

HIGH COURT OF GUJARAT (D.B.)

DINESHKUMAR BRIJNANDAN

Versus

UMIYASHANKAR VEDPRAKASH MISHRA AND ORS

Date of Decision: 07 May 2015

Citation: 2015 LawSuit(Guj) 794

Hon'ble Judges: [Jayant M Patel](#), [G B Shah](#)

Case Type: First Appeal

Case No: 1095 of 2011

Subject: Motor Vehicle

Final Decision: Appeal allowed

Advocates: [R C Jani & Associate](#)

Cases Referred in (+): 2

Jayant M. Patel, J.

[1] The present appeal is directed against the judgment and award passed by the Tribunal dated 07.01.2011, whereby the Tribunal has awarded the compensation of Rs. 5,07,600/- with interest at the rate of 7.5% p.a.

[2] The short facts of the case appears to be that on 02.06.2009, when deceased Dinesh Brijnandan Shukla was driving his motorcycle, wherein Sureshkumar Dubey was the pillion rider, one Indica car bearing registration No. UP-43-K-8902 dashed with the motorcycle and the deceased Dineshkumar sustained injuries and ultimately succumbed to the injuries. The claim petition was filed for compensation of Rs. 30,00,000/-being MACP No. 33/10. The Tribunal at the conclusion of the petition, passed the above referred judgment and award. Under the circumstances, the present appeal before this Court.

[3] We have heard Mr. Jani, learned counsel appearing for the appellant and Mr. Palak Thakkar for respondent No. 3. So far respondents No. 1 and 2 are concerned, they are deleted.

[4] The only contention raised on behalf of the appellant was that the quantum of compensation awarded is much on lower side. It was submitted that the deceased was practising lawyer in UP, though evidence was not produced for showing the particular amount of income, but he submitted that the fact of practise as lawyer for three years, if considered, it can be said that the Tribunal has assessed income much on the lower side and therefore, this Court may enhance the amount of compensation. It was also submitted that the amount awarded for loss of consortium and loss of estate and loss of love and affection is much on lower side and therefore, this Court may consider the said aspect.

[5] Whereas, Mr. Thakkar, learned counsel appearing for the respondent insurance company while supporting the award passed by the Tribunal, contended that the income has been properly assessed and the amount under the head of loss of consortium and loss of estate and loss of love and affection has also been properly awarded and therefore, this Court may not interfere with the said award.

[6] We have considered the Record and Proceedings. We have also considered the reasonings recorded by the Tribunal.

[7] The perusal of the award passed by the Tribunal shows that there was no evidence whatsoever produced for showing the proof of the income except the extract of the land record showing the agricultural land of the deceased. The length of practice was 3 years. The Tribunal on the basis of the decision of this Court in the case of [New India Assurance Co. Ltd. v. Babubhai Dipubhai Chauhan](#), 2006 2 GLR 1514 that for housewife, the income can be assessed at Rs. 3,000/- per month has further considered the matter and has assessed the income at Rs. 4,000/-per month. In our view, when no evidence whatsoever was produced either of the number of clients or the details of the client or the matters in which he appeared or the income tax return, it cannot be said that the Tribunal committed error in assessing the income of the deceased.

[8] However, on the aspect of prospective income, it appears that the Tribunal has not considered the said aspect. As per the decision of the Apex Court in the case of [Smt. Sarla Verma v. Delhi Transport Corporation & Anr.](#), 2009 6 SCC 121, the prospective income could be considered. If the prospective income is considered, such amount would be Rs. 6,000/- per month. Out of the said amount of Rs. 6,000/- per month, as per the decision of the Apex Court in Sarla Verma , since the number of claimants were exceeding three, 1/4th of the deduction would be required to be made. 1/4th of the aforesaid amount would be Rs. 1,500/- and 3/4th of the amount would come to Rs. 4,500/-. Yearly, it would be Rs. 54,000/- which can be considered towards the economic loss. It further appears that the Tribunal has awarded Rs. 20,000/- towards

loss of love and affection, which in our view is on lower side. Considering the facts and circumstances and in view of the recent trend of the Apex Court, it would be just and proper to award the compensation of Rs. 1,00,000/- under the head of loss of consortium, loss of love and affection and loss of estate. On the aspect of multiplier, the appropriate multiplier would be 16 as per the decision of the Apex Court in the case of Sarla Verma . Hence, the total amount would be Rs. 8,64,000/- as against Rs. 8,16,000/- assessed by the Tribunal.

[9] In view of the aforesaid, the total amount of compensation would be Rs. 9,64,000/-. Further, the Tribunal has apportioned the liability of 40% to the deceased and 60% to the driver of the Indica car insured with the respondent No. 3 insurance company and therefore, the net amount of compensation so far as respondent No. 3 is concerned, it would be Rs. 5,78,400/- as against Rs. 5,07,600/- awarded by the Tribunal.

[10] In view of the aforesaid observations and discussions, it is held that the original claimants-appellants herein shall be entitled to the compensation of Rs. 5,78,400/- with interest as awarded by the Tribunal. The judgment and award passed by the Tribunal shall stand modified to the aforesaid extent.

[11] Appeal is partly allowed to the aforesaid extent.

No order as to costs.