

A MEENABEN PANKAJKUMAR JOSHI & ORS.

v.

NEW INDIA ASSURANCE CO. LTD.

(Civil Appeal No.5194 of 2009)

AUGUST 7, 2009

B

[S.B. SINHA AND DEEPAK VERMA, JJ.]

Motor Vehicles Act, 1988 – s.168 – Compensation – Award of – Claimant's husband, director of a company and also running proprietorship concern – Death in motor vehicle accident – Claim of compensation – Filing of income tax returns for assessment year disclosing income – Compensation awarded by tribunal with proportionate costs – High Court modifying the compensation amount as also rate of interest – On appeal held : In terms of s.168, it is necessary for the tribunal to award fair compensation – Additional documents have been produced before this Court – In the interest of justice, matter remitted back to tribunal to consider the additional documents as additional evidence for awarding compensation.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5194 of 2009.

From the Judgment & Order dated 27.2.2007 of the High Court of Gujarat at Ahmedabad in First Appeal No. 2140 of 2006.

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K.V. Vishwanathan, Abhisekh Kaushik, Janak Shah, Rauf Rahim Yadunandan Bansal for the Appellants.

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Salil Paul, Manjeet Chawla for the Respondents.

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted.

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2. The claimants in a motor accident claims are before us A
aggrieved by and dissatisfied with the judgment and award
passed by a Division Bench of the High Court of Gujarat
whereby and whereunder a judgment and award dated
13.12.2005 passed by the Motor Accidents Claims Tribunal,
Fast Track Court-4, Gandhidham – Kutch in MAC Petition B
No.297 of 2005 (original No.2 of 1998) was modified.

3. The deceased Raj Kumar Joshi was a Director of a
Company commonly known as Kandla Clearing Agency Private
Limited. He was drawing a salary of Rs.7,500/- per month. He
was, however, also running a proprietorship concern carrying C
on business in 'Clearing and Forwarding' in the name of Ultra
Clearing and Forwarding Company.

Appellants filed a claim petition before the Tribunal claiming
a sum of Rs.90 lakhs as compensation in respect of the death D
of the said Raj Kumar Joshi who died in a motor vehicle
accident and with a view to prove their case, appellants, inter
alia, filed income tax returns for the assessment years 1996-
97 and 1997-98 disclosing the income from salary from the
Directorship in Kandla Clearing Agency Private Limited at E
Rs.66,000/- and Rs.90,000/- respectively. The said returns were
accompanied by a certificate issued by the Manager/
Accountant of the Company. In the said income tax returns, a
sum of Rs.12.73 lakhs was also shown as turnover of the
business for eight months in respect of the said proprietorship F
concern. The Tribunal passed an award for a sum of
Rs.49,25,000/- with proportionate costs and interest at the rate
of 12% per annum from the date of claim petition till December
2000 and thereafter at the rate of 9% per annum. Respondent
No.1 herein preferred an appeal thereagainst before the High G
Court questioning the correctness of the said judgment and
award.

4. The High Court by reason of the impugned judgment,
so far as the income of the deceased from the aforementioned
proprietorship concern is concerned, opined as under : H

- A "Even proceeding on the basis that the deceased had set up another business in the name of Ultra Clearing and Forwarding Company in May 1997 and even proceeding on the basis that there were deposits in the bank accounts of the deceased with State Bank of Bikaner and Jaipur,
- B we cannot at all approve of the approach of the Tribunal in proceeding on the basis that the margin of profit or margin of commission of the deceased in the said business was to the extent of 20%. *The very nature of the business of the deceased being that of clearing and forwarding agent would mean that the deceased would be acting as an agent of the consignors or consignees and, therefore, such receipts would to a substantial extent be the price of the goods being consigned.* The very fact that
- C after the accident the widow of the deceased filed income tax returns for the salary income of the deceased for the previous years 1995-96 and 1996-97 but did not file and income-tax return for the subsequent year i.e. 1997-98 for the alleged business income allegedly earned between May and October 1997 belies the claimants' case that the deceased was getting substantial income from the business being carried on by him in the name of Ultra Clearing and Forwarding Company. We are, therefore, shocked to find that the Claims Tribunal accepted the claimants' case about the alleged income of the deceased from the business in the name of Ultra Clearing and
- D Forwarding company without making any probe into such tall claim and without testing the claimants' case even on the touchstone of commonsense."
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- F

(Emphasis supplied)

- G So far as the question with regard to the applicability of the Indian Evidence Act is concerned, the High Court while opining that the strict rules of evidence would not apply to the claim proceedings before the Tribunal, held as under :
- H "The foregoing discussion would show that there was no

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evidence on record before the Tribunal to arrive at the conclusion that on the credit amount of Rs.12.73 lakhs; the deceased was getting commission of 20% as held by the Tribunal. The finding of the Tribunal on this score is, therefore, not only incorrect and unwarranted, but to say the least, perverse. No reasonable person instructed in this branch of law would ever arrive at such conclusion that the deceased was getting commission of 20% of the gross deposits made in his bank accounts. The finding can never be said to be based on judicial considerations." A B

The High Court also interfered with the rate of interest opining that the rate of interest should be fixed at 9% per annum from the date of the claim till the date of deposit. C

5. Mr. K.V. Vishwanathan, learned senior counsel appearing on behalf of the appellant, would contend that the High Court committed a serious error insofar as it held that a forwarding and clearing agent dealt with goods. It was urged that the expenditures required to be incurred by a clearing and forwarding agency will depend upon the expenditures required to be incurred in terms of the agreement as clearing and forwarding agent does not deal with sale of goods and as such the question of payment of any price of the goods being consigned would not arise. D E

6. Before us, an application has been filed seeking permission to reply upon additional documents containing various bills, debit notes, etc. to show the nature of expenditure incurred by the said proprietorship concern. F

7. Having heard the learned counsel for the parties, we are of the opinion that keeping in view the provisions of Section 168 of the Motor Vehicles Act, 1988 in terms whereof the Tribunal is required to award a fair compensation, the additional documents sought to be produced before us should be taken into evidence. We say so because the appellants have contended that those documents were not available at the H

A relevant time. Evidently, they have not been brought on records before the Tribunal also.

B 8. We, therefore, are of the opinion that the interest of justice would be subserved if the matter relating to award of additional documents placed before us as additional evidence. The claimants unless admit or formal proof thereof is dispensed with, may prove the said documents by examining witnesses. The respondents, it goes without saying, would be entitled to cross-examine the said witnesses produced on behalf of the
C appellants and would furthermore be entitled to examine their witnesses in this behalf. We make it clear that all other findings arrived at by the Tribunal and as modified by the High Court shall remain undisturbed.

D 9. The appeal is allowed to the aforementioned extent and the matter is remanded to the Tribunal with the aforementioned directions and observations. However, in the facts and circumstances of this case, there shall be no order as to costs.

N.J.

Appeal partly allowed.