

(2011) 02 SIK CK 0001

In the Sikkim High Court

Case No : M.A.C. Appeal No. 04 of 2010

Smt. Durga Maya Pradhan, Sh. Dhan Bahadur Pradhan and
Sh. Kumar Pradhan

APPELLANT

Vs

Shri Ghambir Singh Mangar and The Branch Manager, New
India Assurance Co. Ltd.

RESPONDENT

Date of Decision : 21-02-2011

Acts Referred:

Citation : (2011) 2 TAC 5

Hon'ble Judges : Sonam Phintso Wangdi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.P. Wangdi, J.—This appeal is directed against the judgment of the learned Motor Accident Claims Tribunal, East and North Sikkim at Gangtok, dated 24.09.2010 in M.A.C.T. Case No. 46 of 2008 by the Appellant on the sole ground that the quantum of compensation awarded by the Claims Tribunal is inadequate and insufficient contrary to the evidence on the records.

2. It is the case of the Appellant that the Claims Tribunal committed error in taking Rs. 1,500/- only as monthly income of the deceased, quite arbitrary and in conflict with the evidence adduced during the enquiry before it.

3. The point for determination in the appeal being very short, with the consent of the learned Counsel of the parties, the matter was taken up for final disposal today.

4. Heard.

5. Mr. Ajay Rathi, learned Counsel appearing on behalf of the Appellants, placed the following evidence in support of his claim of the deceased earning Rs. 3,000/- per month as his salary at the time of his death:

(a) Paragraph 6 of the claim petition which reads as:

6. Monthly income of : Monthly salary of the person dead/ Rs. 3000/=(Net) Daily earning/ Rs. Three thousand income was: only per month.

(b) Paragraph 16 of the written objection filed on behalf of the Respondent No. 1, being the owner of the accident vehicle which reads as:

17. That with reference to paragraph 1 to 6 are matter of records.

(c) Ext. 22 which is a salary certificate issued by the owner of the vehicle;

(d) Paragraph 20 of the affidavit in evidence of the claimant No. 3, who is the brother of the deceased which reads as:

20. That my deceased brother was working as labour cum handy boy of Respondent No. 1 and he was drawing the salary to the tune of Rs. 3000/- (Rs. three thousand) only Exbt-22 is the original Salary Certificate issued by the Shri Gambir Singh Mangar (Respondent No. 1) of Kadamtam Busty, East Sikkim.

(e) The following portion of the cross-examination of the claimant by the Counsel on behalf of O.P. No. 1:

It is true that all the relevant documents of the ill-fated vehicle and the Driving License of deceased driver were valid and effective at the relevant time.

(f) The following portion of the cross examination of the claimant No. 3 by the Counsel on behalf of the O.P. No. 2:

...It is not a fact that my deceased brother was not earning a sum of Rs. 3000/- per month as his salary....

6. By relying on the above evidence, Mr. Rathi submits that the claimant has been successful in proving that the deceased did earn Rs. 3,000/- per month, as asserted by the claimants/Appellants in their claim petition.

7. Mr. Sudesh Joshi, learned Advocate representing the O.P. No. 2, the Insurance Company, on the other hand, strenuously argued that the findings of the learned Claims Tribunal was quite reasonable and no error or defect can be made out of it. It was submitted by him that the O.P. No. 2 in paragraph 7 of their written objection had categorically denied that the deceased at the time of his death earned Rs. 3,000/- per month. Reliance was also placed upon the cross-examination of the claimant No. 3 by the Insurance Company which reads as -

It is not a fact that my deceased brother was not earning Rs. 3000/- per month as his salary.

8. Mr. Joshi asserted that the claimant had failed to prove the document Ext. 22 being the salary certificate, as the owner of the vehicle who issued that certificate was not produced as a witness, thereby requiring the Court to draw an adverse inference against him. As per him, had the owner entered into the witness box, it would have enabled the Insurance Company, the O.P. No. 2, to cross-examine him in order to find out the truth or falsity of Ext.22.

9. Mr. Ashok Pradhan, learned Advocate who appeared on behalf of the O.P. No. 1, the owner of the vehicle, chose not to make any submission despite the opportunity available to him.

10. Before entering into the merits of the case, it is observed that the records of the Claims Tribunal do not appear to have been maintained properly. It is noticed that although the exhibits have been referred to by the Claims Tribunal, none of them appear to have been marked thereby making it difficult for this Court to identify them. As remanding the case to the Claims Tribunal for this limited purpose would have been a travesty of justice considering the resultant delay in disposal of the case, the learned Counsels representing the parties, when asked of them, assisted this Court in identifying the documents and most fairly conceded that the exhibits referred to in the judgment related to them. Under such circumstances, this Court proceeded to dispose of the matter.

11. Having considered the records of the case, the evidence on record and the respective submissions of the learned Counsels of the parties, this Court is of the view that the judgment of the Claims Tribunal is quite perverse in so far as its finding on the quantum of compensation is concerned. In order to avoid repetition and prolixity of this judgment, this Court is of the view that the instances indicated by Mr. Rathi do appear to clearly indicate that. The relevant portion of the impugned judgment of the Claims Tribunal is reproduced below:

11. Although the claimant's case is that the deceased used to earn Rs: 3000/- per month, the claimants have not adduced reliable evidence to support their contention. They have relied on a Salary certificate issued by owner of the vehicle yet the owner of the vehicle did not come to exhibit the same. Non production of vehicle owner to prove Salary certificate of deceased marked exbt.22, the opposite party No. 2 was debarred to cross-examine him and has suffered prejudice. Therefore I am not inclined to accept handy boy or labour are non-skilled workers. In many MACT cases involving death of Taxi Driver, claimants put the salary of driver at Rs:2500/. Looking from that angle also, we can not believe that deceased as handy boy used to get salary @ Rs:3000/-p.m. Hence keeping in view above facts the monthly salary of deceased is taken to Rs: 1500 only. This means annual income of the deceased was Rs:18000/-. Deducting 1/3 of the amount, which the deceased would have incurred towards maintaining himself had he been alive, the annual pecuniary loss caused to the claimant would be Rs :12,000/-.

....

12. It is a settled principle of law that in proceedings before the Claims Tribunals, the law of evidence does not strictly apply. However, in the present case, in view of the pleadings contained in paragraph 17 of the written objection of the O.P. No. 1, the owner of the vehicle, extracted above, and the fact that in the cross-examination of the claimant No. 3, no question was raised by him about the authenticity or the existence of the salary certificate, no further evidence would

be required to prove the existence of such document. Although the O.P. No. 2, the Insurance Company, has denied that the salary of the deceased was Rs. 3,000/- per month both in the pleadings and suggestions to that effect was made to the claimant No. 3 while being cross- examined, nothing further has been brought on record when the burden to prove that the deceased did not earn Rs. 3,000/- per month was upon them to discharge. In fact, we find that no evidence was at all led by them in support of their case.

13. Under such facts and circumstances, the finding of the Claims Tribunal contained in paragraph 11 of the impugned judgment clearly suffers from being quite perverse to the evidence referred to above. It has to be borne in mind that the claim being considered is under a benevolent piece of legislation. A young life has been snuffed out per-maturely. There is no denial that the accident vehicle is duly insured under which circumstance it has to be ensured that the death is adequately compensated. The pedantic approach of the Claims Tribunal, in my view, is quite opposed to such principle and is liable to be set aside.

14. In the result, the appeal is allowed. The impugned judgment of the Claims Tribunal is modified by holding that the monthly salary of the deceased is Rs. 3,000/- per month which would make it Rs. 36,000/- annually. Thereafter, with a deduction of one third of the amount, i.e., Rs. 12,000/- towards the maintenance of the deceased had he been alive, the pecuniary loss caused to the claimant would be Rs. 24,000/-. Applying the multiplier 13, the amount of compensation would, therefore, work out to Rs. 3,12,000/-. The rest of the amount being undisturbed, the total compensation would work out as follows: -

(i) Total compensation -	3,12,000.00	(ii) Funeral expenses -	2,000.00	(iii) Loss of estate -	2,500.00	_____	Total -	Rs.	3,16,500.00
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15. The claimant shall pay necessary court fees as prescribed under law.

16. It is directed that the full amount of the compensation shall be paid by the O.P. No. 2, the Insurance Company, within a period of 30 days commencing from the date of this Order. Failure on the part of the Insurance Company to comply with the direction contained in this order shall entail a further interest of 2% over the 10% awarded by the Claims Tribunal, both of which shall be effective from the date of the claim made before the Claims Tribunal.