(2015) 02 GAU CK 0077

In the Gauhati High Court

Case No : MAC No. 86 of 2012

Joygon Nessa APPELLANT

Vs

Managing Director, ASTC and Others RESPONDENT

Date of Decision : 13-02-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2015) 3 ACC 627 : (2015) 2 GLT 830

Hon'ble Judges : Nishitendu Chaudhury, J

Bench : Single Bench

Advocate : J. Kalita, S. Pandit and T.K. Bhattacharyya, for the Appellant

Judgement

Nishitendu Chaudhury, J—This appeal under Section 173 of the Motor Vehicles Act, 1988 arises out of judgment and award dated 21.03.2011 passed by learned MAC Tribunal, Nalbari in MAC Case No. 346/2007. By this judgment and award the learned Tribunal allowed compensation for Rs. 1,24,700/- to the claimant payable by opposite party No. 1, Managing Director, ASTC, Paltan Bazar with an interest at the rate of 6% per annum from the date of institution of the case till realisation. Challenging the judgment, the claimant has prayed for enhancement of the amount. One Joygon Nessa, as claimant, instituted the proceeding stating that Late Hotu Ali, her deceased husband died in a motor vehicle accident on 09.06.2007 at Batgaon Tarabari Police Station while coming from Guwahati to Barpeta by bus No. AS-20/0792 under ASTC Rhino travels. The bus capsized by the side of the road due to rash and negligent driving and Hotu Ali died on the spot. He was taken to Civil Hospital at Barpeta where post-mortem examination was conducted and a police case was registered being Tarabari P.S. Case No. 39/2007. The claimant stated that her husband was a vegetable vendor and used to earn about Rs. 5,000/- per month. He was about 45 years of age at the time of accident and that he was the sole bread earner of the family. The claimant demanded that a sum of Rs. 7,00,000/- was to be paid to her towards compensation.

2. Upon receipt of notice, the opposite parties appeared and filed their written statement denying the case. They stated that the claim is too high and claimant was duty bound to prove the same.

3. Upon pleadings of the parties, the learned Tribunal framed following 6 (six) issues:

i) Whether there is a cause of action for the case?

ii) Whether the Vehicle bearing No. AS-20/0792 (Rhino Bus) met with an accident on the relevant day at Batgaon under Tarabari P.S.?

iii) Whether the vehicle belongs to A.S.T.C., Guwahati?

iv) Whether the vehicle was driven rashly and negligently to endanger the safety of the husband of the claimant who died as result of that?

v) Whether the claimant is entitled to get any compensation as prayed for death of her husband as alleged?

vi) To what relief or relieves the claimant is entitled?

4. Claimant examined herself as PW1 and one Musstt. Baila Khatoon as PW 2. She exhibited accident information report as Ext. 1. Photocopy of post-mortem examination report was also brought on record. After hearing the learned counsel for the parties, the learned Tribunal found that although in the claim petition deceased was described to be of 45 years of age but in cross examination she stated that his age was 55 years as on the date of accident. Even Ext. 2, postmortem report, shows the age of the deceased as 55 years. Without recording any reason, the learned Tribunal held that deceased was 60 years of age as on the date of accident. Coming to the question of monthly income, the learned Tribunal held that the claimant could not prove monthly income of the deceased. Admittedly, deceased was a vegetable vendor. Common experience shows that a petty vegetable vendor never possesses books of accounts so as to prove his monthly income. But the learned Tribunal by applying thumb rule held that the income of the deceased cannot be more than Rs. 1800/- and accordingly held that he had monthly income of Rs. 1800/-. Thereafter by deducting one-third towards personal expenses, the annual income was determined at Rs. 14,400/- and thereafter by using multiplier 8, the compensation was calculated at Rs. 1,15,200/-. To this amount funeral expenses of Rs. 2,000/-, consortium of Rs. 5,000/- and loss of estate of Rs. 2,500/- were added and thus the compensation was fixed at Rs. 1,24,700/-.

5. I have Mr. J. Kalita, learned counsel for the appellant. None appears for the respondent although name of the learned Standing Counsel of ASTC is duly projected in the cause list. I have perused the lower court''s records including the depositions and exhibits.

6. A petty vegetable vendor is not expected to maintain books of accounts for his day to day income and expenditure. They belong to the lowest rung of the

economic strata and live from hand to mouth. In the present day of hike of prices, Rs. 1800/- cannot be the income of a vegetable vendor howsoever small he may be. Besides, in case of a person without having any income the notional income is calculated at Rs. 3,000/- per month. In case the deceased was without any income in that event his notional income would have been calculated at Rs. 3,000/- and by deducting one-third of it as personal expenses, his monthly dependency would have been calculated at Rs. 2,000/-. In that event his annual income becomes as high as Rs. 24,000/- even by a conservative estimate. Having so found and without changing the other considerations of the award passed, the compensation amount requires to be recalculated as follows:

7. The compensation amount of Rs. 1,24,700/- is enhanced to Rs. 2,73,500/-. If the respondent has already paid the compensation of Rs. 1,24,700/-, they shall make payment of further amount of Rs. 1,48,800/- to the claimant within a period of 3 (three) months from today. The awarded amount will carry interest at the rate of 6% per annum from the date of filing of case till realisation.

8. No order as to costs.

9. Send down the records immediately. Interim order, if any, shall automatically stands vacated.

