(2002) 05 GAU CK 0033

In the Gauhati High Court

Case No : Writ Petition (C) No. 147 of 2000

New India Assurance Co. Ltd. APPELLANT

Vs

Sh. C. Keiliana and Another RESPONDENT

Date of Decision : 15-05-2002

Acts Referred:
Motor Vehicles Act, 1988 — Section 169, 171

Citation : (2003) ACJ 1475

Hon'ble Judges : S.K. Kar, J

Bench : Single Bench

Advocate : George Raju, for the Appellant; H. Lalrinthanga, for the Respondent

Final Decision : Partly Allowed

Judgement

S.K. Kar, J.—This petition by the New India Assurance Company Limited, Aizawl Branch, is presented on the strength of Article 226/227 of the Constitution of India challenging the legality of the order dated 30.5.2000 passed by Presiding Officer, Motor Accident Claims Tribunal (in short MACT), in MACT Case No. 88/97. (The petition is, however, drafted very exhaustively like that of a petition of appeal). Insofar a question of maintainability of this petition under Article 226/227 of the Constitution of India is concerned, the law has been well-settled by the full bench judgment of this Court reported as 2000 (2) GLT 393, Miloni Rani Sana, Appellant v. New India Assurance Company Ltd. and Ors. The Court, now, definitely is required to enter into the matter in order to see whether there was any case of miscarriage of justice due to any infirmity, illegality or arbitrariness in the impugned judgment passed by the MACT.

2. The quintessence of the submission made by the learned counsel appearing for the petitioner is that on the basis of law given by Hon''ble Apex Court as reported in The Oriental Insurance Co. Ltd. etc. Vs. Hansrajbhai V.Kodala and Others etc. etc., the Tribunal was not justified in deciding the case applying Section 163-A of the Motor Vehicles Act, 1988. Moreover, the further contention is that there was no case of dependency in this case as the deceased was niece

of the claimant and was not an earning member on the basis of facts on record but the learned Tribunal failed to notice this fact and went from the wrong angle to treat the claim presented by person claiming to be the legal representative of the deceased died in vehicular accident. Lastly, it was contented that under no circumstances as per the materials on record the amount of compensation of Rs. 4,52,000 awarded by the Tribunal can be justified.

3. Learned counsel appearing for the respondents/claimant Sh. C. Keiliana, however, replied by stating that the deceased in this case was a member of the family of the claimant, being the adopted daughter of the claimant. That the petitioner/insurer did not pay the 50 per cent amount of award as ordered by this Court in time and due to this disobedience to the order of the Court alone the petition is liable to be dismissed. (Record shows the 50% award amounting to Rs. 2,12,500 was deposited and paid to claimants on 13.9.2001).

4. I have given my attention to the submissions made by the rival parties, weighed the relevant laws and the materials on the case record of the Tribunal that was called for and forwarded.

5. In short, the claim petition (Proforma) states that the deceased was daughter of later Thangluaia, aged 33 years, died due to a vehicular accident taken place on 13.11.1995 at about 7:30 P.M. near Lengpui under Bawngkawn Police Station due to alleged negligent driving of vehicle No. MZ-01/2040 (Bus) belonging to Lalthangvunga and insured with New India Assurance Company at the relevant time. The claimant prayed for award of 7 lakhs stating that deceased was earning fifteen thousand rupees per month from her business etc. etc.

6. As was usually done in this case also the Insurance Company presented a written objections raising various legal objections of want of cause of action, non-maintainability of the case in its present form, bar of limitation, defect of estoppel waiver, acquiescence etc. The allegations were denied but it was submitted that as per report of verification by the Police S. I. Sh. Kiran Kumar of Aizawl Police Station, the offending vehicle No. MZ-01/2040 was driven at the relevant time by the driver under influence of liquor and accordingly, as per terms of the policy Insurance Company was not required to pay compensation. That there were 53 (fifty three) passengers in the Bus which had limited capacity of 30 to 46 person and as such there was violation of permit condition. Insurer also denied the fact that the bus was insured with the Insurance Company and contended that there were no materials to saddle the Insurance Company with the liabilities to pay compensation.

7. Tribunal framed the following issues :

"1. Is the claim petition maintainable on law and facts ?

2. Is the claim petition barred by limitation and by principles of estoppel waiver and acquiescence ?

3. Was the accident caused due to rash and negligent driving by the driver/O.P of

the accident vehicle ?.

4. Is the claimant entitled to compensation as claimed for ? If so, to what extent ?

5. Are the O.P.''s liable to pay such compensation? If not who else?

6. To what other relief, if any is the claimant entitled ?".

8. The claimant examined himself on oath and was cross-examined by the Insurance Company. Other witnesses were Doctor Vanlalsiama and Lalthangfala, Sub. Inspector of Police. Claimant also relied upon documentary evidence, namely, the inquest report, the Insurance Policy, Birth Certificate, Heirship Certificate, Income Certificate, Post Mortem Report, FIR. in the connected Police Case etc. (all these documents were marked as Exibits 1 to 11). Both parties submitted their written arguments also, it seems.

9. A bare reading of the impugned judgment will show that it was not written in a logical sequence of argumentation in order to arrive at a rational conclusion after marshalling the evidence that has been adduced. The impugned judgment has not recorded appropriate points for determination and the reasons thereon. It has only reproduced the arguments placed before it and thereafter made a short discussion under a ''Heading of findings'', discussed all the issues together with an excuse that it was done for the sake of brevity and convenience. This is something un-heard of in the legal parlance. If issues are framed they are to be dwelt with separately, appropriately and distinctly on the basis of evidence on record and findings to be recorded as per the guidelines of law given under Order XIV of CPC. It is the established principles that claim Tribunals will follow the CPC in the enquiry contemplated u/s 169 of Motor Vehicles Act subject to existence of any rules or procedure that may be framed by Govt. or adopted by the concerned Tribunal. There was absolutely no sifting of evidence recorded/given in the enquiry. The conclusions were recorded by the Tribunal without discussion of the evidence, the Tribunal also failed to record the fact on evidence that there was no dispute insofar accident involving of the particular vehicle and resultant deaths of passengers. Rather then the Tribunal held that since documents were admitted into evidence without objections the contentions of the claimant have been established along-with Oral Testimony adduced. The judgment has neither reproduced nor discussed the impacts of evidence adduced.

10. But then this being not an appeal the factual proposition may be overlooked in this context as the writ petitioner has restrained its submissions on the quantum of compensation and the method of assessment of the same on the basis of Section 163-A of the Motor Vehicles Act, Hon''ble Apex Court, while dealing with Civil appeal as reported in The Oriental Insurance Co. Ltd. etc. Vs. Hansrajbhai V.Kodala and Others etc. etc., has clearly taken this view that amount calculated under the provision of structured formula contained in Section 163-A is payable as an alternative not in addition, to compensation payable u/s 168 of the Act on Principles of fault based liability. It was clarified that this

scheme u/s 163-A is to determine the compensation in all cases of income upto Rs. 40,000 per annum. The relevant portion of the judgment is quoted herein below for the sake of clarification :

"However, this benefit can be availed of by the claimant only by restricting his claim on the basis of income at a slab of Rs. 40,000 which is the highest slab in the Second Schedule which indicates that the Legislature wanted to give benefit of no-fault liability to a certain limit. This would clearly indicate that the Scheme is in alternative to the determination of compensation on fault basis under the Act. The object underlining the said amendment is to pay compensation without there being any long-drawn litigation on a predetermined formula, which is known as structured-formula basis which itself is based on relevant criteria for determining compensation and the procedure of paying compensation after determining the fault is done away. Compensation amount is paid without pleading or proof of fault, on the principle of social justice as a social security measure because of ever-increasing motor vehicle accidents in a fast-moving society. Further, the law before insertion of Section 163-A was giving limited benefit to the extent provided u/s 140 for no-fault liability and determination of compensation amount on fault liability was taking a long time. That mischief is sought to be remedied by introducing Section 163A and the disease of delay is sought to be cured to a large extent by affording benefit to the victims on structured-formula basis. Further, if the question of determining compensation on fault liability is kept alive it would result in additional litigation and complications in the case claimants fail to establish liability of the owner of the defaulting vehicles".

In order to highlight the illegality and impropriety of the assessment of the quantum of compensation in the instants case I would like to reproduce relevant part of the impugned judgment and it goes as hereunder -

"On the question of the income of the deceased Ngaizuali it may be best safe to accept Rs. 3500 as per the statement of the claimant as no contrary is proved by the opposite party by adducing evidence. As the deceased attained the age of 33 yrs 11 months 22 days at the time of her death multiplier 17 is the admissible figure for calculating the amount of compensation as per the SECOND SCHEDULE FOR COMPENSATION FOR THIRD PARTY FATAL ACCIDENT/ INJURY CASES CLAIMS and it may be assessed as follows :-as the second schedule can be used as a guide as per Hon''ble Supreme Court Ruling in the case of UPS RTC and Ors. v. Trilok Chandra and Ors. (Civil Appeal Nos. 7760-7761 of 1996. Arising out of SLP(c) Nos. 1066-65 of 1993, decided on 7th May, 1996).

1. Monthly income of the deceased ...... Rs. 3500

2. Annual income of the deceased 3500 x 12 ...... Rs. 42000

3. According to the schedule annual income of Rs. 40000 is to get Rs. 640000

Therefore 640000 x 420000

40000 ...... Rs. 672000

4. Deducting 1/3 expenses if she still alive as per note under the schedule it comes to ...... Rs. 448000

5. Funeral expenses ...... Rs. 2000

6. Loss of estate .... Rs. 25000

Total compensation due to the claimant is .... Rs. 4,52,500

So, the opposite party/New India Assu. Co. Ltd., is liable to pay Rs. 4,52,500 (Rupees four lakh fifty two thousand five hundred) only for compensation to the claimant while the claimant is claiming Rs. 7,00,000 (Rupees seven lakh) only".

Undoubtedly in Trilok Chandra''s Case Hon''ble Supreme Court opined that Second Schedule attached to the Motor Vehicles Act of 1988 and the structural formula for the assessment of compensation therein can be adhered to as a guideline for quantification of compensation. But, it has been rightly pointed out by the learned lawyer for the petitioner that in doing so, the Tribunal is not supposed to forget the legal implications therein as contemplated by the scheme u/s 163A of the Motor Vehicles Act. Particularly in view of law given by The Oriental Insurance Co. Ltd. etc. Vs. Hansrajbhai V.Kodala and Others etc. etc., there is no scope for any confusion.

11. From the excerpts of the judgment of the Tribunal as reproduced herein-before, we have seen that although there was no legal evidence with respect to income of the deceased. The Tribunal accepted the same most illegally to be Rs. 3500 leading to miscarriage of justice. In holding enquiry under Motor Vehicles Act, it is the established principle that strict adherence to the provisions of the Evidence Act is not to be maintained but then fact remains that the application of the Evidence Act has not been dispensed with. Moreover, we cannot decide things arbitrarily as opposed to arriving at conclusion on the basis of reliable and acceptable evidence. The fact of income is a question of fact to be decided by acceptable evidence on record. Here excepting the isolated statement of the complainant there is no other evidence and his statement has been challenged during his cross-examination by the opponent side for which corroborative evidence must come. But there was none adduced. Hence PW 1 cannot be relied upon to ascertain this fact of income of the deceased. In this context we may remind ourselves of the definition of "proved" given in the Evidence Act (Section 3). The document on which learned tribunal relied upon to ascertain income of deceased, is a certificate given by Superintendent of Taxes. It goes as below ;-

"ORIGINAL BOOK No: 6 SERIAL No : 43 OFFICE OF THE SUPERINTENDENT OF TAXES AIZAWL CIRCLE II AIZAWL

Certiry that annual income of SmtNgaizuali D/o Keiliana of Thenzawl from all sources during the year according to her own declaration is Rs. 42,000 (Rupees forty two thousand) only.

SEAL

Sd/- Date 5/2/97 Superintendent of Taxes Aizawl Circle-II Aizawl."

Here only marking of a document as exhibit neither proves it not dispensed with its proof. It is required to be proved by provision in Evidence Act. None appeared to prove contents of this document. Moreover, this document, exhibit 5, looks to be a photo copy. So, I am constrained to find and hold that the decision on income was taken by the Tribunal on basis of in-admissible and un-acceptable evidence and accordingly, there was Gross illegality committed requiring interfere of higher court. It is also another established point of law that in order to assess compensation multiplier digists are selected on the basis of age of the claimant/ legal representatives who were directly dependent on the income of the deceased and not on the basis of the age of the deceased. Here also an error of law was committed by the Tribunal. Thus, the petitioner has rightly approached this Court to invoke its extraordinary jurisdiction to eradicate the evil and grant remedial measures.

12. Since the matter is of urgent nature, remanding the case of 1995 for fresh inquiry and order may cause un-necessary delay. Accordingly, this Court will assess the just compensation while disposing of this petition. And I go as here under. While going to do so I bear in mind that in such case ''an endeavour should be made to fix just compensation which should represent the pecuniary loss to the legal representatives. Determination cannot be exact or accurate. It must necessarily be an estimate or even partly conjecture. There is scope for some arbitrariness to creep in. But endeavour should be made to reach the figure by balancing on one hand the loss to the claimants of the future pecuniary benefits and on the other any pecuniary advantage which comes to the claimant by reason of death''. Refer (1998) 1 SCC 72

13. It is permissible to take help of the principle in scheme enacted by Second Scheduled attached to the M.V. Act of 1988 (Refer Section 163-A). I quote from the judgment of Hon''ble Apex Court reported as Smt. Kaushnuma Begum and Others Vs. The New India Assurance Co. Ltd. and Others,

"21. Now, we have to decide as to the quantum of compensation payable to the appellants. We first thought that the matter can be remitted to the Tribunal for fixation of the quantum of compensation but we are mindful of the fact that this is a case in which the accident happened were than 13 years ago. Hence we are inclined to fix the quantum of compensation here itself.

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23. The age of the deceased at the time of accident was said to be 35 years plus. But when that is taken along with the annual income of Rs. 18000 figure indicated in the structural formula is Rs. 2,70,000. When 1/3rd therefrom is deducted the balance would be Rs. 1,80,000. We, therefore, deem it Just and proper to fix the said amount as total compensation payable to the appellants as

on the date of their claim."

In the above cited case (supra) the court also ruled that rate of interests on the basis of change in economy and policy of the R.B.I. the usual rate of 12% is to be reduced to 9% per annum simple interests as contemplated by Section 171 of M.V. Act.

14. Claim of compensation is an equitable relief and product of welfare legislation. ''One who seeks equity must come with clean hands''. But if we pay attention to the facts of the case we would notice that the claim petition was filled up callously, if not purposely, out of greed for money. The income has been mentioned there as Rs. 18000 per month. The deceased has been stated to be related to claimant as ''son'' although name inserted therein and subsequent evidence adduced tells that she is woman and niece of the claimants. Surprisingly, the learned member of the Tribunal (judgments noted him as Presiding Officer although Section 165 of M.V. Act 1988 conceive of Members and Chairman of such Tribunals) advanced a suo motu explanation with intents to overrule these defects and infirmities. In this context it may not be out of place to comment here that now a days there is a growing tendencies unfortunately to gain fortune out of the unfortunate death/injuries in vehicular accidents by resorting to dubious means and stark falsehood. The tendencies are to be discouraged.

15. Be that as it may, let me find out to just compensation in this case on the basis of materials on record. Due to the discrepancies in the evidence of income the same is to be rejected and it is to be treated as a case of no income. The alternative is to go for notional income conceived by the Second Schedule of M.V. Act @ Rs. 15,000 per annum or to fix a lump sum on surmise clubbing income of Rs. 3000 p.a. and Rs. 12,000 p.a. from second schedule it would be 2,42,000, less 1/3rd which is equal to Rs. 1,61,000 and odd, taking hints from facts of Smt. Kaushnuma Begum and Others Vs. The New India Assurance Co. Ltd. and Others, inclusive of the no fault claim. Although there was an order to that effect, it was not brought to my notice by the concerned parties whether ''no fault'' of Rs. 50,000 has been paid or not. At any rate claimant is not entitled to anything above two lakhs. But by interim order, this court already allowed Rs. 2,12,500 and that has been paid by the petitioner Insurance Company. This may be taken to be inclusive of all claims including interests pendente lite and no fault etc. etc.

16. The petition is partly allowed. The award granted by learned Tribunal is reduced to Rs. 2,12,500. The same has been paid already and therefore the M.A.C.T. Case No. 88/97 will stand finally as closed.

17. Send down the L.C.R. forthwith.