

(2007) 01 GAU CK 0094
In the Gauhati High Court

New India Assurance Co. Ltd.

APPELLANT

Vs

Kawllian Thanga and Another

RESPONDENT

Date of Decision : 12-01-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 170

Citation : (2007) 3 GLT 444

Hon'ble Judges : A.B. Pal, J

Bench : Single Bench

Judgement

A.B. Pal, J.—The Judgment and award dated 1st June 2005 in MAC Case No. 143 of 2004 rendered by the Motor Accident Claims Tribunal, Aizwal stands impugned in this appeal by M/s New India Assurance Company Ltd. (for short the Insurer). By the said judgment an amount of Rs. 4,80,000/-(Rupees four lacs eighty thousands) with interest at the rate of 9% per annum from the date of filing of the claim petition till the date of realization has been awarded making the insurer liable to pay the entire amount.

2. The material facts giving rise to the claim proceeding originates from a motor accident on 11th July, 2004 claiming the life of one Teichhuma, aged about 34 years. The vehicle by which the deceased along with other passengers were travelling was a mini bus bearing registration No. MZ-06/0184 owned by one Lalramchangsanga, who himself was driving the vehicle. The owner met his end in the said accident. Some other passengers also died. The cause of the accident was later found to be sudden steering failure.

3. In the claim petition filed by the elder brother of Teichhuma, the owner of the said vehicle (though dead) was impleaded as Opposite Party No. 1 and the Insurer as Opposite Party No. 2, presumably because the death of the owner was not known to the claimant at the time of filing the claim petition. Even in para-2 of the judgment impugned the learned tribunal observed that the Opposite Party No. 1 did not contest the case. But in para 6 of the judgment, the tribunal observed that the Opposite Party No. 2 (Insurer) prayed for contesting the case

on all or any of the grounds available to the Opposite Party No. 1 (owner of the vehicle), who died in the said accident. If the tribunal at any stage of the proceeding came to know about the death of the owner it is not intelligible why the claimant was not directed to implead the legal heirs of the deceased owner. Be that as it may, the Insurer was granted permission u/s 170 of the Motor Vehicles Act whereupon the claim was contested on all grounds. It was contended by the Insurer that the claim was not maintainable, as the accident had taken place due to steering failure of the said vehicle. As the driver of the vehicle was not found to be negligent, it was argued that the claim for compensation by the elder brother of the deceased was not legally tenable. The learned Tribunal placed reliance on the decision of this Court in *Pramila Bordoloi v. Blue Hills Travels Pvt. Ltd.* reported in 2002 (1) TAC 533 (Gau) to hold that mere absence of negligence on the part of the driver does not disentitle a claimant from an otherwise rightful claim of compensation. As the deceased died a bachelor, learned tribunal placing reliance on a decision of the Rajasthan High Court in *Kishan Lal v. Bharosi Lal* reported in 2001 (1) TAC 177, held that the elder brother is also a legal heir of the unmarried deceased.

4. As regards the quantum of compensation the learned tribunal relied on the structured formula given in the second schedule of the Motor Vehicles Act. Against the claim that the deceased was earning Rs. 4000/- (rupees four thousands) per month the tribunal reduced the amount to Rs. 40,000/- (rupees forty thousand) as annual income which is the highest slab in the said schedule. The learned tribunal arrived Rs. 4,53,333/- by multiplying Rs. 40,000/- with 17 and reducing the amount by one third. Thereafter a conventional amount of Rs. 27,000/- on account of general damages was added to make the total amount to Rs. 4,80,333.00. Thus, Rs. 4,80,000/- to make it around figure, came to be awarded.

5. Mr. George Raju, learned Counsel for the appellant submits that the method of calculation adopted by the learned tribunal is wrong and arbitrary in as much as there is absolutely no proof on record to support that the deceased was earning Rs. 40,000/- annually, as held by the learned tribunal. The only documentary evidence in support of the claim is a certificate issued by the President of the Village Council marked Exhibit C-4, which does not disclose the source of income or the nature of occupation of the deceased. Even the claimant, the elder brother of the deceased, in his deposition has stated nothing as to how the deceased was earning Rs. 40,000/- annually or to what extent he was dependent on him. Though learned Counsel for the claimant/respondent strongly opposed this submission by submitting that the certificate being admitted without objection, cannot be called in question at the appellate stage, I do not find any force in the same. Even after a document is admitted in evidence it remains to be appreciated with regard to its evidentiary value. It is not difficult for any person to obtain such a certificate from a Village Council and by merely producing such a certificate the burden of proof, on the part of the claimant does not stand discharged.

6. I am of the considered view that such a certificate alone without any supportive evidence that a village council is competent to issue Income Certificate cannot be the basis for taking a view that the deceased was earning Rs. 40,000/- annually. In the absence of any such evidence regarding income, the notional income provided in the second schedule of the Act being Rs. 15,000 annually has to be accepted. Thus the multiplier chosen correctly being 17, the amount of compensation should have been Rs. 15,000 x 17=Rs. 2,55,000/-. From this amount one third has to be deducted being personnel expenses of the deceased and thus the net amount would come to Rs. 1,70,000/-(rupees one lac seventy thousand) only.

7. Mr. George Raju, would further argue that as the owner of the vehicle is dead, the award is against a dead person, which is legally invalid. According to him, the insurer comes into the picture only to discharge the liability of the insured. When with the death, the liability of the dead also stands obliterated, the Insurer cannot in any way be fastened with any liability of the dead owner. This argument of Mr. Raju does not appeal to me for the reason that Section 163A of the Motor Vehicle Act under which the present claim petition was made clearly provides that the owner and the insurer of the vehicle involved in the accident are liable to pay the amount of compensation awarded. Though for ignorance or for other reasons the claimant did not implead the legal heirs of the deceased owner, the duty of the tribunal or the insurer to address this issue during the proceeding, does not stand diminished. A perusal of the judgment impugned would show that at no stage of the proceeding there was any whisper about the question of maintainability of the claim on the ground of not impleading the legal heirs of the deceased. Inheritance does not legally heirs in the void and therefore, the legal heirs of the deceased came to be the owners of the vehicle in question. They did not come forward on their own to contest the claim enabling the Insurer thereby to obtain the permission u/s 170 of the Act to contest the claim on all grounds including those available to the owner of the vehicle. This being the position, the benefit derivable under the beneficial legislation cannot be negated on such technical issues.

8. In view of the above, this appeal having merit is partly allowed. The amount of compensation awarded by the judgment impugned stands reduced to Rs. 1,70,000/-(rupees one lac seventy thousand) only, which shall bear interest at the rate of 9% p.a. from the date of presentation of the claim petition till the date of realization. There shall be no order as to cost.