
(2010) 05 GAU CK 0044
In the Gauhati High Court
Case No : MA (C) No. 32 of 2009

The New India Insurance Co. Ltd.

APPELLANT

Vs

Lalawmpuia and Others

RESPONDENT

Date of Decision : 06-05-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 162, 163A, 163A(1), 163A(2)

Citation : (2010) 2 GLD 676 : (2010) 3 GLT 548

Hon'ble Judges : Majbam B.K. Singh, J

Bench : Single Bench

Advocate : M. Guite, for the Appellant; Helen, Dawngliani, GA, for the Respondent

Final Decision : Dismissed

Judgement

Majbam B.K. Singh, J.—Heard Mr. M. Guite, learned Counsel appearing on behalf of the appellant and Mrs. Helen, Dawngliani, learned Counsel appearing on behalf of the respondents.

2. This appeal has been filed u/s 173 of the Motor Vehicle Act, 1988 challenging the impugned judgment and Award dated 17.8.2009 passed by the Ld. Member-cum-Presiding Officer, Motor Accident Claims Tribunal, Aizawl in MAC Case No. 44 of 2007. The said MAC Case No. 44 of 2007 was filed by the present respondent Nos. 1 to 3, who are minors, through their next friend against the present respondent No. 4 and the present appellant claiming for payment of compensation on structured formula basis u/s 163A of the Motor Vehicles Act, 1988 in respect of death of their mother on 3.7.2006 as a result of injuries which she had sustained in a motor accident on 21.6.2006 at Quinine (NH-40) while travelling in a Tata Sumo vehicle bearing registration No. AS-01-X-4906 belonging to the present respondent No. 4. The present appellant, who was the insurer of the said owner in respect of the said Tata Sumo at the relevant time, contested the claim petition after taking the necessary permission from the Claims Tribunal. On the basis of the pleading of the parties, the following two

issues were framed:

- (i) Whether the claim petition is maintainable in its present form and style?
- (ii) Whether the claimant is entitled to any compensation and if so, who is liable to pay and to what extent?

The next friend of the minors was examined on behalf of the claimants and his testimony was not shaken at the time of cross-examination. At the time of cross-examination of the said witness of the claimants, there was also no denial from the side of the present appellant about the happening of the said motor accident while the deceased was travelling in the said Tata Sumo. None was examined on the side of the owner of the said vehicle as well as on behalf of the Insurance Company (the present appellant). On the basis of the materials, the Ld. Member, Motor Accident Claims Tribunal, Aizawl, held, vide the impugned judgment and Award, to the effect that the claimants would be entitled to get a compensation of Rs. 4,53,943/- (Rupees four lakhs fifty-three thousand nine hundred and forty-three) only with interest at the rate of 9% from the date of filing the claim petition till realization of the said amount from the Insurance Company (the present appellant). The Insurance Company (the present appellant) was directed to deposit the said amount of compensation in cash or by way of account payee demand draft or cheque in favour of the claimants to the Ld. Member, Motor Accident Claims Tribunal, Aizawl for disbursement to the claimants within one month from the date of the passing of the impugned judgment and award after deducting any interim award, if already satisfied.

3. One of the grounds submitted by the learned Counsel of the appellant is that the claim case was filed without impleading necessary parties and as such, it should not have been entertained. According to the learned Counsel of the appellant, the said accident took place while the said mother of the minor claimants was travelling in the said Tata Sumo vehicle bearing Registration No. AS-01-X-4906, as a result of dashing against the said Tata Sumo by a speeding Army Truck, and as such, the driver and the concerned owner of the speeding Army Truck are necessary parties in the said claim case. The learned Counsel of the appellant draws my attention to the certificate of the Superintendent of Police, Ri Bhoi District, Nongpoh, marked as Exhibit C-3, which states, inter alia, that as per finding in the inquiry, the said Tata Sumo was dashed by a speeding Army Truck which fled away towards Shillong after occurrence and the registration numbers of the said Army Truck could not be ascertained. The learned Counsel of the appellant submits that since the accident was caused as a result of dashing against the said Tata Sumo by the speeding Army Truck, the claim case filed without impleading the driver and the concerned owner of the speeding Army Truck should not have been entertained and that by entertaining the said claim case, the Claims Tribunal acted illegally. Further, according to the learned Counsel of the appellant, it was wrong and illegal on the part of the Claims Tribunal to hold the owner of the Tata Sumo liable for the accident caused as a result of rash and negligence driving of the Army Truck. The learned Counsel

of the appellant submits that in case of inability to ascertain the relevant particulars in respect of the said Army Truck, the accident should have been treated as a hit and run motor accident as provided under Sections 162 and 163 of the Motor Vehicles Act.

4. Learned Counsel of the Claimants-respondents Nos. 1 to 3 submits that in the said claim case filed u/s 163A of the Motor Vehicles Act, 1988, the driver and the concerned owner of the said Army Truck are not necessary parties inasmuch as the question as to who caused the motor accident is not relevant in the case. According to the learned Counsel of the claimants-respondent Nos. 1 to 3, the death of mother of the claimants was due to accident arising out of use of the said Tata Sumo vehicle and in that situation as per provisions of Section 163A of the said Act, the owner of the said Tata Sumo or authorized insurer shall be liable to pay compensation as indicated in the Second Schedule to the claimants, who are the legal heirs of the deceased. The learned Counsel of the claimants-respondents draws my attention to Sub-section (2) of Section 163A of the said Act and submits that the question of liability and extent thereof are not justiciable u/s 163A of the said Act.

5. On consideration of the submissions of both sides in the light of the provisions of Section 163A of the Motor Vehicles Act, 1988, I am of the opinion that in a claim case filed u/s 163A, the question as to who caused the motor accident is not relevant. This Section 163A is a special one making the owner of the vehicle or authorized insurer liable to pay compensation in respect of the death or permanent disablement due to accident arising out of use of motor vehicle, as indicated in the Second Schedule, to the legal heirs or the victim as the case may be. It cannot be denied that Section 163A was introduced in the Motor Vehicles Act, 1988, by way of a social security scheme. It is a Code itself. By inserting Section 163A the Parliament intended to provide for the making of an award consisting of a pre-determined sum without insisting on a long-drawn-out trial or without proof of negligence in causing the accident. Section 163A of the said Act covers cases where even negligence is on the part of the victim. The insertion was, thus, a deviation from the common law liability under the law of torts and was also in derogation of the provisions of the Fatal Accidents Act. By inserting Section 163A, a new device was sought to be evolved so as to grant a quick and efficacious relief to the victims falling within the specific category. This provision of Section 163A is by way of an exception to Section 166 and the concept of social justice has been duly taken care of. In this regard, the decision of the Hon''ble Court in Deepal Girishbhai Soni and Others Vs. United India Insurance Co. Ltd., Baroda, may be referred to. It is well settled that a statute is to be read in its entirety for the purpose of its interpretation. The purport and object of the provisions should be given full effect by applying the principle of purposive construction. Section 163A has also an overriding effect. Section 163A itself states to the effect that these provisions are to be effected notwithstanding anything contained in the Motor Vehicles Act, 1988 or any other law for the time being in force or instrument having the force of law. Sub-section (2) of Section

163A clearly states that in any claim for compensation under Sub-section (1) of Section 163A, the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or negligence or default of the owner of the vehicle or vehicles concerned or of any other person.

6. It is clear that in a proceeding u/s 163A of the Motor Vehicles Act, 1988, the question of wrongful act or negligence or default of any person in respect of the motor accident is not relevant. The owner or the concerned insurer has been made liable to pay compensation u/s 163A in case of death or permanent disablement due to accident arising out of use of motor vehicle irrespective of question if the accident has been caused due to wrongful act or negligence or default of any other any person. The purpose of the Legislature in introducing Section 163A is to enhance further the purpose of introducing Section 140 of the Act. A proceeding u/s 163A of the Act is a final proceeding by reason whereof a claimant who has been granted compensation under the said section is debarred from the proceeding with any further claim on the basis of fault liability in terms of Section 166 of the Act.

7. In the light of the clear provisions of the said Section 163A, there is no room for thinking that in the said claim case filed u/s 163A, the claimants-respondents should have impleaded the driver and the concerned owner of the Army Truck which is said to have dashed against the Tata Sumo in which the deceased was travelling. Since the question of fault is not relevant u/s 163A of the Act, non-impleadment of the driver as well as the owner of the Army Truck in the case is of no consequence. Section 163A of the Act clearly states as to who is liable and to what extent in case of the death or permanent disablement due to accident arising out of the use of motor vehicle. I am of the considered opinion that the first ground submitted by the learned Counsel of the appellant is not acceptable, and as such, it is rejected.

8. The second ground submitted by the learned Counsel of the appellant is that though as per Second Schedule of the Motor Vehicles Act, the amount payable under the head of medical expenses is only Rs. 15,000/-, the Ld. Member of the Motor Accident Claims Tribunal, Aizawl wrongly assessed a sum of Rs. 1,20,843/- as the amount payable under the head of medical expenditure.

9. The learned Counsel of the claimants-respondents draws my attention to the decision of this Bench in MAC Appeal No. 14 of 2008 dated 5.3.2009 and MAC Appeal No. 30 of 2005 dated 31.7.2007 and submits that the second ground submitted by the learned Counsel of the appellant is not tenable in law in view of the said decisions of this Bench.

10. On perusal of the materials before the Court, it is ascertained that the amount assessed by the Ld. Member of the Motor Accident Claims Tribunal, Aizawl under the head of medical expenses was based on vouchers which were exhibited during the proceeding of the case. There cannot be any doubt that the

said amount of Rs. 1,20,843/- was the actual amount spent in giving medical treatment to the deceased before her death. The appellant's counsel has also failed to produce any authority to the effect that in a case filed u/s 163A, the amount payable under the head of medical expenses should not be more than a sum of Rs. 15,000/-. In view of the earlier decisions of this Bench noted above, the second submission of the appellant is also not acceptable. No interference is called for in respect of the assessment of the medical expenses made by the Ld. Member of the Motor Accident Claims Tribunal, Aizawl.

11. The last point submitted by the learned Counsel of the appellant is that the loss of income was assessed wrongly and without sufficient basis. In this connection, I have perused the relevant paragraph of the impugned judgment and award dealing with the assessment of the loss of income. It is ascertained that in the said case, the loss of income was assessed by taking into consideration all the relevant factors. In my considered opinion, there is no sufficient basis for interfering with the said assessment.

12. No other ground is submitted by the learned Counsel of the appellant. In the result, since none of the grounds submitted by the learned Counsel of the appellant is sustainable in law, no interference is called for in respect of the impugned judgment and award. Accordingly, this appeal is dismissed as having no merit. The award shall be paid by the appellant as directed by the Ld. Member of the Motor Accident Claims Tribunal, Aizawl, in the impugned judgment and award dated 17.8.2009 passed in MAC Appeal No. 44 of 2007 within one month from today.