

(2010) 12 GAU CK 0040
In the Gauhati High Court
Case No : MAC Appeal No. 49 of 2008

Pravash Das

APPELLANT

Vs

Divisional Manager, Oriental Insurance Company Ltd. and
Others

RESPONDENT

Date of Decision : 07-12-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2011) 3 GLT 427

Hon'ble Judges : Brojendra Prasad Katakey, J

Bench : Single Bench

Advocate : A. Maleque, for the Appellant; S. Dutta, M. Choudhury, D. Baruah, D. Chakraborty, M. Choudhury, M. Rahman, A.C. Sarma, K. Pathak and M.K. Bora, for the Respondent

Final Decision : Allowed

Judgement

B.P. Katakey, J.—This appeal by the claimant is for enhancement of amount of compensation awarded by learned Presiding Officer, MACT, Kokrajhar vide order dated 20 February, 2008 in MAC Case No. 74/2006 awarding a sum of Rs. 3,35,900/- (Rupees three lakh thirty five thousand and nine hundred) only, for the death of claimant's wife in a motor accident occurring on 11 May, 2006, together with interest at the rate of 6 per cent per annum from the date of filing the claim petition till the date of realization, and directing Respondent insurance companies to satisfy the award, there being contracts of insurance between the insurance companies and the Respondents/owners of the vehicles involved in the accident.

2. An application u/s 166 of Motor Vehicles Act, 1988 has been filed by the present Appellant before learned Tribunal claiming compensation of Rs. 8 lakhs contending inter alia that on 11 May, 2006, while his wife was travelling by a bus bearing registration No. AS-17/7152 belonging to the Respondent No. 4, the bus met with an accident due to the collision with another vehicle bearing registration

No. AS-18/A-0239 (truck) belonging to present Respondent No. 3 at Chalandapara on National Highway No. 31B at around 12.30 p.m., in which accident his wife had received severe injuries, for which she was hospitalized at Goalpara Civil Hospital, and eventually she died on 12 May, 2006. It has also been pleaded in the application that the age of the deceased was 35 years and she had three dependants, apart from the Appellant, two minor children, and her monthly income was Rs. 7,000/- (Rupees seven thousand) only. The further case of the Appellant before learned Tribunal was that the accident occurred due to rash and negligent driving by the drivers of both the vehicles. The present Respondent No. 1 insurance company being insurer of the vehicle bearing registration No. AS-18/A-0239 (truck) and the present Respondent No. 2 insurance company being insurer of the vehicle bearing registration No. AS-17/7152, they have been impleaded as opposite parties in the said proceeding, apart from the owners of both the vehicles. The said proceeding has been registered as MAC Case No. 74/2006.

3. The Respondent Nos. 3 & 4/owners of the offending vehicles, and the Respondent Nos. 1 & 2, the insurers, on receipt of notices, entered appearance and contested the proceeding by filing their respective written statements.

4. The owners of the offending vehicles, in the written statements, have not denied the accident as well as the factum of death of Appellant's wife. They have, however, pleaded that since there has been a contract of insurance between them and the insurance companies, any amount of compensation that may be payable is to be awarded against the insurance companies.

5. The Respondent Nos. 1 and 2 in their written statements denied the allegations made in the application filed u/s 166 of the Act and the claimant/Appellant was put to strictest proof thereof.

6. The Appellant/claimant, in order to substantiate his claim, had examined 3 witnesses, which includes the Appellant himself as P.W.-1; Sri Dipak Das, as P.W.-2; & Sri Parimal Das, as P.W.-3. P.W.-1 had also exhibited 4 documents, namely, FIR, as Ext. 1; certified copy of post mortem examination report, as Ext.2; income certificate issued by the Circle Officer, Chapar Circle, as Ext.3; and the inquest report, as Ext.4. The witnesses were cross-examined by the insurance companies, who were the opposite party Nos. 1 & 2 in the proceeding before the learned Tribunal. Neither the insurance companies nor the owners of offending vehicles examined any witness, though they filed their respective written statements.

7. Learned Tribunal, on appreciation of the evidences on record, vide order dated 20 February, 2008 awarded a sum of Rs. 3,35,900/- as compensation which includes Rs. 2,000/- towards the funeral expenses, Rs. 2,500/- towards the loss of estate, Rs. 5,000/- towards the loss of consortium, by holding that the accident occurred due to rash and negligent driving by both the vehicles, and the Appellant's wife, who was travelling in the bus, died arising out of the accident

on 11, May, 2006. The age of the deceased was found to be 35 years. The learned Tribunal, however, did not believe Ext.3, the income certificate issued by the Circle Officer, on the ground that the claimant/Appellant neither filed any income tax return nor any document in support thereof and took the monthly income of the deceased as Rs. 2,400/- and deducting one-third therefrom towards the amount the deceased would have spent for her own use had she been alive, awarded the amount compensation. Hence the present appeal.

8. I have heard Mr. A. Maleque, learned Counsel for the Appellant; Mr. D. Chakraborty, learned Counsel for the Respondent No. 1; and Mr. A.C. Sarma, learned Counsel for the Respondent Nos. 3 & 5. None appeared for the other Respondents.

9. Referring to the deposition of P.W.-1, P.W.-2 & P.W.-3, it has been submitted by learned Counsel for the Appellant, that since the Appellant could prove the monthly income of the deceased at Rs. 8,000/-, which has been supported by the income certificate issued by the Circle Officer, the learned Tribunal ought not to have refused to accept such certificate solely on ground that the claimant/Appellant neither produced any income tax return nor any other documents, even though it is not the case of any of the parties to the proceeding that the income of the deceased was taxable under the provisions of Income Tax Act, 1961. Learned Counsel therefore submits that learned Tribunal ought to have taken the monthly income of the deceased at Rs. 8,000/- and consequently ought to have awarded a sum of Rs. 8 lakhs as compensation, which has been claimed by the claimant/Appellant in claim application, though he is entitled to more than that.

10. Learned Counsel for the Respondent No. 1, on the other hand, while supporting the impugned order, has submitted that there being no other evidence on record except the income certificate issued by the Circle Officer to substantiate the claim of Appellant that the monthly income of the deceased was Rs. 8,000/-, no illegality has been committed by the learned Tribunal in taking the monthly income of the deceased at Rs. 2,400/- and consequently in awarding the amount by the impugned order dated 20 February 2008. According to learned Counsel, the Appellant is not entitled to any amount other than what has been awarded.

11. Learned Counsel for the Respondent Nos. 3 & 5 has submitted that there being no dispute with regard to the contract of insurance between the Respondent Nos. 3 and Respondent No. 1, the amount to which the Appellant/claimant may be found to be entitled may be directed to be paid by the insurance companies.

12. I have considered submissions of learned Counsel for the parties and also perused the materials available on record, both the oral and documentary. Neither the owners of the offending vehicles nor the drivers or for that matter the insurers have challenged the finding recorded by the learned Tribunal relating

to the factum of accident, involvement of aforesaid two vehicles in the said accident, death of the claimant's wife because of the severe injuries received by her in such accident on 11 May, 2006, the age of the deceased, the contracts of insurance between the Respondent No. 1 and the Respondent No. 3 as well as the Respondent No. 2 and the Respondent No. 4. Those aspects of the matter therefore are not required to be gone into in the present appeal. What has been disputed in the present appeal is the monthly income of the deceased. According to the Appellant, the learned Tribunal ought to have awarded more than what has been awarded. According to the contesting Respondents, the learned Tribunal has rightly passed the award.

13. The Appellant/claimant, in the application filed u/s 166 of the Act, has claimed the monthly income of the deceased as Rs. 7,000/-. P.W.-1-, P.W.-2 & P.W.-3, in their evidence, however have stated that the monthly income of deceased, who was a bookseller, was Rs. 8,000/- and apart from the Appellant, she had 2 minor children, who were dependent on her income. P.W.-1, in support of his claim that the monthly income of the deceased was Rs. 8,000/- has also proved the certificate (Ext.3) issued by the Circle Officer. That part of the evidence has not been challenged by the Respondent Nos. 1 & 2, who had cross-examined the witnesses examined by the claimant/Appellant. The learned Tribunal, as it appears from the impugned order dated 20 February, 2008, did not believe the income certificate (Ext.3) on ground that neither any income tax return nor any supporting document has been proved by the Appellant/claimant. It is nobody's case that the income of the deceased was taxable at the relevant point of time under the provisions of the Income Tax Act. The learned Tribunal, at one stage, after refusing to believe Ext.3, has held that the Apex Court in a case, without mentioning the details of the judgment and also the reference thereto, has held that the monthly income of the deceased should be taken at Rs. 3,000/-, and in the subsequent stage, without assigning any reason whatsoever, has taken the monthly income of the deceased at Rs. 2,400/-. There must be some basis and some reasons must be recorded by the learned Tribunal as to why a particular amount is taken as the monthly income of the deceased. No reason for taking the monthly income at Rs. 2,000/-, as noticed, has been recorded by the learned Tribunal.

14. Ext.3, the income certificate issued by the Circle Officer, reveals that the monthly income of the deceased was Rs. 8,000/-. It has also come out of the evidence that the deceased was a bookseller. The Appellant/claimant in the claim application filed u/s 166 of the Act claimed that deceased monthly income was Rs. 7,000/-. Therefore, there is apparent contradiction relating to the income of the deceased. Even assuming that the income of the deceased, who was a bookseller, was, in a particular month Rs. 7,000/- it cannot, in the absence of any positive evidence in that regard, be said that she had that income all throughout the year. Having regard to the deposition of witnesses, it can be safely concluded that the monthly income of the deceased would be around Rs. 5,000/-. The deceased admittedly left behind 3 dependants. Hence, by applying the ratio laid

down in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , one-third is to be deducted from the said amount to ascertain the loss of dependency. The annual loss of dependency therefore would be Rs. 40,000/- (Rs. 60,000/- minus Rs. 20,000/-). In paragraphs 41 & 42 of Sarla Verma (supra), the Apex Court has held that the multiplier to be used should be as mentioned in column 4 of the table charted therein. The deceased being 35 years old, the appropriate multiplier would be 16. The amount of compensation to which the Appellant would, therefore, be entitled is Rs. 6,40,000/- (Rupees six lakh and forty thousand) only. In addition thereto, the Appellant would be entitled to Rs. 2,000/- towards the funeral expenses, Rs. 2,000/- towards the loss of consortium and Rs. 2,500/- towards the loss of estate. The Appellant/claimant would therefore be entitled to Rs. 6,46,500/- (Rupees six lakh forty six thousand and five hundred) only. The said amount shall carry interest at the rate of 6% per annum as has been awarded by the learned Tribunal from the date of the application till the date of realization.

Since the finding recorded by the learned Tribunal relating to the involvement of both the vehicles in the accident has not been challenged and there being No. dispute relating to the contracts of insurance, the Respondent Nos. 1 & 2 shall pay the aforesaid amount with interest, in equal proportion, less the amount already paid, within two months. The learned Tribunal, on such deposit, shall invest a sum of Rs. 1,50,000/- (Rupees one lakh fifty thousand) only in the name of each of the minor children of the deceased in fixed deposit accounts in any nationalized bank having branch at Bongaigaon, with condition that the said amount shall not be encumbered in any respect and shall be paid to those two children only on attaining the age of majority.

The appeal is accordingly allowed to the extent indicated above. No. costs.