(2010) 11 GAU CK 0016

In the Gauhati High Court

Case No : MAC Appeal No. 03 (AP) of 2010

Oriental Insurance Co. Ltd. APPELLANT

Vs

Ranjit Roy RESPONDENT

Date of Decision : 23-11-2010

Acts Referred:
Motor Vehicles Act, 1988 — Section 149(2), 170

Citation : (2011) 2 TAC 854

Hon'ble Judges : P.K. Musahary, J

Bench : Single Bench

Advocate : G. Ori and M. Kato, for the Appellant; D. Lazi, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Musahary, J.—Heard Mr. M. Kato, learned Counsel for the Appellant and also heard Mr. D. Lazi, learned Counsel for the Respondent.

2. This appeal is directed against the order dated 12.4.2010 passed by the Court of Member, Motor Accident Claims Tribunal, Tezu in MACT Cast No. 4/2009 awarding compensation of Rs. 4,73,640 to the claimant on the death of his wife with simple interest @ Rs. 6% per annum from (29.6.2009) within a period of 45 days from the date of order.

3. The brief facts of the case are that a passenger bus (City Ride) met with an accident on 13.5.2009 and in the said accident, Appellant''s wife Smt. Jamuna Roy, Son, Shri Dipu Roy and daughter, Miss Krishna Roy died on the spot while travelling as passengers from Tinsukia to Tezu, The Appellant as claimant filed 3 separate MACT claims petition claiming a sum of Rs. 10,00,000 in each case, The owner and driver of the offending vehicle have been impleaded as opposite party No. 1 and 2 in the claim cases but they did not contest the case. However, the present Appellant an opposite party No. 3 filed written statement opposing the claim, Three claims petition have been registered as MACT case No. 4/2009, MACT case No. 5/2009 and MACT case No. 6/2009. all those claim cases were

heard together and disposed of by a common judgment and order dated 20.10.2008. In MACT Case No. 4/2009, the learned Tribunal awarded a net compensation of Rs. 5,07,724, In MACT case No. 5/2009 and MACT case No. 6/2009, the learned Tribunal awarded net compensation of Rs. 1,54,500 each. The total compensation awarded in all those MACT cases came to Rs. 7,16,724, The Appellant as opposite party No. 3, being aggrieved and dissatisfied with the award passed by the learned Tribunal in respect of MACT Case No. 4/2009 filed a petition for review of the said award on the ground that the deceased wife of the claimant had no income and the learned Tribunal calculated the income on the basis of the income of the claimant-husband and that too by applying wrong multiplier. The learned Tribunal upon hearing the parties, applied the multiplier 15 and calculated the compersation at Rs. 4,73,460 with simple interest @ Rs, 6% per annum from 29.6.2009 payable within a period of 45 days from the date of the order. The present Appellant being not satisfied with the aforesaid order has approached this Court by filling the present appeal.

4. I have perused the records of the case and carefully gone through the common judgment and order dated 20.10.2009 as well as the order dated 12.4.2010.

5. From records, it is found that the opposite party Nos. 1 and 2, the driver and the owner of the offending vehicle did not file any written statement. It means that they did not contest the claim. The present Appellant as insurer and as opposite party No. 3. filed written statement but did not file any application u/s 170 of the M.V. Act to contest the claim on all or any of the grounds that are available to the person against whom the claim has been made.

6. A question has arisen in this case as to whether the insurer can maintain an appeal questioning the quantum of compensation while the insurer has not admittedly filed any application u/s 170 of the M.V. Act. This question has been decided already by the Apex Court in National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others, It has been hold amongst other, that right to appeal is not an inherent or a common law right but is a statutory right and hence, where the statute limits the right to appeal only to the specified grounds, the Appellant cannot file an appeal on any other ground. u/s 149(2) of the M.V. Act, right of appeal has been provided only on the ground specified therein. In the present case, the Appellant has admittedly challenged the quantum of the award which is not a ground enumerated in Section 149(2) of the M.V. Act.

7. Following the aforesaid principle, this Court in New India Assurance Co. Ltd. Vs. Sangzuali and Another, held that failure of the Insurance Company to invoke the provisions of Section 170 of the M.V. Act before the Tribunal, disentitles it to file an appeal and under such circumstances, the appeal can be preferred only on the ground enumerated u/s 149(2) of the M.V. Act. It is clearly held therein that appeal preferred on the grounds other than enumerated u/s 149(2) is not maintainable. The Apex Court in R. Mannakatt and Anr. v. M. Subramaniam and Anr. (2005) 11 SCC 389 held that appeal preferred by the Insurance Company u/

s 170 of M.V. Act is not maintainable in cases where the insurer has not taken the grounds enumerated u/s 149(2) of the M.V. Act.

8. In the light of the decisions of the Apex Court as well as the decision of this Court in the aforesaid cases, I am of the considered view that the present appeal is not maintainable. Since the appeal is not maintainable, it is not required go to into the question of quantum of compensation awarded by the learned Tribunal. I find no merit in this case. Accordingly, this appeal stands dismissed. Parties to bear their own costs.

9. Send down the records to the learned Tribunal forthwith.

