(2010) 08 GAU CK 0102

In the Gauhati High Court

Case No : MAC Appeal No. 03 of 2010

State of Mizoram and Another — APPELLANT

Vs

K. Lalngilneia and Another — RESPONDENT

Date of Decision : 05-08-2010

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2011) 1 GLT 152

Hon'ble Judges : H. Baruah, J

Bench : Single Bench

Advocate : Helen Dawngliani, for the Appellant; Micheal Zothankhuma, for the Respondent

Judgement

H. Baruah, J.—Heard Mrs. Helen Dawngliani, learned Government Advocate for the State Appellants and Mr. Micheal Zothankhuma, learned Counsel appearing for and on behalf of the Respondents.

2. In challenge is the judgment and award dated 28.10.2009 passed by Member-cum-Presiding Officer, MACT, Aizawl in MAC Case No. 20 of 2008 whereby and where-under a sum of Rs. 11,54,000/- (Rupees eleven lakhs fifty four thousands) has been awarded as compensation in favour of the claimant-Respondent Nos. 1 and 2 herein on account of death of their mother in a vehicular accident.

3. Being dissatisfied with the judgment and award dated 28.10.2009, the opposite party in MAC Case No. 20 of 2008 as Appellants have approached this Court challenging the legality and correctness of the judgment and award.

4. Deceased, Marry M. Ralte, aged about 31 years was the wife of K. Zothanglura and a beautician by profession earning Rs. 15,000/- per month. She met with an accident on 29.8.2007 at Ramthar Veng involving vehicle bearing registration No. MZ-01-5753 (Gypsy) belonging to the Director of School Education, Govt. of Mizoram, the Appellant No. 2 herein. She succumbed to injuries received on

account of the accident. The aforesaid vehicle was driven by one Biakhming Thanga, an employee of the Appellant No. 2 who held a valid driving license valid up to 5.9.2010. It is contended that the deceased was looking after her two minor children being the prime earner of the family and on account of death of the deceased the dependants, the minor son, daughter and her ailing husband are suffering a lot to earn their livelihood. On account of death of the deceased, her minor children, the Respondent Nos. 1 and 2 filed a claim petition u/s 166 of the Motor Vehicle Act, 1988 claiming compensation on account of death of their mother in the vehicular accident. The claim petition was filed by the minors putting their father as their guardian/next friend.

5. The claim petition was contested by the opposite party-Appellants by filling their written statement wherein various grounds have been taken including the locus standi of the claimants to file the claim petition. The tribunal on the basis of the pleadings framed the following issues for decision.

(i) Whether the claim petition is maintainable in its present form and style?

(ii) Whether there is any fault on the part of the driver or the owner of the vehicle involved in this case?

(iii) Whether the claimant is entitled to any compensation and if so, who is liable to pay and to what extent?

The claimants to substantiate their claim for compensation on account of death of their mother put K. Zohmingthanga and Sub-Inspector, H. Lalnunmawia in the witness box while the opposite party, the Appellants herein examined only one witness, namely, R. Kapzauva. It would be apposite to mention that the claimants to substantiate their claim also proved 15 Nos. of documents, which are made exhibits, Ext. C/1 to C/15. The tribunal after meticulous consideration of the facts and evidence, both oral and documentary of either party recorded the impugned judgment and award whereby and where under Rs. 11,54,000/- has been awarded as compensation on account of death of the mother of the claimants, the Respondents herein.

6. The sole ground of challenge in this appeal is in regard to the computation of income of the deceased. Mrs. Helen Dawngliani, learned Govt. Advocate appearing for the State Appellants contended that such a computation by the tribunal ought not to have been made for awarding compensation in absence of evidence to that effect. It is submitted by her that the tribunal took Rs. 9000/- as monthly income of the deceased on surmise and conjecture. No evidence forthcoming to substantiate such income as has been taken by the tribunal for computation of the award. Claimant''s witness K. Zohmingthanga in his evidence deposed that the deceased was a beautician and earned Rs. 15,000/- at least per month from that profession plus on sale of the cosmetic etc.. It is also deposed by him that the deceased was unable to open a parlour as she had to remain busy with her kids and the ailing husband. She was seldom hired for bridal makeup and in that a way she had earn Rs. 15,000/- at least per month. It is

also deposed that she was a trained beautician. In regard to the above evidence on record it is submitted by Mrs. Helen Dawngliani, learned Govt. Advocate for the State Respondents that the claimants failed to substantiate that their mother was a trained beautician by producing any certificate whatsoever. That apart admission of PW-1 that the deceased was not maintaining a parlour and also in absence of evidence of daily income showing the list of customers, it was not justifiable on the part of the tribunal to calculate the monthly income at Rs. 9000/-. It is argued that in a claim case, in the case of death in particular, the income of the deceased is required to be proved by cogent and sufficient evidence. Since no acceptable and reliable evidence forthcoming in the context of monthly income of the deceased, evidence of K. Zohmingthanga is beyond the scope of acceptance since such an income has been stated on assumption. No document has been proved by the claimants to show that their deceased mother was a trained beautician. No customer has been examined even by the claimants to establish the fact that she was also a customer of the deceased. So in the facts situation Mrs. Helen Dawngliani argues that the evidence in respect of income of the deceased is not acceptable and on the basis of the same taking of monthly income of Rs. 9000/- by the tribunal is wrong and erroneous. It is true that except K. Zohmingthanga, none is brought to the witness box to prove the income of the deceased. It is also true that claimants failed to establish by placing some reliable evidence that their deceased mother was a trained beautician. But it has never been denied by the Appellants that deceased was not a beautician. There is only objection is in regard to the monthly income of the deceased. The Appellants have tried to show that such income is not possible unless a beautician starts her business by establishing a parlour. Attending some customers seldom cannot attract such a handsome income by the deceased. Mrs. Helen, therefore, submits that tribunal has committed error and illegality in assessing the compensation by taking income at Rs. 9000/- per month. In view of the submission advanced by Mrs. Helen Dawngliani, learned Govt. Advocate representing the State Appellants, the impugned judgment rendered by the tribunal on this point has been meticulously gone through. There appears no proper reasoning why the tribunal has to take Rs. 9000/- as monthly income from Rs. 15,000/- per month as claimed by the claimants. The tribunal placing reliance on the judgment and order passed in MAC Appeal No. 37 of 2004 passed by this Court and evidence adduced took the income at Rs. 9000/- since she was able to maintain her family during her lifetime from this profession. In this regard it is submitted by Helen Dawngliani, learned Govt. Advocate that the facts appear in the present appeal and MAC Appeal No. 37 of 2004 are not one and the same and the evidence adduced available on record is also not found sustainable to arrive at a decision that the monthly income of the deceased should stand at Rs. 9000/- per month. Further it is argued that the father of the claimants being a teacher is also earning and he also subscribes some portion of his income in the maintenance of his family. Referring to the cross-examination of K. Zohmingthanga, it is submitted by Helen Dawngliani that father of the claimants is a school teacher by profession and earns Rs. 8000/- per month.

7. Mr. Micheal Zothankhuma, learned Counsel appearing for the Respondents controverting the submissions advanced by Mrs. Helen Dawngliani, learned Govt. Advocate for the Appellants submits that a beautician can earn a handsome amount even if she or he is not having a parlour of his or her own. It is submitted that due to rise in price of every commodity, beauticians also used to earn in a high rate. Referring to evidence of the claimants, more particularly, the evidence of Zohmingthanga it is submitted by Mr. Micheal Zothankhuma for the Respondents that the deceased was seldom hired for bridal makeup from which end she also used to earn a handsome amount. Further she used to visit her customers when invited. It is also submitted that deceased used to sale cosmetics to the customers. Thus, the evidence of K. Zomingthanga on account of not maintaining a parlour by the deceased as beautician cannot be brushed aside in the context of monthly income. It is submitted by Mr. Micheal Zothankhuma that if all these facts are clubbed together and also the evidence, deceased''s income would not be less than Rs. 7000/- per month. A beautician without maintaining a parlour can earn a lot depending upon his/her efficiency in profession. Therefore, it is argued by him that the submissions advanced by Mrs. Helen Dawngliani, learned Govt. Advocate appearing for the Appellants cannot form a basis that the deceased''s income cannot more or less than Rs. 9000/- as taken by the tribunal.

8. I have given my anxious consideration to the facts and also the evidence on record, except the issue of income, the judgment and award is not challenged on any other grounds. Death is an admitted fact and such death was occurred due to vehicular accident as evident on the record. No dispute appears in between the parties in regard to the profession of the deceased. She was a beautician out and out but to substantiate that she was a trained beautician, no document has been proved. No parlour was admittedly run by the deceased in her business as beautician. But the facts and evidence go to show that she used to earn a handsome amount from the profession as beautician and was maintaining her family including her ailing husband. There is no dispute at all that there is no sky rocketing price rise in every commodity. For the customers it becomes dearer day by day. In the same way the price of the cosmetic also increases. The beautician''s works always dependent upon cosmetics and the same are required to be purchase at a higher rate which resultantly increases the charges for beautification of the customers. Taking note of these facts, if a beauticians attends 30 (thirty) customers in a month at least he or she would be able to make a profit Rs. 6000 to 7000/- per month minus the cost of the cosmetic used for such beautification. In a parlour various beautification works are performed. Prices for beautification vary from parlour to parlour and also on sex of the customers. Though, no evidence has been put forward in regards to the above aspects, in order to ascertain a reasonable monthly income of the deceased. This Court is required to place this aspects at this stage for awarding a just compensation.

9. Thus, taking into consideration of the facts, evidence on record and the

discussions herein before made, an income of Rs. 6000/- per month would be just income for the purpose of computation of the compensation. Mr. Micheal Zothankhuma, learned Counsel appearing for and on behalf of the Respondents in his usual fairness agrees that Rs. 6,000/- would be just a monthly income of the deceased for the purpose of calculation of the compensation, although Mrs. Helen Dawngliani, learned Govt. Advocate express her displeasure on such income.

10. Thus, taking Rs. 6000/- as monthly income of the deceased the award is calculated as under:

"1. Loss of income

= Rs. 6.000 x 12 x 16 x 2

3

= Rs. 7,68,000.00

2. Funeral expenses

= Rs. 2,000.00

Total

= Rs. 7,70,000.00

(Rupees Seven Lakhs seventy thousands) only.

The above amount of compensation shall carry interest at the rate of Rs. 6% per annum from the date of filing of the claim petition until realisation.

11. Appeal is partly allowed and modified to the extent as indicated above. No cost.

The Appellants shall pay the compensation with interest to the claimants within a period of 3 (three) months from the date of receipt of the copy of the judgment and award of this Court. It is made clear that the compensation so awarded shall be used for the benefit of the claimants, the minors. The father, the natural guardian of the claimants shall deposit 2/3rd share of the compensation in fixed deposit scheme in the name of the claimants in any nationalized bank until they attain majority.