

(2011) 09 GAU CK 0014

In the Gauhati High Court

Case No : MAC Appeal No. 3 (K) of 2011

National Insurance Co. Ltd.

APPELLANT

Vs

Yashinungsang A.O. and Others

RESPONDENT

Date of Decision : 28-09-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 149, 149(2), 170

Citation : (2012) 3 TAC 533

Hon'ble Judges : Arup Kumar Goswami, J

Bench : Single Bench

Advocate : P.B. Paul, Ms. Limabenla and Mr. Tajongchuba, for the Appellant; Tongpok Pongener, Ms. Asangla, Ms. Aienla, Shri Tongpang Jamir and Ms. Akumla Longchar, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Goswami, J.—The respondent No. 1 herein, as claimant had filed MAC Case No. 36 of 2009 before the learned Member, Motor Accident Claims Tribunal, Mokokchung, Nagaland against the Divisional Manager, National Insurance Co. Ltd., owner and driver of Tata Mobile bearing registration No. NL-02/G-6182 stating, inter alia, that the son of the claimant/respondent No. 1, namely, Imlinungkum Ao, died in a vehicular accident on 3rd August, 2009, while he was travelling by the above Tata Mobile handyman, thereby, claiming compensation of Rs. 6,64,000/- for the accidental death of Imlinungkum Ao. The learned Member, Motor Accident Claims Tribunal, Mokokchung, Nagaland after hearing the parties, passed the judgment and award dated 22nd October, 2010 awarding compensation of Rs. 4,58,000/- only in favour of the claimant/respondent No. 1, directing the appellant to make payment of the awarded amount within a period of 30 days and in default to pay interest at 9% per annum from the date of filing of the claim petition.

2. This appeal has been preferred against the award dated 22nd October, 2010 passed in MAC Case No. 36/2009 awarding a sum of Rs. 4,58,000/- to the

claimant.

3. Heard Mr. P.B. Paul, learned Counsel for the appellant. Also heard Mr. Tongpok Pongener, learned Counsel appearing for the claimant/respondent No. 1. I have also perused the materials on record.

4. Mr. P.B. Paul, learned Counsel for the appellant submits that the deceased was a minor at the time of the accident. His submission is that the learned Tribunal had committed manifest error in holding that the deceased was about 20 years at the time of the accident and that he was drawing a salary of Rs. 3,500/- per month as a handyman.

His contentions in this appeal are that the learned Tribunal ought to have taken the income of the deceased as Rs. 15,000/- per annum being the notional income and not monthly income of Rs. 3,500/- as had been arrived at by the learned Tribunal and that the adoption of 16 as multiplier is not sustainable in law.

5. Mr. Tongpok Pongener, learned Counsel for the claimant/respondent No. 1 raises the question of maintainability of the appeal. He has submitted that the Insurance Company had filed an application u/s 170 of the Motor Vehicles Act, 1988, for short, the Act, and the said application was rejected by the learned Tribunal. This fact is not disputed by Mr. P.B. Paul and the impugned award also reflects the same.

6. The contention of Mr. Tongpok Pongener is that in absence of any order u/s 170 of the Act, allowing Insurance Company to contest the claim on all grounds that are available to the person against whom the claim has been made, the Insurance Company cannot be permitted to urge any ground other than the grounds mentioned u/s 149(2) of the Motor Vehicles Act, 1988. He submits that the Insurance Company, in the appeal, has raised the question of quantum of compensation, which is not a ground afforded by Section 149 (2) of the Act.

7. To appreciate the contention advanced by the learned Counsel for the claimant/respondent No. 1 it will be necessary to consider the provision contained in Section 149(2) and Section 170 of the Act and as such, the same are reproduced below:

149 (2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the Court, or as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:--

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:--

(i) a condition excluding the use of the vehicle.

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organized racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motorcycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular.

170. Impleading insurer in certain cases.--Where in the course of any inquiry, the Claims Tribunal is satisfied that-

(a) there is collusion between the person making the claim and the person against whom the claim is made, or

(b) the person against whom the claim is made has failed to contest the claim,

it may, for reasons to be recorded in writing, direct that the insurer who may be liable in respect of such claim, shall be impleaded as a party to the proceeding and the insurer so impleaded shall thereupon have, without prejudice to the provisions contained in sub-section (2) of Section 149, the right to contest the claim on all or any of the grounds that are available to the person against whom the claim has been made.

8. Perusal of Section 149(2) indicate that, under the law the insurer is entitled to contest the claim only on the ground mentioned in Section 149(2) of the Act. In other words, challenge of an insurer must be confined to the statutory defences which are available to the Insurance Company u/s 149(2) of the Act.

9. Section 170 of the Act provides that where in course of an enquiry the Claims Tribunal is satisfied that (a) there is a collusion between the person making a claim and the person against whom the claim has been made, or (b) the person against whom the claim has been made has failed to contest the claim, the Tribunal may, for reasons to be recorded in writing, implead the insurer and in that case it is permissible for the insurer to contest the claim also on the grounds which are available to the insured or to the person against whom the claim has been made.

10. The challenge made with regard to adoption of multiplier as well as the income of the deceased, if accepted, would alter the quantum of compensation. Therefore, challenge to the use of multiplier as well as income amounts to challenging the quantum of compensation itself. These are not the grounds of challenge u/s 149(2) of the Act. Admittedly, in the instant case, application of the insurer u/s 170 of the Act was rejected by the learned Tribunal.

11. In the case of National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others, , the Supreme Court stated as follows:

...Thus, unless an order is passed by the Tribunal permitting the insurer to avail the grounds available to an insured or any other person against whom a claim has been made on being satisfied of the two conditions specified in Section 170 of the Act, it is not permissible to the insurer to contest the claim on the grounds which are available to the insured or to a person against whom a claim has been made.

In view of the aforesaid position of law there is no merit in this present appeal and the same is accordingly dismissed.