

(2005) 03 GAU CK 0046

In the Gauhati High Court

Case No : MAC Appeal No. 24 of 2000 and WP (C) No. 253 of 2000

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Bina Bhattacharjee and Others

RESPONDENT

Date of Decision : 18-03-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Motor Vehicles Act, 1988 — Section 163A, 166

Citation : (2005) 3 GLR 380

Hon'ble Judges : I.A. Ansari, J

Bench : Single Bench

Advocate : B. Bhattacharjee, for the Appellant; M. Kar Bhowmick, S. Adhikari and B.C. Das, for the Respondent

Judgement

I.A. Ansari, J.—I have heard Mr. K. Bhattacharjee, learned counsel for the petitioner, and Mr. P.S Deb, learned counsel appearing on behalf of the respondents.

2. By the impugned award, dated 18.12.1999, passed in TS (MAC) No. 456/96, the learned Member, Motor Accident Claims Tribunal, West Tripura No. 2, Agartala, has awarded a sum of Rs. 3,24,000 as compensation in favour of the claimant for the injuries sustained by him in a motor vehicular accident. Feeling aggrieved, the insurer of the offending vehicle has challenged the award in this writ petition.

3. The facts giving rise to the present writ petition may, in brief, be stated as follows:

The claimant (since deceased) made an application u/s 166 of the Motor Vehicle Act (hereinafter referred to as "the MV Act"), his case being, in brief, thus: On 17.10.1995, when the claimant was boarding into the bus No. TR 01-2745 at Motor Stand Road, Agartala, the driver of the said vehicle, without taking care as to whether all the passengers had fully boarded into the bus or not, suddenly,

geared up the speed of the vehicle and started driving the same very rashly and negligently. Unable to maintain his balance, the claimant fell down on the road and sustained severe injuries on his head. The claimant was taken, in injured condition, to GB Hospital, where he remained admitted from 18.10.1995 to 21.10.1995 and, on being referred by the said hospital, the claimant was shifted to SSKM Hospital, Calcutta, on 25.10.1995, where he remained under treatment as an indoor patient for about a month. While discharging him from the hospital, the hospital certified that the claimant had suffered intracerebral haemorrhage and was advised not to undertake heavy exertion or strenuous activities. The claimant, who was, by occupation a driver, became, thus, unfit to pursue his occupation as a driver and is, therefore, entitled to compensation.

4. The learned Tribunal held that the said accident took place due to rash and negligent driving of the offending vehicle by its driver. The finding, so reached by the learned Tribunal, that the said accident took place due to rash and negligent driving of the said vehicle, could not be assailed before the learned Tribunal and has, in fact, not been assailed at the time of hearing of this writ petition.

5. It is also not in dispute that the said vehicle stood insured on the date of the said accident with the present petitioner as insurer thereof. It is the amount of compensation, awarded by the Tribunal, which became the subject-matter of challenge at the time of hearing. In this regard, what has been contended, on behalf of the insurer, is that the learned Tribunal has granted Rs. 60,435 as expenses for the medical treatment, incurred by the claimant, though under the MV Act, the learned Tribunal could not have awarded more than Rs. 15,000, as expenses incurred for the treatment of the claimant.

6. While dealing with the above aspect of the matter, it is of paramount importance to note that an application for compensation can be made, under the scheme of the MV Act, either u/s 166 or u/s 163A. If a compensation is, claimed u/s 166, the claimant has the responsibility to prove that the accident, in question, took place due to rash and negligent driving of the offending vehicle; but if an application for compensation is made u/s 163A, no negligence, wrongful act or default on the part of the driver of the offending vehicle need be proved. Similarly, when an application is made u/s 163A, the schedule framed u/s 163A cast certain limitations on the powers of the Tribunal, while awarding the compensation. For instance, while considering an application made u/s 163A, though the Tribunal can direct payment of the medical expenses actually incurred by a claimant, it cannot direct payment of medical expenses exceeding Rs. 15,000 even if the expenses incurred is more than u/s 163A. However, when an application is made u/s 166, the Tribunal's powers suffer from no such limitation inasmuch as it can direct payment of medical expenses incurred by the claimant, whatever may be the amount so incurred and even if the amount exceeds the sum of Rs. 15,000 similarly, when the application is made u/s 166, the Tribunal can grant compensation of an amount exceeding Rs. 5,000 in the case of grievous injuries and an amount exceeding Rs. 1,000 in the case of non-grievous

injuries, provided that the nature of the case set up by the claimant so warrants.

7. In the case at hand, as the claim has been made u/s 166, the Tribunal did not suffer from the limitation, which the Second Schedule aforementioned imposes as regards the medical expenses. Viewed from this angle, when the Tribunal found, on a threadbare discussion of the evidence on record, that the claimant incurred, as medical expenses, an amount of Rs. 60,435, it was not debarred from directing the said amount to be paid, as medical expenses, to the claimant.

8. It has also been agitated, at the time of hearing of the present writ petition, that the compensation awarded for the injuries sustained by the claimant is unreasonable and not sustainable under the law. While considering this aspect of the matter, it is pertinent to note that though the petitioner has challenged in its writ petition that the quantum of compensation is too high, what need to be noted, in this regard, is that an insurer cannot, as held in *Sadhana Lodh Vs. National Insurance Company Ltd. and Another*, , challenge, by way of a writ petition, an award given by a Tribunal on the mere ground that the compensation awarded is high or excessive, for, an erroneous decision, in the absence of any other ground, is not amenable to the writ jurisdiction under Articles 226 and/or 227 of the Constitution of India. That the insurer, such as, the present petitioner, cannot challenge an award made by a Tribunal on the ground of quantum of compensation only cannot be disputed and has not, in fact, been disputed before me.

9. Coupled with the above, the learned Tribunal has, I find, assigned cogent reasons for awarding the compensation of Rs. 3,24,000 inclusive of the medical expenses of Rs. 60,435 aforementioned. This apart, I notice that the learned Tribunal has relied on a certificate issued by the doctor, who had attended the claimant and this certificate indicates that the claimant suffered from intracerebral haemorrhage and was advised not to undertake heavy exertion or any extraneous activity. The learned Tribunal has concluded that the injuries sustained by the claimant virtually restrained him from carrying out his occupation as a driver. I see no reason to take a view different from what the learned Tribunal has taken. The learned Tribunal has found that the petitioner used to earn more than Rs. 2,000 per month, he was aged about 50 years and had become unfit for carrying out his occupation as driver. On the basis of these findings, the learned Tribunal applied 11 as the multiplier and calculated that the compensation would be to the tune of Rs. 3,24,000. The conclusion, so reached, cannot be said to be without any evidence or wholly against the weight of the evidence on record nor can the same be said to be grossly contrary to, and/or in violation, of the scheme of the MV Act.

10. In view of what have been pointed out above, I find absolutely no merit in the present petition and the same is dismissed with cost of Rs. 2,000.

11. With the above observations and directions, this writ petition shall stand disposed of.

12. Send back the LCRs.