
(2016) 11 GAU CK 0049
In the Gauhati High Court
Case No : MAC App. No. 14 of 2015

C. Pangthuama

APPELLANT

Vs

State of Mizoram

RESPONDENT

Date of Decision : 18-11-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2017) 1 ACC 797 : (2017) 1 GauLT 291 : (2017) 1 TAC 392

Hon'ble Judges : M.R. Pathak, J.

Bench : Single Bench

Advocate : Mr. Lalfakawma and Mr. Rosangzuala Ralte, for the Appellant; Mr. A.K. Rokhum, Addl. Advocate General, Mizoram, for the Respondents Nos. 1 and 2; Mr. Lalchhanliana Khiangte, Advocate, for the Respondent No. 3

Final Decision : Allowed

Judgement

M.R. Pathak, J. (CAV) - Heard Mr. Lalfakawma for the appellant, Mr. Ashok Kumar Rokhum, learned Additional Advocate General, Mizoram for the respondent Nos. 1 and 2 and Mr. Lalchhanliana Khiangte, learned counsel for the respondent No. 3.

2. Being aggrieved with the Judgment and Award dated 22.09.2015 passed by learned Member-cum-Presiding Officer, Motor Accident Claims Tribunal, Aizawl, Mizoram in MACT Case No. 6/2014 wherein the Tribunal dismissed the claim petition that was preferred by the present appellant as claimant, has filed this appeal under Section 173 of the Motor Vehicle Act, 1988 challenging the same.

3. The Tribunal came to a finding that the claimant is the brother of the deceased and there is no evidence to show that the claimant depends upon the deceased and there is no any dependency and further the income of the deceased was not proved.

4. It is to be stated herein that on 23.05.2008 around 05:00 p.m. the sister of the claimant/appellant died in a motor vehicular accident when she was dashed

by a Fire Tender bearing Registration No. MZ-01-D-6660 belonging to the respondent No. 2 and was driven by the respondent No. 3.

5. After recording of the evidence of the witnesses the Claims Tribunal came to a finding that the claimant is the elder brother of the deceased who was only next to the youngest and that the deceased's youngest brother is still alive. The Tribunal also found that at the time of filing the claim petition the deceased left with three brothers and one sister, including the claimant i.e. the present appellant, whereas the deceased was a single who looked after her old mother. As per the claim made by the Claimant the deceased quit her job and adapted herself in more profitable business and earned Rs. 10,000/- every month. The claimant's witnesses in their evidence clearly deposed that at the time of death of the deceased, her and claimant's mother was alive, who died only in the year 2011. It is also stated that the deceased, mother of the deceased and the claimant along with his wife and six children lived together under the same roof in his house during their lifetime. The claimant's witnesses Nos. 1 and 3 including him in their evidence stated that the deceased was the sole bread earner of her family. The claimant witness No. 2 Sub-Inspector of Police stated that he was the concerned SI at the Champhai Police Station at the relevant time and that in the accident had occurred on 23.05.2008 wherein the sister of the claimant/appellant died on the spot and accordingly a Police Case was registered.

6. After considering all the evidences the Tribunal came to a conclusion that claimant is the elder brother of the deceased who failed to show that he was dependant on the income of the deceased and as such there was no dependency. The Tribunal also came to a finding that it was the deceased, but not the claimant, who was rather dependent upon the claimant. Further, the Tribunal found that the income certificate of the deceased, Exhibit C-5, though was issued by the Village Council President, Bethel Veng, Champhai but he was not examined by the claimant during trial and the Tribunal came to the finding that Village Council President is not the competent authority to issue such income certificate and as such the income of the deceased was not proved.

7. It is seen from the evidences recorded in the case that the claimant appellant filed the claim petition in the first part of February 2014, whereas the alleged sister of the claimant died in the motor vehicle accident that occurred on 23.05.2008. Moreover, in his claim petition the claimant though stated deceased was earning Rs. 10,000/- per month by doing business, but, neither he nor the other witnesses, who were examined on behalf of the claimant, did not disclose the business in which the deceased was involved prior to her death. Further, it is also seen that the claimant, the elder brother of the deceased filed the claim petition in the case 2014 that too six long years after the death of the deceased and three years after the death of mother of the deceased who expired on 2011.

8. From the written statement of the opposite parties herein, it is seen that respondents did not object that the claimant is not the brother and legal representative of the deceased who was an un-married lady at the time of her

death and but objected that the brothers of the deceased who claimed to be the dependant of the deceased are not entitled to get compensation for the death of the deceased brother or sister in a motor accident claim as per Motor Vehicle Act, 1988 as amended. It is also urged by the respondents that as the deceased was single at the time of her death she did not leave any preferential heirs like children, parents.

9. It is settled that the persons who represent the estate of the deceased, must be taken to be his/her legal representative and therefore in a motor vehicle accident compensation can be claimed only by the heirs.

10. In the case of Gujarat SRTC v. Ramanbhai Prabhatbhai reported in (1997) 3 SCC 234 the Hon"ble Apex court have held that a legal representative is one who suffers on account of death of a person due to a motor vehicle accident and need not necessarily be a wife, husband, parent and child etc.

11. Considering the provisions of sub-section (1) of Section 110-A of the Motor Vehicles Act, 1939 corresponding to the provisions of sub-section (1) of Section 166 of the Motor Vehicles Act, 1988 and claim under section 1A of the Fatal Accidents Act, 1855 and following the decision of the Hon"ble Supreme Court in the case of Gujarat State Road Transport Corporation v. Ramanbhai Prabhatbhai and Another, reported in (1987) 3 SCC 234; a Division Bench of this Court in the case of Smt. Muhini Thakuria and others v. Dhiraj Kalita and others reported in (1993) 2 GLR 24 have held that ?

"16. The correct position of law is that claim in the case of a fatal accident and under Section 110-A of the Motor Vehicles Act could be made by legal representatives of the deceased, the right is not only restricted to the spouse, parent and child. A brother of the deceased may be also a legal representative of the deceased in the absence of preferential heirs under the personal law governing the parties and, if so, can claim compensation; but he cannot do so if he is not a legal representative though he may have looked to the deceased for his financial support."

12. In the case of New India Assurance Company Limited v. Sitra kyrsian and others decided by this Court and reported in (2011) 5 GLT 724 it is held that the expression "legal representative" has not been defined in the Motor Vehicle Act, 1988 and the definition of the expression "legal representative" as defined in section 2 (11) of the Code of Civil Procedure though not in terms applied to a case before Motor Accident Claims Tribunal, but even in ordinary parlance the said expression is understood amongst in the same way in which it is defined in the CPC and therefore, this definition must governed cases before the Claims Tribunal.

13. It is settled that the legal representative of the deceased has the right to claim compensation and the right to claim compensation is one thing and the quantum of compensation payable is an entirely another matter. The payment of compensation and the quantum of compensation payable is always determined

by the dependency of the claimant upon the deceased and if there is no dependency, unlike Section 140 of the Motor Vehicle Act, the question of payment of compensation under Section 166 will not arise.

14. Therefore as regards the loss to the estate the legal representative has right to claim compensation in accordance with his/her share he or she is entitled to under their personal law, but so far the loss of dependency is concerned they shall be entitled to compensation only if they are dependents and not otherwise.

15. Considering the above, this Court is of the view that the Claims Tribunal committed illegality while rejecting the claim petition preferred by the appellant as claimant by the impugned Judgment and Award dated 22.09.2015 and therefore, the said Judgment and Award dated 22.09.2015 passed by learned Member-cum-Presiding Officer, Motor Accident Claims Tribunal, Aizawl, Mizoram in MACT Case No. 6/2014 is set aside and quashed and the matter is remanded back to the learned Member-cum-Presiding Officer, Motor Accident Claims Tribunal, Aizawl, Mizoram for a fresh consideration regarding appellant/claimant's entitlement of compensation under the Motor Vehicles Act, 1988 as amended on the basis of the evidence that were already recorded by the learned Claims Tribunal.

16. The parties herein are directed to appear before the learned MACT, Aizawl by 07.12.2016. Since the parties to this appeal are represented by their respective counsel, the MACT, Aizawl need not issue any fresh notice to the parties for their appearance in said MACT Case No. 6/2014.

17. With the aforesaid observation and direction this appeal stands allowed.

18. Registry shall send back the records of MACT Case No. 6 of 2014 to the Motor Accident Claims Tribunal, Aizawl, Mizoram forthwith along with a copy of this order.