
(2012) 01 GAU CK 0108
In the Gauhati High Court
Case No : MAC App. No. 238 of 2006

M/s. New India Assurance Co. Ltd.

APPELLANT

Vs

Ellorinda R. Sangma and Others

RESPONDENT

Date of Decision : 03-01-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2012) 2 TAC 404

Hon'ble Judges : Brojendra Prasad Katakey, J

Bench : Single Bench

Advocate : A. Ahmed, for the Appellant; Sk. N. Mahammad, Md. Rahman and M. Ahmed, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Katakey, J.—This appeal by the Insurance Company is directed against the judgment and award dated 3rd June, 2006 passed by the learned Member, Motor Accident Claims Tribunal, Goalpara, in MAC Case No. 122/2005, awarding a sum of Rs. . 11,67,216/- as compensation with interest @ 6% per annum from the date of filing the claim petition till the date of realization, for the death of the claimant No. 1's husband in a motor accident occurred on 4th December, 2004 arising out of the use of the motor vehicle bearing Registration No. AS-19/2414 (Bus). By the said judgment and award an amount of Rs. . 2,91,804/- being 25% of the awarded amount, was directed to be paid to the parents, namely, Shri Jollang Sangma and Smt. Mahini Marak (who are not made respondents in the present appeal) and the remaining amount, of Rs. . 8,75,412/- to the wife and two minor children, namely, the respondent Nos. 1, 2 and 3, with a further direction that out of the aforesaid amount of Rs. . 8,75,412/-, Rs. . 2,00,000/- each are to be deposited in the name of two minor sons, namely, the respondent Nos. 2 and 3 till they attain the age of majority. An application u/s 166 of the Motor Vehicles Act, 1988 (in short the Act) was filed by the present respondent No. 1 alongwith the parents of the deceased, as claimants, claiming an amount

of Rs. . 21,00,000/- for the death of Larwing B. Marak, the husband of the respondent No. 1, father of the respondent Nos. 2 and 3, alleging that on 4th December, 2004 while Larwing B. Marak, who was working in Indian Army, was travelling by Bus bearing Registration No. AS-19/2414, belonging to the respondent No. 4 and driven by respondent No. 5, met with an accident at 6.45 a.m. at North Salmara and as a result of which Mr. Larwing B. Marak received serious injuries and died. It has also been alleged that the Bus was driven by the driver in a rash and negligent manner, for which the accident occurred. The said application was registered and numbered as MAC Case No. 122/2005 in the Motor Accident Claims Tribunal, Goalpara.

2. The present appellant, who was the opposite party No. 1 in the said proceeding, contested the claim petition filed by the claimants denying the averments made and putting the claimants to the strictest proof thereof. The owner and the driver have not contested the said proceeding.

3. The learned Member, on the basis of the pleadings of the parties, framed the following issues for consideration and decision:-

(1) Whether the accident took place due to rash and negligent driving by the driver of the vehicle No. AS-19/2414 or the accident occurred arising out of the use of the said vehicle?

(2) Whether the claimant is entitled to get any compensation, if so, what should be just compensation?

(3) Whether the Insurance Company or the owner is liable to pay compensation?

4. While the claimants examined two witnesses, namely, claimant No. 1 i.e. the widow of the deceased and one Shri Pani Ram Roy, who was the witness to the occurrence and proved as many as 8(eight) documents, which were marked as Exts.-1 to 8, neither the Insurance Company nor the owner or the driver of the offending vehicle adduced any evidence. The witnesses examined by the claimants, however, were duly cross-examined by the Insurance Company.

5. The learned Member upon appreciation of the evidences on record has answered the Issue No. 1 in favour of the claimants by holding that the accident occurred due to rash and negligent driving of the vehicle bearing Registration No. AS-19/2414 belonging to the present respondent No. 4 by the driver and because of the accident, the husband of the claimant No. 1 received serious injuries and eventually died. The Issue No. 2 was, therefore, also decided in favour of the claimants by holding that they are entitled to compensation of Rs. . 11,67,216/-. There being the contract of insurance between the appellant Insurance Company and the owner of the offending vehicle, namely, the respondent No. 4, at the relevant point of time, the Issue No. 3 was decided by directing the Insurance Company to satisfy the award, in view of the contract of insurance between the aforesaid parties. Hence the present appeal.

6. I have heard Mr. A. Ahmed, learned Counsel for the appellant and also heard

Mr. N. Mahammad, learned Counsel appearing for the respondent Nos. 1, 2 and 3. None appears for the respondent Nos. 4 and 5.

7. It has been contended by Mr. Ahmed, learned Counsel for the appellant that though there is no dispute relating to the gross monthly income of the deceased, which was Rs. . 8,531/- at the relevant point of time, the learned Member while determining the compensation payable, ought to have taken the net income of the deceased. It has also been submitted that the claimants' witness No. 1 i.e. the claimant No. 1, herself in her deposition having stated that the deceased out of his income contributed Rs. . 4,500/- for maintenance of his wife, children and the parents, the learned Member ought to have taken the loss of monthly dependence as Rs. . 4,500/- and accordingly award the compensation. The learned Counsel, however, has submitted that the multiplier 17, keeping in view the age of the victim, was rightly taken. It has, therefore, been submitted that the amount of compensation awarded needs to be modified.

8. Mr. N. Mahammad, learned Counsel appearing for the respondent Nos. 1 to 3, on the other hand, referring to Ext.-4 i.e. the statement of accounts issued by the Sr. Accounts Officer of Indian Army, in respect of the salary paid to the deceased, has submitted that it is evident from the said document that the total monthly salary of the deceased was Rs. . 8,531/- and as such the learned Member has rightly taken the same for the purpose of calculating the amount of compensation payable to the claimants. It has also been submitted that the claimants in fact are entitled to more amount as compensation, as the learned Tribunal did not take into consideration the future prospect of the deceased, who, had he been alive, would have entitled to the revised pay scale w.e.f. 1st January, 2006. The learned Counsel, therefore, submits that no interference with the amount of compensation awarded by the learned Member, MACT, is required.

9. The factum of accident involving the aforesaid motor vehicle, death of Larwing B. Marak in the said accident, his age (31 years) as well as the contract of insurance between the appellant-Insurance Company and the owner of the motor vehicle (respondent No. 4) are not in dispute. What has been disputed by the Insurance Company in the present appeal is the quantum of compensation awarded by the learned Member, contending that the learned Member has taken into account the gross monthly income instead of net income of the deceased and also ignored the evidence of the claimants' witness No. 1 relating to the monthly contribution towards the family.

10. The claimants in support of the monthly income has proved the statement of accounts issued by the ST. Accounts Officer of Indian Army, which has been marked as Ext-4, wherefrom it appears that the take home salary of the deceased was Rs. . 8,531/-; That being the position, the learned Member has rightly taken into consideration of the said amount for the purpose of calculating the loss of dependency. CW- 1, however, in her evidence has stated that out of the said amount the deceased contributed Rs. . 4,500/- per month to the family. The amount of compensation to be awarded for the death of the claimant No. 1's

husband has to be ascertained taking into account of his contribution towards the family, which is the loss of dependency. However, while ascertaining the amount of compensation payable another important factor i.e. the future prospect of the deceased, who was in permanent employment in Indian Army, has not been taken into consideration. The Apex Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , has held that an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years, has to be made, while determining the amount of compensation payable. The deceased's monthly income being Rs. . 8,531/-, an amount of Rs. . 4,265/- ought to have been added to the monthly salary of the deceased, which comes to Rs. . 12,796/-, he being in a permanent job and about 31 years of age. The revision of the salary of the army personal w.e.f. 1st January, 2006 also cannot be ignored. Though the claimants' witness No. 1 in her evidence has stated that at the relevant point of time the deceased contributed Rs. . 4,500/- per month towards the maintenance of the family, the same, in view of the above, would have proportionately increased, had the deceased been alive.

11. Keeping in view the aforesaid facts as well as the age of the deceased, which was 31 years, the amount of Rs. . 11,67,216/- with interest @ 6% per annum from the date of filing the claim petition till the date of realization, as awarded by the learned Tribunal cannot be termed as highly excessive. The learned Tribunal has awarded the just compensation of Rs. . 11,67,216/-. Hence, the judgment and award passed by the learned Tribunal requires no interference. The Insurance Company is directed to deposit the awarded amount, less the amount already deposited, with interest, as awarded by the learned Member, MACT, within a period of 2(two) months from today. The learned Tribunal, thereafter, shall ensure the release as well as deposit of the amount as directed in the impugned judgment and award.

12. The appeal is accordingly stands dismissed. No costs. The Registry is directed to send down the records forthwith. The statutory deposit made by the Insurance Company before the Registry shall be refunded to the Insurance Company.