
(2011) 02 GAU CK 0072

In the Gauhati High Court

Case No : MAC Application No's. 14 (K) , 15 (K) , 16 (K) and 17 (K) of 2008

State of Nagaland

APPELLANT

Vs

Rashamong Chang and Others

RESPONDENT

Date of Decision : 03-02-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 140(1), 140(2), 142

Citation : (2011) 3 GLR 924 : (2011) 1 GLT 609 : (2011) 3 TAC 583

Hon'ble Judges : C.R. Sharma, J

Bench : Single Bench

Advocate : B.N. Sarmah and Imtiwapang, for the Appellant; Tongpok Pongener, for the Respondent

Judgement

C.R. Sarma, J.—Heard Mr. B. N. Sarmah, learned Counsel, assisted by Mr. Imtiwapang, learned Counsel, appearing for the Appellant. Also heard Mr. Tongpok Pongener, learned Counsel, appearing for the Respondents.

2. These set of appeals, filed by the same Appellant, involve same question of law and similar facts. The parties in the said appeals are represented by the same set of Advocates and the impugned orders, dated 10.03.2008, have arisen out of the same vehicular accident.

In view of the above, for the sake of convenience and as agreed to by the learned Counsel, appearing for both the parties, the above mentioned appeals are taken up for disposal by this common judgment and order.

3. The claimants in MAC Case No. 24/2007, MAC Case No. 25/2007, MAC Case No. 28/2007 and MAC Case No. 29/2007, met with a vehicular accident, involving the offending vehicle bearing Registration No. NL-11-0641 (Mini Tata), owned by the present Appellant i.e. Deputy Inspector General of Police, Nagaland, Kohima. The claimants, who sustained injuries in the said vehicular accident, prayed for an interim relief u/s 140 of the Motor Vehicles Act, 1988 (hereinafter called "the M.V. Act"). Accordingly, the learned Member, Motor

Accident Claims Tribunal, Mokokchung, Nagaland, by his order, dated 10.03.2008, passed in the above mentioned MAC cases, granted interim relief amounting to Rs. 25,000/- to each of the claimants under the principle of "no fault liabilities".

Aggrieved by the said order, the Respondent as Appellant, has come up with the present appeals, challenging the impugned orders, on the ground that the learned trial Judge committed error by granting interim relief under the principle of "no fault liabilities", without complying with the provisions of Section 142 of the M.V. Act.

4. Sub-section (1) of Section 140 of the M.V. Act, provides that, in case of death or permanent disablement of any person arising out of the use of a motor vehicle, the owner(s) of the vehicle shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of the said Section. Sub-section(2) of Section 140 of the M.V. Act, provides that in case of death of any person, no fault liability may be fixed at Rs. 50,000/- and in case of permanent disablement of any person, such liability may be fixed at Rs. 25,000/-. Section 142 of the M.V. Act, which reads as follows, provides the circumstance under which the relief under the principle of no fault liability can be granted.

142. Permanent disablement--

For the purposes of this Chapter, permanent disablement of a person shall be deemed to have resulted from an accident of the nature referred to in Sub-section (1) of Section 140 if such person has suffered by reason of the accident, any injury or injuries involving:

- (a) permanent privation of the sight of either eye or the hearing of either ear, or privation of any member or joint; or
- (b) destruction or permanent impairing of the powers of any member or joint; or
- (c) permanent disfiguration of the head or face.

5. A comparative reading of Sections 140 and 142 of the M.V. Act, clearly indicate that, for the purpose of granting interim relief u/s 140 of the M.V. Act i.e. under the principle of no fault liabilities, for permanent disablement, it must be established that the injured suffered by reason of the accident, permanent privation of the sight of either eye or the hearing of either ear, or privation of any member or joint, or destruction or permanent impairing of the powers of any member or joint, or permanent disfiguration of the head or face.

6. The impugned orders, passed by the learned trial Judge does not indicate that the claimants sustained any of the said injuries as mentioned in Section 142 of the M.V. Act. There is nothing on record to show as to on what basis the learned trial Judge came to the finding that the claimants sustained the injuries mentioned in Section 142 of the M.V. Act. There can be no dispute that in order

to pass an interim order u/s 140 of the M.V. Act, the trial Judge is required to come to a prima facie finding that the claimants sustained the injuries mentioned in Section 142 of the M.V. Act.

7. In view of the above discussions, I have no hesitation in holding that the learned trial Judge committed error by passing the impugned orders, without complying with the provisions prescribed by Section 142 of the M.V. Act. i.e. without arriving at a finding that the claimants suffered any of the injuries as mentioned in Section 142 of the M.V. Act. There should have been a finding as to which one or more of the said injuries were sustained by the claimants.

8. In the light of the above, I am of the considered view that the impugned orders can't stand the test of law. However, if the claimants had sustained the injuries mentioned in Section 142 of the M.V. Act, they should be given an opportunity to substantiate their claim for interim relief and the learned trial Judge should pass appropriate order as per law. Therefore, for ends of justice, I am of the opinion that this is a fit case to remand the matter to the learned trial Judge to pass necessary order in compliance with the provisions of Sections 140 and 142 of the M.V. Act, after giving sufficient opportunities to both the parties.

9. Accordingly, the impugned orders, dated 10.03.2008, passed by the learned Member, Motor Accident Claims Tribunal, Mokokchung, Nagaland, in MAC Case No. 24/2007, MAG Case No. 25/2007, MAC Case No. 28/2007 and MAC Case No. 29/2007, are set aside and quashed. Consequently, the cases are remanded back to the Tribunal for passing necessary orders as per law.

10. In view of disposal of the aforesaid MAC Appeals, the statutory deposits made by the Appellant at the time of filing the said appeals, be allowed to be withdrawn.

11. With the above directions, the above mentioned MAC Appeals are disposed of.
Return the Lower Court Records.