
(2007) 05 GAU CK 0074
In the Gauhati High Court
Case No : MAC Appeal No. 80 of 2003

Gita Rani Moral and Others	Vs	APPELLANT
Oriental Insurance Co. Ltd. and Others		RESPONDENT

Date of Decision : 04-05-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2008) GLT 224 Supp

Hon'ble Judges : Maibam B.K. Singh, J; Iqbal Ahmed Ansari, J

Bench : Division Bench

Advocate : M.U. Mahmud, for the Appellant; S.K. Goswami, for the Respondent

Judgement

I.A. Ansari, J.—This is an appeal preferred u/s 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the MV Act") against the award, dated 19.05.2003, passed by the learned Member, Motor Accident Claim Tribunal, Bongaigaon, in MAC Case No. 84 of 1999, determining a sum of Rs. 7,73,800/- as compensation and directing the insurer-respondent No. 1 herein to pay to the claimant-Appellants the said amount with interest @ Rs. 8% per annum from the date of making of the claim application till realization of the awarded amount.

2. We have heard Mr. M.U. Mahmud, learned Counsel for the claimants-Appellants, and Mr. S.K. Goswami, learned Counsel appearing on behalf of the insurer-respondent No. 1.

3. The claimant No. 1 namely, Smti Gita Rani Moral, for herself and on behalf of her two minor daughters, namely, Nabanita Moral and Pritinita Moral, who are claimants-Appellants Nos. 2 and 3 respectively, made an application, u/s 166 of the MV Act, seeking a sum of Rs. 43,80,000/- as compensation for the death of her husband, Khanindra Moral, in a motor vehicular accident, which took place, on 28.04.1999, at about 12:30 P.M., near the old fire Brigade office, Bongaigaon, the case of the claimants being, in brief, thus: While the claimant's husband, Khanindra Moral, was driving his scooter, bearing registration No. AS-19/2615, at

BT Road, with one Kandarpa Talukdar as pillion rider, a school bus, bearing registration No-ASZ-219 (which is hereinafter referred to as "the offending vehicle") came driven from the opposite direction at a high speed, rashly, negligently and knocked down the said scooter. On being so knocked down, Khanindra Moral and the said pillion rider fell down and sustained injuries. While Kandarpa Talukdar, i.e., the pillion rider, survived, Khanindra Moral succumbed to his injuries at the hospital. Khanindra Moral was aged about 40 years at the time of his death and he, as an employee of Brahmaputra Flood Control Board, used to receive Rs. 10,287/- per month as salary and allowances.

4. The above application was resisted by the owner and also the insurer of the offending vehicle by contending, inter alia, that there was no fault on the part of the driver of the offending vehicle and that the said accident took place entirely due to rash and negligent driving of the scooter by its owner, namely, Khanindra Moral. The learned Tribunal, however, held, inter alia, that the accident had taken place due to rash and negligent driving of the offending vehicle and awarded the said sum of Rs. 7,73,800/- as compensation.

5. In view of the fact that the learned Tribunal's finding that the said accident had taken place due to rash and negligent driving of the offending vehicle is not in dispute in this appeal, it is clear that this appeal is confined only to the determination of the amount of compensation, which the Appellants are entitled to.

6. While considering the above aspect of the case, what needs to be noted is that the claimants proved Ext. 5 as the salary certificate of the said deceased. This salary certificate shows that the total salary paid to the Petitioner including his basic pay and allowances were to the tune of Rs. 10,287/- per month. The learned Tribunal, however, considered Rs. 6,390/- as the monthly income of the said deceased. On considering this aspect of the case, we notice that even if a sum of Rs. 355/-, which the said deceased used to receive as house rent allowance, is not included within the monthly income of the said deceased, his monthly income would come to the tune of $(Rs. 10,287.00 - 355.00) = Rs. 9,932/-$. Thus, the monthly income of the said deceased being about 10,000/-, his annual income can be safely held to be Rs. 1,20,000/- and, out of this amount, if 1/3 be kept excluded, as personal expenses of the said deceased, the loss of dependency of the legal representatives of the said deceased comes to the tune of Rs. 80,000/- per annum.

7. In view of the fact that it is the finding of the learned Tribunal that the said deceased was aged about 42 to 45 years, it logically follows that in the facts and circumstances of the present case, 15 ought to have been applied as the multiplier, and if 15 is applied as multiplier, compensation, for loss of dependency, comes to the tune of Rs. 12,00,000/-. To this amount, needs to be added Rs. 2,000/- as funeral expenses. In view of the fact that the claimant No. 1, namely Gita Rani Moral, has lost her husband at her prime age, she ought to have been granted, at least, Rs. 25,000/- as compensation for loss of

consortium. The total compensation, therefore, payable to the legal representatives of the said deceased comes to the tune of Rs. 12,27,000/-. Thus, the compensation of Rs. 7,73,800/- needs to be enhanced to a sum of Rs. 12,27,000/-. This amount needs to be divided into four units, three units being payable to the claimants-Appellants and one unit shall be payable to the respondent No. 5 herein, who is the widowed mother of the said deceased.

8. Because of what have been discussed and pointed out above, we hereby allow the appeal to the extent indicated above and direct the respondent No. 1. M/s Oriental Insurance Co. Ltd., to pay, in all, Rs. 12,27,000/-, as compensation, to the claimants-Appellants with interest as already directed. The learned Tribunal shall apportion the awarded amount as observed hereinabove.

9. With the above observations and directions, this appeal shall stand disposed of.

10. No order as to costs.

11. Send back the LCRs.