents no.1 to 4 â?" original claimants has supported the impugned judgment and award.

It is submitted that the Tribunal has committed no error in calculating the prospective income and considering the date of the accident being 5.9.2008,

the Tribunal has applied the correct formula while considering the prospective income. It is also contended that there is no evidence on record to show

that the deceased paid incomeÂtax and according to Mr. Barot, as the deceased was working in a semiÂGovernment organization, the incomeÂtax is

always deducted from his salary. It is further contended that as the Tribunal has not considered any additional income by way of agriculture income,

as contended by the appellant before the Tribunal, unless and until there is exact deduction of incomeÂtax, no such deduction to the tune of 10% can

be made from the salary of the deceased while computing the income. According to Mr. Barot even as per the judgment of the Hon'ble Apex Court in

the case of Pranay Sethi (supra), income would mean gross salary minus tax. It is therefore submitted that the appeal, being meritÂless, deserves to

be dismissed.

6. Mr. M.P. Prajapati, learned advocate for respondent no.7 as well as Mr. Nagesh Sood, learned advocate for respondent no.8 have submitted that

this Court may pass appropriate orders.

7. Record indicates that the deceased was 54 years old on the date of the accident and was in service of Gujarat Stat Land Development Corporation

Ltd. as Assistant Director at Godhra. The pay slip at Exh.43 indicates that though his gross salary was Rs.16,698/Â, there is no deduction towards

incomeÂtax. We find that there is deduction of Rs.200/Â towards professional tax. The Tribunal has therefore rightly considered the income of the

deceased at Rs.16,400/Â per month. Mr. Mazmudar has rightly contended that as per the judgment of the Hon'ble Apex Court in the case of Pranay

Sethi (supra), the original claimants would be entitled to prospective income only to the tune of 15%, which comes to Rs.2,460/Â and therefore, the

monthly income would come to Rs.18,860/Â minus oneÂthird towards personal expenses i.e. Rs.6,287/Â, the net monthly income would come to

Rs.12,573/Â X 12 X 11 = Rs.16,59,636/Â. Thus, the original claimants would be entitled to compensation under the future loss of income at

Rs.16,59,636/Â. Over and above the same, following the judgment of the Hon'ble Apex Court in the case of Pranay Sethi (supra), the original

claimants would be entitled to additional amount of Rs.70,000/Â under different conventional heads and thus, the original claimants would be entitled to

total compensation of Rs.17,29,636/Â, which is rounded off to Rs.17,29,640/Â divided by 2, the amount comes to Rs.8,64,820/Â. As the liability of the

appellant is only to the extent of 50%, considering the negligence of both the vehicles being determined equally by the Tribunal, which is not disputed in

this appeal, the original claimants would be entitled to net compensation of Rs.8,64,820/Â with 7.50% interest per annum and costs from the date of

filing of the claim petition till its realization. As the Tribunal has awarded Rs.11,10,000/Â, the Tribunal shall refund the additional amount of

Rs.2,45,180/Â? with proportionate costs and interest to the appellant â?" insurance Company forthwith.

8. The appeal is partly allowed. The impugned judgment and award be modified to the aforesaid extent. Rest of the judgment and award remains

unaltered. Registry is directed to send back the record and proceedings to the Tribunal forthwith. However, there shall be no order as to costs in this

appeal.

