

(2017) 05 GAU CK 0053
In the Gauhati High Court
Case No : 2 (K) 2015

The Oriental Insurance Co. Ltd

APPELLANT

Vs

Mr. Kiwongkum & Ors

RESPONDENT

Date of Decision : 29-05-2017

Acts Referred:

[Motor Vehicles Act, 1988](#), [Section 173](#),
[Section 173](#), [Section 163A](#), [Section 163A](#) - Appeals - Special provisions as to payment of compensation on str

Citation : (2017) 05 GAU CK 0053

Hon'ble Judges : S.Serto

Bench : SINGLE BENCH

Advocate : B.Devnath, M. Wapbang, Zhevi Swu, T.Suohu, Bendangwabang, Moarenba, S. Mere

Judgement

1. This an appeal under Section 173 of the M.V. Act 1988, against the Judgment and award, dated 06.02.2015, passed by the learned Member Motor Accident Claims Tribunal, Dimapur, passed in M.A.C Case No. 22/2013, wherein the respondents/claimants were awarded a sum of Rs. 5,19,000/- for the death of their love one (daughter of respondent No. 1 and 2, sister of respondent No. 3 and 4) in a motor accident.

2. The brief facts of the case which led to the institution of this appeal are as follows:- On 03.11.2013, at about 4:45 pm while late Ms. Shikiula (daughter of respondent No. 1 and 2, sister of respondent No. 3 and 4, who shall hereafter be referred to as the "deceased victim") was pillion riding on a motorcycle bearing Registration No. NL 07J/5054, ridden by Late Mr. Lotan L.Yims and while they were trying to overtake a Mahindra Bolero bearing Registration No. NL-10/3327, they had a head on collision with a Maruti Gypsy, bearing Registration No. NL-07/2446, that was coming from the opposite side at 4th Mile, Dimapur. In that accident both the rider of the motorcycle late Mr Lotan L. Yims and late Ms. Shikiula, died at the spot. Soon thereafter, the respondents/claimants filed an

application under section 166 of the M.V. Act, 1988, claiming compensation to the tune of Rs. 15,20,000/- for the loss of their love one, against the owner of the motorcycle, Insurance Company i.e. the appellant, the State of Nagaland (owner of the Bolero) and the unknown owner and driver of the Maruti Gypsy.

The learned Tribunal after examining the evidence given by the parties and after hearing them, awarded a sum of Rs. 5,19,000/- (Rupees fifteen lakhs nineteen thousand) only to the respondents/claimants and directed the appellant to pay the same within a period of 30 days, since the motorcycle was insured by the owner under comprehensive policy with the appellant company. The operative portion of the judgment and award is reproduced here under;-

"ORDER

Accordingly, I hereby direct the Oriental Insurance Company limited, Dimapur to deposit the compensation amount of Rs. 5,19,000/- (Rupees five lacs nineteen thousand) only by cheque to this office within 30 days from the date of judgment and order, for onwards disbursement to the claimants. Failing to do so, the said Company shall be liable to pay the interest @ 9% per annum on the awarded amount from the date of filing the claim application i.e 05/03/2013 till realization in full.

Judgment and order pronounced in my open Court today on this 06 day of Feb."2015 under my hand and given seal of this Tribunal."

3. Aggrieved, the appellant has come to this Court assailing the judgment and award of the learned Tribunal on four grounds;- (i) that negligence of the rider of the motorcycle and the owner of the same was not proved;

(ii) that the Ld. Member, MACT, Dimapur, had erred in adopting the multiplier from the age of the deceased instead of adopting the same from the age of the father who is one of the claimants as per the settled principles of law;

(iii) that the names of the owners of the two vehicles Bolero registration No.. which were involved in the said accident were not disclosed in the claim petition and therefore, the same was not maintainable; and

(iv) that the income of the deceased was not proved.

4. Heard Mr. B. Devnath, learned counsel for the appellant. Also heard Ms. S. Mere, learned Government Advocate for the State respondents and Mr. Bendangwabang, learned counsel for the respondents/claimants. It is submitted by Mr. B. Devnath, learned counsel for the appellant that since the application for compensation was filed under section 166 of the M.V. Act, the onus of proving that there was negligence on the part of the motorcycle rider and the owner of the same was on the respondents/claimants. However, the respondents/claimants failed to prove the same, therefore, the application was not maintainable.

The learned counsel cited the judgment of this High Court in the case of United

India Insurance Company Limited -versus- H. Lalhminglana & Another reported in (2006) 2 GLT 538, particularly para-36 and 42 of the judgment. The same are reproduced here below:

"36. Now, turning to the question as to whether, a proceeding under Section 166 can be converted into a proceeding under Section 163A of the MV Act, 1988 (in short "the MV Act)", and compensation can be awarded on the basis of the provisions of Section 163A, it is of paramount importance to note that the claimant instituted a proceeding under Section 166 of the MV Act. For sustaining a claim under Section 166 of the MV Act, the claimant has to establish that the accident, in question, took place due to rash and negligent driving of the vehicle, whose owner and insurer is liable to pay the compensation, for, an application for compensation under Section 166 is, basically, an application for compensation against tortious liability of the owner of the vehicle involved in the accident. For establishing tortious liability, negligence on the part of the owner of the vehicle, in question, must be established unless the law enacted, in this regard, provides otherwise. By incorporation provisions, such as, Section 140 and 163A, the legislature has absolved a claimant from proving, if he chooses, fault on the part of the driver of the vehicle or any rashness or negligence in the use of the vehicle at a public place.

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42. That one is required to prove fault to become entitled to receive compensation under Section 166 and that recourse to Section 140 can be had as an interim arrangement subject to final determination can be easily discerned from the observations made in Deepal Girishbhai Soni(supra), which runs as follows:

"The Scheme envisaged under Section 163-A, in our opinion, leaves no manner of doubt that by reason thereof the rights and obligations of the parties are to be determined finally. The amount of compensation payable under the aforementioned provisions is not to be altered or varied in any other proceedings. It does not contain any provision providing for set off against a higher compensation unlike Section 140. In terms of the said provision, a distinct and specified class of citizens, namely, persons whose income per annum is Rs. 40,000/- or less is covered there under; whereas Section 140 and 166 cater to all Sections of Society.

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It may be true that Section 163-B provides for an option to a claimant to either go for a claim under Section 140 or Section 163A of the Act, as the case may be , but the same was inserted ;ex-abundanti cautela" so as to remove any misconception in the mind of the parties to the lis having regard to the fact that both relate to the claim on the basis of no-fault liability. Having regard to the fact that Section 166 of the Act provides for a complete machinery for laying a claim on fault liability, the question of giving an option to the claimant to pursue their

claims either under Section 163-A or Section 166 does not arise. If the submission of the learned counsel is accepted the same would lead to an incongruity".

The learned counsel further submitted that two other vehicles were involved in the accident, therefore, without specific evidence which proves that the accident occurred due to the negligence of the motorcycle rider or the owner of the same, liability of the accident cannot be fasten only on the owner of the motorcycle and the insurance company i.e. the present appellant.

5. The learned counsel also submitted that the choice of multiplier has to be determined either by the age of the deceased or the claimants, whichever is higher. But in this case, the learned Tribunal has wrongly taken the age of the deceased for adopting the multiplier which is against the settled principles of law. Therefore, the amount of compensation awarded by the tribunal cannot be sustained in law. The learned counsel placed reliance on the Judgment of the Hon'ble Supreme Court passed in the case of U.P. State Road Transport Corporation and Others -versus- Trilok Chandra and Others, reported in (1996) 4 SCC 362, particularly para-12 of the same. The contents of the para are reproduced here below:- "12. For concluding the analysis it is necessary now to refer to the judgment of this Court in the case of General Manager, Kerala State Road Transport, Trivandrum vs. Susamma Thomas 1994 (2) SCC 176. In that case this Court culled out the basic principles governing the assessment of compensation emerging from the legal authorities cited above and reiterated that the multiplier method is the sound method of assessing compensation. The Court observed :

"The multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalizing the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased (or that of the claimants, whichever is higher) and by the calculation as to what a capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed-up over the period for which the dependency is expected to last."

The principle was explained and illustrated by a mathematical example:

"The multiplier represents the number of years" purchase on which the loss of dependency is capitalised. Take for instance a case where annual loss of dependency is Rs.10,000. If a sum of Rs.1,00,000 is invested at 10% annual interest, the interest will take care of the dependency, perpetually. The multiplier in this case works out 10. If the rate of interest is 5% per annum and not 10% then the multiplier needed to capitalise the loss of the annual dependency at Rs.10,000 would be 20. Then the multiplier i.e., the number of years" purchase of 20 will yield the annual dependency perpetually. Then allowance to scale down

the multiplier would have to be made taking into account the uncertainties of the future, the allowances for immediate lump sum payment, the period over which the dependency is to last being shorter and the capital feed also to be spent away over the period of dependency is to last etc. Usually in English Courts the operative multiplier rarely exceeds 16 as maximum. This will come down accordingly as the age of the deceased person (or that of the dependents, whichever is higher) goes up."

6. The learned counsel also submitted that there was no evidence supporting the claim of the respondents/Claimants on the income of the deceased, therefore, there was no material for the learned Tribunal to have arrived at the conclusion that the monthly income of the deceased would be about Rs. 4000/-.

7. In reply, the learned counsel for the respondents/claimants submitted that there was no specific denial from the appellant on the claims of respondents/claimants that the accident occurred due to the rash and negligent driving of the motor cycle by the rider of the same which lead to the death of both the deceased victim and the rider, therefore, need for giving evidence to prove the same did not arise at all. The learned counsel further submitted that at para 6 of the written statement filed by the appellant, there was clear admission that the accident occurred due to the rash and negligent driving of the ill-fated motorcycle by the deceased rider, therefore, the appellant cannot now turn around and say that there was no evidence. The learned counsel further submitted that the insurance company did not produce any evidence to prove that the accident was not due to rash and negligent driving of the rider of the motorcycle.

The learned counsel, also submitted that the insurance policy of the ill-fated motorcycle was a comprehensive one and the deceased was well covered under the policy.

The following judgments were relied upon by the learned counsel for the respondents/claimants in support of his submissions;

- i. *Bimla Devi & Ors vs. Himachal Road Transport Corpn. & Ors.*, reported in (2009)13 SCC 530, para-11 to 15;
- ii. *Neeta, w/o. Kallappa Kadolkar and others vs. Divisional Manager, Maharashtra State Road Transport Corporation, Kolhapur*, reported in (2015) 3 SCC 590, para-13 to 18; and
- iii. *Khenyei vs. New India Assurance Co. Ltd. & Ors.*, reported in (2015) 9 SCC 273, para-13 to 18 and 22.

8. Lastly, the learned counsel submitted that the quantum of the award given by the learned Tribunal is reasonable and fair in the facts and circumstances of the case, therefore, no interference is called for.

9. On perusal of the written statement filed by the appellant in the MAC case No.

22/13, I find that no specific denial or plea was made against the claims of respondents/claimants that the accident took place due to rash and negligent driving of the motorcycle by the rider. Further on perusal of the findings of the learned Tribunal on the issue, I see no room for interference as the learned Tribunal's decision was based on sufficient evidence given by the parties. However, I may also add here that from the facts and circumstances of the case the accident that killed the rider of the motorcycle and the deceased victim or the pillion rider could not have happened due to any other reason than the rash and negligent driving of the rider of the motorcycle because the accident occurred while he was trying to overtake the Bolero. In other words, the nature of the accident and the circumstances under which it occurred itself shows that the accident took place as a result of rash and negligent driving of the motorcycle by the deceased rider.

10. The only issue left for determination is on the quantum of the compensation. Regarding the question as to whose age should be taken into consideration i.e. either the age of the claimants or the deceased for adopting the multiplier, the principle of law as rightly submitted by the learned counsel for the appellant is settled. There is no need of wasting space by discussing on it. It is either the age of the claimants or the deceased, whichever is higher, that has to be taken into account for choosing the multiplier. In this case the age of the father of the deceased i.e. the respondent No.1/claimant No. 1, which has to be taken into account for adopting the multiplier for the obvious reason. His age as given is 70 years. Therefore, as per 2nd Schedule of the M.V. Act, 1988, the Multiplier has to be 5 and not 17, adopted by the learned Tribunal. However, one cannot lose sight of the fact that in this case there are three more claimants who are none other than the mother, younger brother and younger sister of the deceased victim. Their claim that they were dependents of the deceased victim was not challenged, therefore, they are also entitled to compensation for the loss of their bread earner. In such fact circumstance, their age cannot be totally ignored while determining the multiplier, because in normal course of nature they are expected to live longer than the respondent/claimant No.1. The Respondent/Claimant No.2 is aged about 60 years, the Respondent/Claimant No.3 is aged about 27 years and Respondent/Claimant No.4, is aged about 14 years. Considering the age of the Respondents/Claimants from the oldest to the youngest, the multiplier adopted by the learned tribunal i.e. 17, is quite reasonable as it is somewhat of a mean between all the corresponding multipliers that are given against such age in the Second Schedule of the M.V. Act. Therefore, I am not inclined to interfere on the same.

Further, on the income of the deceased, I am unable to agree with the submission of the learned counsel for the appellant. It is stated in the application that the deceased was running a shop, wherein, she was selling pan and mobile phone sim-cards and recharges. Dimapur being the commercial hub of the state, a person running that kind of business is most likely to earn even more than Rs.4,000/- per month as determined by the learned tribunal. Moreover, the

learned tribunal stated in the impugned judgment that the claim of the respondents/claimants regarding the income of the deceased was not shaken by the appellant in the cross examination of the witnesses. In view of all these I am of the opinion that the conclusion of the learned tribunal is quite plausible and reasonable.

11. Though the learned tribunal awarded compensation for funeral expenses and also for the loss of love and affection, no compensation for one of the heads i.e. loss of estate, for which Courts normally award compensation was awarded. It has become part of the practice for the courts in the country to award compensation for loss of estate in motor accident claim cases besides the same having been mentioned as one of the General Damages, in the Second Schedule of the M.V. Act. Therefore, it has become mandatory to award the same in such cases. Considering the age of the deceased and the business she was running before she died due to the accident, the amount of compensation for loss of estate the claimants could have been awarded is at least a sum of Rs. 25,000/-. Therefore, the same amount is awarded and added towards the compensation already granted by the learned tribunal.

12. The learned Tribunal granted only Rs. 15,000/- as funeral expenses. This in my opinion is too less considering the expenses normally incurred by the tribals on such occasions. When a person dies a lot of relatives and sympathisers from near and far gather to support the family and tea and snacks even meals are served on the day of the funeral and continues to do so for quite a few days thereafter. In doing so a lot of expenditure is incurred. Considering all that the funeral expenses granted by the learned tribunal is too little and niggardly, therefore, the same is enhanced by another Rs.15,000/-.

13. Furthermore, the sum of Rs.10,000/- granted by the learned Tribunal for loss of love and affection is also too meagre considering the facts and circumstances under which the deceased victim died, her personal age and the position she held in the family when she was alive. Therefore the same is also enhanced by another Rs.10,000/-.

14. Regarding the interest it has become a normal practice all over the country to grant 6% per annum from the date of filing of the claim application till 30 days after the date of judgment and to grant 9% per annum from thereon till the realisation of the whole compensation amount. Therefore, the interest granted by the learned tribunal is modified to that extent. 15. In view of the discussions and conclusions drawn above the compensation awarded by the learned tribunal is modified as follows:-

Description	Amount
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Description	Amount
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(A). Pecuniary Loss: Rs. 4,000/- X 12 X 17 - less 1/3 Rs. 5,44,000/-	
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(B). Non Pecuniary Loss (i) Funeral expenses (Rs. 15,000 + Rs. 15,000) Rs. 30,000/-	
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(ii) Loss of love and affection (Rs. 10,000 + Rs. 10,000) Rs. 20,000/-

(iii) Loss of estate Rs. 25,000/-

Total : Rs. 6,19,000/-

Less interim award : Rs. 50,000/-

Total Compensation : Rs. 5,69,000/-

Before I part with this judgment I must mention here that for the family members of a person like the deceased victim who was so young and full of life, the sum awarded will never be an adequate compensation for the loss they have suffered on her death. Therefore, the appellant should be more responsive in meeting its constitutional and statutory obligations, more readily and promptly.

In the terms mentioned above the appeal is disposed. The appellant is directed to deposit the awarded amount in the office of the Motor Accident Claims Tribunal, Dimapur, Nagaland, within a period of 2(two) months from today.

No order as to cost.