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(2014) 08 GUJ CK 0002

In the Gujarat High Court

Case No : First Appeal No. 178 of 2005

Vinjaben Rakhyabhai Dangar APPELLANT

Vs

Samji Jina Patel RESPONDENT

Date of Decision : 25-08-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2014) 08 GUJ CK 0002

Hon'ble Judges : Bhaskar Bhattacharya, C.J

Bench : Single Bench

Advocate : Sureshm Shah and Mehul S. Shah, Advocate for the Appellant; G.C. Mazmudar and H.G. Mazmudar, Advocate for the Respondent

Judgement

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Bhaskar Bhattacharya, C.J.—This appeal under section 173 of the Motor Vehicle Act is at the instance of the claimants and is directed against the award dated 10th June, 2004 passed by the Motor Accident Claims Tribunal (Main), Kachchh at Bhuj in M.A.C.P. No. 140 of 2000 by partly allowing the same and awarding a sum of Rs. 4,78,000/- with interest at the rate of 9% per annum from the date of filing of the application till actual realization.

2. Being dissatisfied, the claimants have come up with the present appeal.

3. It is needless to mention here that neither the owner of the offending vehicle nor the insurance company of the said vehicle has either preferred any separate appeal or cross objection in this appeal. Therefore, the question that arises for determination in this appeal is as regards quantum of compensation payable to the claimants.

4. The following facts are not in dispute.

4.1. The victim along with his wife and a ten month old daughter were travelling in a scooter owned by the deceased and at that time due to head-on-collision

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with the tempo coming from opposite direction, both the victim and his wife died, living four minor children and mother.

5. In the claim application, the claimants have preferred claim a sum of Rs. 20,00,000/- as compensation on the allegation that the victim was a professional mechanic and used to earn Rs. 6000/- a month by employment in two different garages. According to the claimants, the victim used to get Rs. 3000/- each from above two garages. Two certificates given by the owner of each of the said garage have also been brought on record by proving the signatures of the owners of the those garages.

6. The Tribunal below on consideration of material on record was of the view that in absence of those owners in the witness box, contents of those certificates cannot be accepted and thereafter, by looking at the village revenue record of right in respect of agricultural land of the deceased, the Tribunal came to the conclusion that the victim had monthly income of Rs. 2000/- from the agricultural activities and after taking into consideration prospective income to be Rs. 2500/- and by application of multiplier of 17, the Tribunal arrived at a figure of Rs. 4,08,000/- and further added Rs. 70,000/- under various headings.

7. After hearing the learned advocates for the parties and after going through the material on record, I am, however, unable to accept the finding recorded by the Tribunal below as regards the income of the victim. There is no suggestion given to the brother of the victim who appeared as witness on behalf of the claimants that the victim was not a mechanic by profession. It is true that unless author of the certificate faces cross examination, the veracity of the statement made in the certificate cannot be automatically proved. In absence of any suggestion regarding profession of the victim as mechanic, the Tribunal atleast should have reasonably concluded as to his income from the profession of mechanic. It appears that the victim was aged 34 years old having four children and wife. It further appears that the mother of the victim also used to reside with the victim. It further appears that he had his own scooter. In such circumstances, in my opinion, it can be reasonably concluded that the victim had atleast monthly income of Rs. 5000/- a month.

8. As pointed out by Hon''ble Supreme Court in the decision of Laxmi Devi and Others Vs. Mohammad Tabbar and Another, , even the unskilled labourer now a days earn Rs. 3000/- a month. Such being the position, in case of a person who has family consisting of six members and maintaining a scooter, it is reasonable that such person must have income of Rs. 5000/- a month at the relevant time.

9. I, therefore, propose to calculate the compensation by following principle laid down by the Hon''ble Supreme Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, .

10. On the basis of aforesaid finding, yearly income of the victim comes to Rs. 60,000/-. Victim being aged 34 years, 50% of the income should be added to the same; thus the figure comes to Rs. 90,000/- per annum. There being five

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members in the family, 1/4th should be deducted from the said amount as personal expenditure and after deducting the said amount (Rs. 22,500), the prospective income comes to Rs. 67,500/-. If we apply multiplier of 16, the figure arrived at would be Rs. 10,80,000/-. In addition, further sum of Rs. 25,000/- should be added as loss of estate, love and affection and funeral expenditure and thus, final figure should be Rs. 11,05,000/-.

11. I, thus, modify the award impugned by awarding a sum of Rs. 11,05,000/- with interest at the rate of 9% per annum from the date of filing of the application till actual realization. The insurance company is directed to deposit the balance amount before the Tribunal within two months from today.

The appeal is disposed of. No order as to costs.

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