
(2008) 03 GAU CK 0032
In the Gauhati High Court

New India Assurance Co. Ltd.

APPELLANT

Vs

SH. K. Vanlal Chhuanga and Another

RESPONDENT

Date of Decision : 04-03-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173
Penal Code, 1860 (IPC) — Section 279, 304A

Citation : (2008) 2 GLT 56

Hon'ble Judges : H. Barua, J

Bench : Single Bench

Judgement

H. Barua, J.—Heard Mr. Ricky Gurung, learned Counsel for the appellant and also heard Mr. S.N. Meitei, learned Counsel for the respondent No. 1.

2. This appeal has been filed under the provisions of Section 173 of the M.V. Act, 1988 for setting aside the judgment and award dated 2.9.04 passed by the learned Member, MACT Aizawl in MAC Case No. 49/2003.

3. Shri K. Vanlalchhuanga respondent No. 1 herein, on account of death of his son in a vehicular accident filed a claim petition before the learned Member, MACT Aizawl, claiming compensation to the tune of Rs. 15,00,000/-.

4. The learned Member, MACT, after due enquiry of the claim awarded Rs. 7,08,752/- as compensation together with interest at the rate of 9% p.a. from the date of filing of the claim petition to the claimant until realization. While awarding as such it was directed that the award along with interest shall be paid within one month from the date of passing of the impugned judgment and award.

5. Being highly aggrieved by and satisfied with the award, this present appeal has been preferred. Mr. Ricky Gurung, learned Counsel for the appellant at the very outset of his argument raised the following issues for decision:

(i) that the learned member committed error in applying the multiplier.

(ii) that the learned member also committed error in computing the

compensation by taking the gross income of the deceased.

6. Mr. Ricky Gurung, the learned Counsel for the appellant in support of the contention in the context of the first issue argues that the learned Member had taken the multiplier at 17 taking the age of the deceased. But the learned Member ought to have taken the multiplier on the basis of the age of the father, the claimant. Here in our case, we have found that the father of the deceased filed the claim petition whose age is evidently at 49. Mr. Ricky Gurung argues that appropriate multiplier would have been 13 in view of the age of the claimant father. In the context of the second issue, the learned Counsel for the appellant also submits that the Last Pay Certificate of the deceased (Exhibit C/4) speaks for the gross salary at Rs. 5182/- and after all deductions the salary stands at Rs. 4508/- RM. But the learned member failed to consider the ratio laid in the case in between Chinnama George and Others Vs. N.K. Raju and Another, Compensation was made by taking the gross income of the deceased which is not legal on the part of the learned member. In para 8 of the judgment, the Apex Court held as under:

8. Lastly, it was submitted that the salary certificate shows that the salary of the deceased was Rs. 8,632/-. It was submitted that the High Court was wrong in taking the salary to be Rs. 6,642/- It was submitted that the High Court was wrong in deducting the allowances and amounts paid towards LIC, society charges and HBA, etc. We are unable to accept this submission also. The claimants are entitled to be compensated for the loss suffered by them. The loss suffered by them is the amount which they would have been receiving at the time when the deceased was alive. There can be no doubt that the dependents would only be receiving the net amount less 1/3rd for his personal expenses. The High Court was therefore, right in so holding.

According to the learned Counsel for the appellant, had the multiplier 13 and net income of the deceased been taken, the compensation would have stand at Rs. 4,68,832/-. The compensation so computed by the learned member according to the learned Counsel for the appellant is erroneous and illegal and the same cannot sustain.

7. Mr. S.N. Meitei, learned Counsel for the respondent No. 1, however, raises a strong objection in the context of the application of the multiplier at 13 and also in the context of applying the net income in computing the award. It is submitted by him that life expectancy being 63.27, the appropriate multiplier would have been 16.12. This submission of Mr. S.N. Meitei does not hold good in view of the law laid down by the Hon"ble Supreme Court in the case between Gyan Chand Jain and Anr. v. Permanand and Ors. reported in 2003(1) TAC 490 (SC). In para 4 and 5 of the judgment the Hon"ble Supreme Court laid down as under:

4. Claimants, being aggrieved; filed the SLP in which leave was granted. learned Counsel appearing for the appellants argued that in the present case, keeping in view the age of the deceased, multiplier of 18 ought to have been applied. We do

not find any merit in this submission. It is not disputed that maximum multiplier that could be applied is 18. Since the deceased was unmarried and the age of the mother was 49 years and that of the father was 55 years, the total loss of dependency has to be determined keeping in view the age of the parents. It is well established that age of claimants when they happen to be parents in the case of deceased unmarried child is a relevant factor for determining the multiplier to be adopted. Under such circumstances, the multiplier applied by the Tribunal which was upheld by the High Court is appropriate.

5. We do find a small infirmity in the order of the Tribunal. The income of the deceased was determined at Rs. 1,638/- p.m. The Tribunal erred in determining the total loss of dependency at Rs. 1,000/- p.m. The same should have been Rs. 1,100/- per month and as only 1/3rd was to be deducted towards the personal expenses of the deceased. In that view of the matter, the loss of dependency is determined at Rs. 1,100/- p.m. which comes to Rs. 13,200/- per annum. By adopting multiplier of 12 the total loss towards the loss of dependency comes to Rs. 1,58,400/-. By adding Rs. 3,000/- towards loss of love and affection and Rs. 3,000/- towards funeral expenses the total compensation comes to Rs. 1,64,400/- which is rounded off to Rs. 1,65,000/-. The Insurance Company is directed to deposit the balance amount before the Tribunal, Kota within a period of six weeks from today alongwith interest at the rate determined by the Tribunal. On deposit of the amount, the claimants would be at liberty to withdraw the same.

In the case between Gyan Chand Jain and Anr. v. Permanand and Ors. (supra), the Hon'ble Apex Court was of the view that multiplier depending on the age of the parents would have been appropriate in computation of the award if the deceased was unmarried at the time of accident. Here in our case also the deceased was an unmarried Excise Constable and was receiving gross salary of Rs. 5182/- p.m. It is evident from the record that the age of the father who is the claimant is 49 years of age. Of course, there is no evidence on record to show that the age of mother of the deceased is 45. That apart, the mother is not the claimant. In that view of the matter the tribunal ought to have considered and taken into consideration the age of the father, the claimant himself. If the age of the father is taken at 49 and the net income of the deceased the award could have been calculated at Rs. 4,68,832/-

8. It is submitted by Mr. S.N. Meitei that though the claim application does not speak specifically about the Section under which it is made, the claimant has proved through evidence that the accident occurred due to rash and negligent driving of the driver and the deceased died as a result of ran over by the said truck. When the claimant has proved that the accident had taken place due to rash and negligent driving of the driver of the offending vehicle concerned, non-quoting of the appropriate Section of the law will not vitiate the award. It can be inferred from the facts and evidence led that the application is made u/s 166 of the Act. Negligence has also been proved by the claimant by proving exhibit C/5,

C/6 & C/8. Exhibit C/5 is the FIR lodged by the Police while Exhibit C/6 is a Certificate issued by the doctor. Exhibit C/8 is a police report submitted by SIB. Lalbiakmawia Officer in-charge Vairengte Police Station, Kolasib District, dated 22.2.03, certifying that on 2.2.03 at around 7:30 PM one Tipper No. AS-10/3415 driven by Mr. John Alfred S/o. Lalruatsanga of Sakawrdai Village had run-over one K. Lalrinliana, an Excise Constable while the vehicle was moving back at Zalen Veng, Vairengte, which caused the death of the said K. Lalrinliana for which an inquiry was conducted and Vairengte P.S. Case No. 9/02 dated 2.2.03 under Sections 279/304A IPC was registered against the driver. These three exhibits go to show that there was negligence on the part of the driver while driving the vehicle which caused death of the Excise Constable on the relevant date. It is submitted by the learned Counsel for the appellant that computation cannot be made taking aid of the second scheduled of the M.V. Act since the income of the deceased was far beyond the limit of Rs. 40,000/- annually. This submission also will not hold good in view of the facts and evidence on record.

9. Having considered the facts and circumstances of the case and evidence on record, it would not be appropriate to say that the present application cannot be treated as an application made u/s 166 of the M.V. Act. These facts and circumstances and the evidence make it clear that it was made u/s 166 of the M.V. Act. It should be borne in mind that neither of the section finds place in the claim petition.

10. The calculation so made by the learned Member taking aid of the gross income and the multiplier at 17 is not acceptable in view of the law laid down by the Hon"ble Supreme Court in the case between Asha and Ors. v. United India Insurance Co. Ltd and Anr. and Gyan Chand Jain and Anr. v. Permanand and Ors. Accordingly, the award so computed is modified to the extent of Rs. 4,68,832/- plus funeral expenses of Rs. 2000/-, conventional amount of Rs. 10,000/- and loss of estate at Rs. 2500/- the total of which would carry 9% interest p.a.

11. The amount already received by the claimant shall be deducted from the total amount so computed and awarded.

12. Appeal is partly allowed.