
(2010) 02 GAU CK 0080
In the Gauhati High Court
Case No : Mac. App. No. 24 of 2009

State of Mizoram and Another	Vs	APPELLANT
Smt. H. Lalbiaktluangi		RESPONDENT

Date of Decision : 24-02-2010

Acts Referred:

Mizoram Motor Vehicles Rules, 1995 — Rule 258(1)
Motor Vehicles Act, 1988 — Section 163A

Citation : (2010) 2 GLD 175 : (2010) 3 GLT 20

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

Bench : Single Bench

Advocate : Helen Dawngliani, for the Appellant; C. Zoramchhana, for the Respondent

Judgement

P.K. Musahary, J.—Heard Mrs. Helen Dawngliani, learned Government Advocate, appearing for the appellant/State and Mr. C. Zoramchhana, learned Counsel who appears on behalf of the sole respondent.

2. This appeal is directed against the Judgment and Award dated 30.3.2009 passed by the learned Member-Cum-Presiding Officer, Motor Accident Claims Tribunal, Aizawl, in MACT Case No. 92 of 2007 awarding a sum of Rs. 5,63,830/- (Rupees Five Lakhs Sixty- three Thousand Eight Hundred and Thirty) with interest at the rate 9% per annum from the date of filing to be paid by the State.

3. The ground of appeal is mainly in regard to the assessment of the monthly income of the deceased and the medical expenses beyond the prescribed limit in the second schedule corresponding to Section 163A of the Motor Vehicles Act.

4. It is submitted by Mrs. Helen Dawngliani, learned Government Advocate that, as per the evidence of the claimant, the monthly income of the victim was between Rs. 2500-3000/- whereas the learned Tribunal has assessed the income of the victim at Rs. 3,000/- (Rupees Three Thousand) without any basis. Moreover, the income certificate "Exhibit C4" was issued by Secretary of the

Village Council who is not an authorized person to issue such income certificate as per the law. The total loss in income has been calculated at Rs. 4,53,600/- (Rupees Four Lakhs Fifty-three Thousand and Six Hundred) which is not permissible under the existing provision under the MV Act. In regard to claim of compensation on account of medical expenses it is submitted that the maximum amount that can be awarded is Rs. 15,000/- (Rupees Fifteen Thousand) as per the Schedule 2 and as such, the award of Rs. 1,50,230/- (Rupees One Lakh Five Thousand Two Hundred and Thirty) as claimed by the claimant is not permissible. The learned Tribunal did not apply his mind to the aforesaid provision under which Rs. 15,000/- (Rupees Fifteen Thousand) could be awarded as medical expenses. Furthermore, as per Rule 258 (1) (c) of the Mizoram Motor Vehicles Rules, 1995, the disability certificate is to be issued by the medical officer in charge and the signature or thumb impression of the applicant is also to be obtained thereon. The claimant produced the disability certificate "Exhibit C6" which was signed by the doctor who treated the victim without the signature of the in charge of the hospital and signature of the applicant. According to the learned Counsel for the appellant, the learned Tribunal did not insist on production of the original certificate and it acted upon the photocopy of the disability certificate aforesaid. It is, therefore, submitted by the learned Counsel for the appellant that the impugned Judgment awarding compensation to the tune of Rs. 5,64,830/- (Rupees Five Lakhs Sixty-four Thousand Eight Hundred and Thirty) is not sustainable under the law and the same is liable to be set aside.

5. Mr. C. Zoramchhana, learned Counsel appearing for the respondent submits that the income certificate issued by the Village Council is acceptable and the income of the victim can be calculated on the basis of such certificate and no illegality or irregularity has been committed by the learned Tribunal in accepting the said income certificate and calculating the income of the victim on the basis of such certificate issued by the Secretary of the Village Council. As regards the compensation of medical expenses, it has been submitted that the expenses above Rs. 15,000/- (Rupees Fifteen Thousand) could be awarded provided the said expenses are supported by valid vouchers/bills. The claimant, according to Mr. C. Zoramchhana, learned Counsel appearing for the respondent, has been able to produce and prove all the medical vouchers/bills and there was no objection on the said bills/vouchers from the appellant side. In this regard, he has refers to an order dated 5.3.2009 passed by a Single Bench of this Court in MAC Appl. No. 14/2008.

6. I have considered the submissions made by the learned Counsel for the parties. I have also perused the records produced at the time of hearing. Although the learned Counsel for the respondent submits that the income certificate issued by the Village Council is acceptable, no document or authority has been shown to that effect. However, in the attending facts and circumstances of the case, without insisting on the income certificate from the competent authority, the learned Tribunal could have considered the income of the victim on the basis of notification issued by the Government under the Minimum Wages

Act, taking into consideration the occupation of the victim person, who may be skilled, semi-skilled or unskilled. The number of working days may also be determined by taking into consideration that the victim is a Mizo Christian who normally does not work on Sundays.

7. In view of the above, the impugned Judgment and Award dated 30.3.2009 passed by Ld. Member-cum-Presiding Officer, MACT, Aizawl in MACT Case No. 92/2007 is set aside.

8. The learned Tribunal is required to insist on production of the original medical certificate regarding the disability of the victim as per the provision under Rule 258(1) (c) of the Mizoram MV Rules, 1995.

9. The appeal is remanded back to the learned Tribunal concerned for fresh consideration in regard to the income of the victim and also the disability certificate providing opportunity to the counsel for the parties. The rehearing and disposal of the claim petition may be completed within a period of 3 (three) months from the date of receipt of records along with a copy of this order.

With the above direction, this appeal stands disposed of.