

(2017) 01 TP CK 0010
In the Tripura High Court
Case No : M.A.C. App. No. 151 of 2013

The Oriental Insurance Company Ltd.	APPELLANT
Vs	
Suniti Paul	RESPONDENT

Date of Decision : 04-01-2017

Acts Referred:

Motor Vehicles Act, 1988 — Section 168, Section 173

Citation : (2017) AAC 957

Hon'ble Judges : T. Vaiphei, CJ.

Bench : Single Bench

Advocate : K. Bhattacharji, P. Dhar

Final Decision : Partly Allowed

Judgement

T. Vaiphei, C.J.—This appeal under Section 173, Motor Vehicles Act, 1988 is directed against the judgment dated 18-6-2013 passed by the learned Member, Motor Accident Claims, Tribunal, West Tripura, Agartala in T.S. (MAC) Case No. 215 of 2012 awarding a compensation amounting to Rs. 15,36,000/- to the four claimant-respondents for the death of the deceased in a vehicular accident.

2. The facts relevant for disposal of the appeal may be briefly noted at the outset. The case of the claimant-respondents is that on 26-3-2011, the deceased, Sunil Paul alias Sunil Chandra Paul returning to his house along with other passengers in a bus bearing registration No. TR-01-A-1428 driven rashly and negligently by its driver and that when the bus reached Mohanpur near DCM Office along Agartala-Simna Road under Sidhai Police Station, the driver of the bus lost control of the bus and dashed against a road side tree thereby causing grievous injuries to him. He succumbed to his injuries soon after he was taken to GB Hospital for treatment. The deceased was 45 years old at the time of the accident, was a businessman and used to earn a monthly income of Rs. 20,000/-. The claimant-respondent No. 1 is the wife of the deceased, while the claimant-respondents No. 2 and 3 are his daughters. The claimant-respondent

No. 4 is the mother of the deceased. On the death of the deceased, the claimant-respondents filed the claim petition, which resulted in the impugned judgment.

3. The claim petition was contested by the insurer/appellant as well as the owner of the offending vehicle by denying any liability whatsoever. The main contention of Mr. K. Bhattacharjee, the learned counsel for the insurer, in assailing the impugned judgment is that the finding of the Tribunal that the deceased was earning a sum of Rs. 10,000/- per month is based on no evidence, is arbitrary and cannot be acted upon and that the compensation awarded on the basis of such arbitrary and imaginary conclusion cannot stand and is liable to be set aside. He seriously disputes the finding of the Tribunal with respect to the age of the deceased based on the job card by contending that the deceased could not have been 48 years old at the time of the accident when his age was recorded in the post mortem report to be 52 years; wrong determination of the age of deceased resulted in awarding disproportionate compensation to the claimants. He, therefore, submits that the impugned judgment is not sustainable in law and is liable to be modified accordingly. On the other hand, Ms. P. Dhar, the learned counsel for the claimant-respondents, supports the impugned award and submits that no interference is called for. She submits that the fact that the deceased was a businessman by running a sweet shop and ready-made garments is not in dispute and in that view of the matter, it is not difficult to come to the finding, as was done by the Tribunal, that the deceased was earning Rs. 10,000/- per month. She further submits that the age of the deceased maintained in the job card on the basis of the information furnished by the deceased himself during his lifetime is more reliable than the age recorded in his post mortem report, which was entered on the basis of third party after death. She, therefore, submits that the impugned award is just, fair and proportionate and should be upheld by this Court.

4. In so far as the income of the deceased is concerned, I find force in the contention of the learned counsel for the insurer. Except for the self-serving statement of PW-1, which is even corroborated by any witness or documentary evidence, there is no basis for automatically coming to the conclusion that the deceased must have Rs. 10,000/- per month. There is no trade license to substantiate the claim that he was actually running a sweet shop and ready-made garments. It is not even mentioned as to where he was running the shop. On the contrary, the fact that he was a holder of job card would go to show that he was supposed to be an unemployed person with no real income of his own. True, admitted fact need not be proved, but then the Tribunal, in order to arrive at correct finding on the income of the deceased, ought to have required the claimants to adduce further better evidence under the proviso to Section 58, Evidence Act, 1872. In that view of the matter, there is no reason to hold that the deceased was earning an income of Rs. 10,000/- per month. A misplaced sympathy, generosity and benevolence cannot be the guiding factor for determining the compensation. In the absence of salary certificate issued by a competent authority or the business turnover certified by the local Sales Tax

authority, determination of income has to be made on the basis of data brought on record by the claimant, which again cannot be accurately ascertained and necessarily involves an element of estimate or it may partly be even a conjecture. The question is what can be done at this belated stage? To remand the case to the Tribunal will further delay the disposal of the case. To shorten the proceeding, I am inclined to believe that the deceased could be regarded as a skilled worker, who used to earn Rs. 6,000/- per month during his lifetime. As for the age of the deceased, I am also inclined to act upon his age entered in the job card. Therefore, the age of the deceased at the time of accident can be accepted as 48 years. Consequently, the yearly income of the deceased is Rs. $6,000 \times 12 = \text{Rs. } 72,000/-$ to which shall be added 30% towards future prospects, which will come to Rs. 93,600/-. If one third is deducted therefrom, i.e. Rs. 93,600, it will come to Rs. $93,600 - 31,200 = \text{Rs. } 62,400/-$, which, if multiplied by 13, will be Rs. 8,11,200/-. Thus, the total loss of dependency to the claimant-respondents can be assessed at Rs. 8,11,200/-. The claimant-respondent No. 1 will be entitled to Rs. 1,00,000/- for loss of consortium. So are all the claimant-respondents entitled to another sum of Rs. 1,00,000/- for loss of estate. The claimant-respondents No. 2, 3 and 4 are further entitled to Rs. 50,000/- each. The claimant-respondent No. 1 is also entitled to Rs. 25,000/- as funeral expenses. Therefore, the total amount of compensation payable to the claimant-respondents comes to Rs. 11,86,200/-.

5. For the reasons stated in the foregoing, this appeal is partly allowed. The appellant is directed to deposit a sum of Rs. 11,86,200/- (Rupees eleven lakhs eighty-six thousand and two hundred) only together with interest @ 7% per annum from the date of the claim petition within a period of two months from the date of receipt of this judgment for payment to the claimant-respondents. On the appellant depositing the compensation with the interest accrued thereon, the Registry will release the same to the claimant-respondents in accordance with the apportionment made by the Tribunal after their fulfilling the usual formalities and without further reference to this Court. Needless to say, any amount already deposited by or paid to the claimant-respondents shall be adjusted accordingly. The impugned judgment stands modified to the extent and in the manner indicated above. Transmit the LC record forthwith.