
(2008) 03 GUJ CK 0029
In the Gujarat High Court
Case No : First Appeal No. 1706 of 1999

Vilasben Jitendrakumar Shah and Others	APPELLANT
Vs	
Durga Tours and Travels and Another	RESPONDENT

Date of Decision : 12-03-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2008) 03 GUJ CK 0029

Hon'ble Judges : R.M. Doshit, J;C.K. Buch, J

Bench : Division Bench

Advocate : Jinesh Kapadia, for Harin P. Raval,s 1 - 4, for the Appellant; Vibhuti Nanavati, for P.V. Nanavati, for Respondent 2, for the Respondent

Final Decision : Allowed

Judgement

R.M. Doshit, J.—This Appeal preferred u/s 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as, "the Act") arises from the judgment and award dated 10th December, 1998 passed by the Motor Accident Claims Tribunal, Ahmedabad (hereinafter referred to as, "the Tribunal") in Motor Accident Claim Petition No. 21/1994. The appellants are the claimants.

2. On 27th December, 1993 at around 8:45 in the morning one Jitendrakumar Shah, while riding the scooter bearing registration No. GJ-1-C-9845, met with an accident with a matador bearing registration No. GJ-15-5119. He was ran over by the offending matador and died instantaneously. The appellants, the widow and three minor daughters of the deceased filed the above referred Claim Petition No. 21/1994 for a compensation in the sum of Rs. 30 lakhs. According to the claimants the accident in question occurred on account of the rash and negligent driving by the driver of the matador one Somsinh H.Bhatiya. The matador belonged to the respondent No. 2 and was insured by the respondent No. 3. The deceased was 41 years of age, was employed by one C.A.Galiakotwala & Co. Ltd. as a Sales Representative. He was also a partner in the business firm M/s.Dipti Traders. His monthly income was around Rs. 12,000=00 to 13,000=00.

3. The claim was contested by the Insurance Company by its written statements Exh.24 and 33.

4. In support of their claim, the claimants have examined the claimant No. 1, the widow of the deceased (Exh.39), one Shantilal Shah, the employee of the aforesaid C.A.Galiakotwala & Co. Ltd. (Exh.94), one Umakant, the brother of the deceased (Exh.56). The claimants relied upon the panchnama of the scene of accident (Exh.41), post-mortem report (Exh.45) and the certificate of income given by the Income Tax practitioner (Exh.85).

5. The Tribunal, having considered the evidence on record, held that the deceased was going at an excessive speed. He was, therefore, partially responsible for the accident. The deceased is held responsible for the accident to the extent of 25%. The claimants did not produce any documentary evidence of the age of the deceased. The Tribunal has relied upon the post-mortem report to hold that the deceased was of 46 years of age.

6. As to the computation of compensation, the Tribunal has relied upon the above referred income certificate (Exh.85). Considering the facts that the deceased had not passed S.S.C. examination; that he had joined the service in the year 1970 as a clerk for a salary of Rs. 465=00; that over the time he rose to be the sales representative for a monthly salary of Rs. 2,100=00; his income as was entered in the income tax returns (Exh.77 and Exh.84) and his tax liability, his annual income was estimated at Rs. 55,000=00. The Tribunal also noted that after the death of the deceased, the claimants were paid monthly Rs. 3,000=00 from the aforesaid partnership business, as interest on the investment made by the deceased.12-03-2008

7. We are of the opinion that the Tribunal below has erred in appreciating the evidence on record in respect of the accident in question. The location of the accident at the corner of the cross-roads suggests that it was the driver of the Matador who was negligent and was wholly responsible for the accident. The finding of the contributory negligence recorded by the Tribunal below is based on surmises and conjectures. The Tribunal has observed that, "...I am of the view that the accident might have taken place due to excessive speed of both vehicles.... I am of the view that it is a case of negligence on the part of drivers of both the vehicles, especially considering the fact that accident had taken place on intersection of four roads. The matador driver had ran away with his matador." As recorded hereinabove, the accident did not occur right at the intersection of four roads, but at the corner i.e., after the deceased had crossed the intersection and had reached near the entry of the road ahead the rear part of the scooter was hit by the matador. We, therefore, hold that the Tribunal below has erred in assessing 25% contributory negligence on the part of the deceased. The claimants are entitled to whole of the amount of compensation assessed.

8. This brings us to the question of quantum of compensation. We believe that

the Tribunal has, on appreciation of evidence on record, rightly held that the annual income of the deceased was around Rs. 55,000=00. The finding that the deceased was around 46 years of age and the adoption of a multiplier of 13 also do not call for interference. We, however, believe that the Tribunal has erred in not considering the future increase in the income of the deceased.

9. True, that the deceased was not highly educated. He had not passed even S.S.C. examination. He had started his career as a Peon on a monthly pay of Rs. 425=00. After 20 years he had rose to be a Sales Representative for a monthly pay of Rs. 2,100=00. There may not be much scope for improvement in the service. But, the deceased also had business in partnership with his brother and mother. As deposed by the father and the brother of the deceased, the deceased also contributed his skill to the business. The scope for increase in the income in future could not be ruled out. Considering that the business was established in the year 1974 and that it was continuously making profit, we believe we can fairly estimate the future rise in the income from business and an average annual income of Rs. 75,000=00. As the deceased was a Sales Representative and was also looking after his business, we can safely reduce 1/3rd of the income, the money spent for the maintenance and personal expenses of the deceased, to arrive at an annual dependency loss of Rs. 50,000=00. The claimants were, therefore, entitled to compensation in the sum of Rs. 6,50,000=00. To that, we add a sum of Rs. 30,000=00 for loss of expectancy of life, loss of consortium, funeral expenses, etc.

10. It has also come in the deposition of Umakant, the brother of the deceased (Exh.56) that since the death of the deceased, against his investment in the capital of the business, the claimants were paid Rs. 3,000=00 a month by way of interest. We are of the opinion that Rs. 3,000=00 paid to the claimants by the business firm as interest on capital investment is of no consequence i.e. it shall not affect the computation of dependency loss.

11. The claimants are, therefore, entitled to compensation in the sum of Rs. 6,80,000=00.

12. The Appeal is accordingly allowed with proportionate cost. The claimants will be entitled to the additional amount of compensation with interest at the rate of 6% per annum. The award made by the Tribunal below be modified accordingly.