

(2005) 09 GAU CK 0002
In the Gauhati High Court
Case No : MAC Appeal No. 40 of 2003

New India Assurance Co. Ltd.

APPELLANT

Vs

Malsawmtluanga and Another

RESPONDENT

Date of Decision : 21-09-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 165, 166, 168, 170

Citation : (2006) 3 ACC 590 : (2006) 1 GLR 528

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

Bench : Division Bench

Advocate : George Raju and Ricky Gurung, for the Appellant; Lallianzuala, for the Respondent

Judgement

I.A. Ansari J.

1. For the death of her husband, Lalramsanga Hnamte, aged about 51 year, who died, on 18.8.2001, in a motor vehicular accident, the claimant, as widow of the said deceased, instituted a claim proceeding u/s 166 of the Motor Vehicles Act, 1988 (in short, "the M.V. Act, 1988") seeking compensation for the death of her husband, who was a Government Teacher, having gross income of Rs. 11,137 per month. This claim application gave rise to MAC Case No. 96 of 2001.

2. As the owner of the vehicle involved in the accident did not contest the proceeding, the insurer, on being allowed, in terms of Section 170 of the MV Act, 1988, contested the proceeding on all such grounds, which were available to the owner of the vehicle.

3. During the course of the claim proceeding, the widow of the said deceased, who had instituted the claim proceeding, died and the respondent No. 1 herein, who is son of the said deceased claimant and who got himself substituted in the claim proceeding continued the proceedings accordingly. By the award, dated 17.7.2003, passed in MAC Case No. 96/2001 aforementioned, the learned Member, Motor Accident Claims Tribunal, Aizawl, granted in all, a sum of Rs.

9,83,656 as compensation with interest at the rate of 9% per annum from the date of filing of the claim petition until realisation of the entire awarded amount. Aggrieved by the quantum of compensation, so awarded, insurer has preferred the present appeal.

4. We have heard Mr. Ricky Gurung, learner Counsel for the appellant, and Mr. Lallianzuala, learned Counsel appearing on behalf of the respondent No. 1.

5. While considering the quantum of compensation awarded by the learned Tribunal, what we notice is that the learned Tribunal has taken the sum of Rs. 11,137 per month, which was the gross income of the said deceased, as basis for determining the compensation. In this regard, it needs to be noted that a claimant is entitled to be compensated for the loss actually suffered by him or her and the loss suffered is the amount, which the person, claiming compensation, would have been receiving at the time, when the deceased was alive.

6. Considered thus, since the net income of the said deceased was Rs. 8,276 per month, it logically follows that the widow of the said deceased, who had originally, instituted the claim proceeding, would have been receiving the said net amount of Rs. 8,276 per month less one-third, which the deceased would have been spending as his personal expenses. So assessed, the compensation payable to the claimant works out to the tune of Rs. 3,64,144. To this amount needs to be added Rs. 2,000 as funeral expenses and Rs. 2,500 as loss of estate.

7. It has, however, been agitated, on behalf of the insurer appellant, that since claimant sought for an amount of Rs. 3,10,000 as compensation, the learned Tribunal ought to have kept the compensation awardable to the claimant limited to the extent of Rs. 3,10,000, which was the amount claimed as compensation. While considering the submissions, so made, on behalf of the appellant, it may be noted that the function of the Tribunal, which is constituted u/s 165 of the M.V. Act, 1988, is to award, in terms of Section 168 thereof, such compensation, which appears to the Tribunal just and reasonable compensation, in the face of the evidence produced on record. Since the determination of just and reasonable compensation is the statutory responsibility of the Tribunal, it logically follows that if, in the facts of a given case, the Tribunal finds that the claimant is entitled to higher compensation, the Tribunal should allow the claimant to amend his application so as to enable the Tribunal to pay proper compensation.

8. In the case at hand, though no application for amendment of the claim application was made, yet, as the difference in the amount of compensation payable to the claimant and the amount actually claimed by him is not very significant, we are of the view that in the context of the facts and attending circumstances of the present case, the learned Tribunal ought to have awarded Rs. 3,68,644, as compensation, to the claimant-respondent.

9. In the result and for the foregoing reasons, we hold that the claimant-respondent is entitled to receive, in all, Rs. 3,68,644 including statutory liability

of the insurer-appellant, and direct that the present appellant, as insurer, shall make payment of the said amount within a period of two months from today with interest at rate of 9% per annum from the date of making of the claim application until realisation of the entire awarded amount. While calculating the interest, the insurer-appellant may make requisite adjustment of interest for the amount, which already stands paid to the claimant-respondent and/or stands deposited with the Registry of this Court or with the Tribunal.

10. With above observations and directions this appeal shall stand disposed of.

11. No order as to costs.

12. Send back the L.C.R.