
(2009) 11 GAU CK 0072
In the Gauhati High Court
Case No : M.A.C. Appeal No. 17 of 2009

United India Insurance Co. Ltd.

APPELLANT

Vs

H. Lalthankima and Another

RESPONDENT

Date of Decision : 03-11-2009

Acts Referred:

Mizoram Motor Vehicles Taxation Rules, 1996 — Rule 258
Motor Vehicles Act, 1988 — Section 140, 163A

Citation : (2009) 2 GLD 840

Hon'ble Judges : H. Baruah, J

Bench : Single Bench

Advocate : N.N. Ali, for the Appellant; Helen Dawngliani, for the Respondent

Judgement

H. Baruah, J.—Heard Mr. M.M. Ali, learned Counsel for the appellant and Mrs. Helan Dawngliani, learned Counsel for the respondent No. 1. None appears for and on behalf of respondent No. 2.

2. In this appeal the judgment and award dated 17.3.2009 passed in MAC Case No. 110 of 2007 by Member, MACT, Aizawl whereby and whereunder an amount of Rs. 4,68,363/- has been awarded with 9% interest per annum from the date of filing of the claim petition until realisation from the Opposite Party No. 2, the appellant herein has been challenged.

3. The judgment and award as indicated above has been impugned primarily on one ground that the medical certificate, Exhibit: C-12 showing 70% permanent disability of the claimant by the doctor concerned examined as witness No. 2 for the claimant cannot form the basis of award as calculated by the Tribunal in as much as the same is not issued per statutory requirement of Rule 258 of Mizoram Motor Vehicle Rules, 1996 (for short MMV Rules, 1996) and Form No. 79 contained therein which neither contains the counter signature of the Medical Superintendent of the hospital nor other requirements indicated in the Form. This aspect of the matter having been overlooked by the learned Tribunal, the award suffers considerably to the prejudice of the appellant herein. When the statute

requires to perform a certain duty in a particular manner, such duty is required to be performed as per requirements and not otherwise. The medical certificate on which reliance was put by the Tribunal in calculating the award has been issued in violation of the provision of the MMV Rules, 1996. The medical certificate, Exhibit: C-12 obtained by the claimant and issued by witness No. 2 of the claimant cannot inspire confidence that the claimant did actually suffer 70% permanent disability due to vehicular accident.

The claimant-respondent No. 1 is a driver of the truck bearing registration No. MZ-01B-8687, while respondent No. 2 is the registered owner of the said truck. The claimant while driving the vehicle as aforesaid on 21st August, 2006 met with an accident as a result of which he sustained injuries in his person which has been certified as 70% permanent disability. The accident vehicle as claimed is insured with this present appellant and the policy remains valid till 29.6.2006. On account of sustention of injuries due to vehicular accident the driver as claimant filed an application u/s 163-A of the M.V. Act, 1988 before the MACT, Aizawl claiming compensation. After due inquiry the Member, MACT, Aizawl awarded Rs. 4,68,363/- as compensation as indicated in the impugned judgment and award.

5. Mr. M.M. Ali, learned Counsel for the appellant relying the ratio laid down in the cases between Babu Verghese and Others Vs. Bar Council of Kerala and Others, and Gauhati Municipal Corporation, Contractors Association v. The Guwahati Municipal Corporation, Guwahati reported in 1996 (1) GLT 385 submits that the Tribunal ought not to have considered the medical certificate, Exhibit: C-12 in the calculation of the award when the same is not issued per statutory requirement. Referring Rule 258 of the MMV Rules, 1996 it is submitted by him that for the purpose of claiming compensation either u/s 140 or u/s 163-A of the M.V. Act, 1988 claimant is required to provide the document/certificate as indicated therein and in respect of medical certificate, it is required to be issued per Form 79 of the Rules. If such certificate is not issued per Form 79, the same cannot be taken into consideration while calculating the compensation to the claimant. It is further submitted by him that when the statute requires a certain thing to do in a particular manner such thing is required to be done in that manner and not otherwise. The medical certificate, Exhibit: C- 12 on which the Tribunal put reliance suffers from this principle. This principle of law as indicated above was settled by the Apex Court while dealing with the Nasir Ahmad v. King Emperor's case AIR 1963 PC 253 and approved by the Apex Court while dealing with the case between Rao Shiv Bahadur Singh v. State of U.P., Deep Chand v. State of Rajasthan, and State of U.P. v. Singhara Singh. The Form No. 79 contained in MMV Rules, 1996 is a statutory form for issuing a medical certificate. The medical certificate, Exhibit : C-12 on which the reliance was put by the Tribunal is not admittedly issued in the prescribed Form No. 79. Therefore, the medical certificate appears to have suffered a statutory defect which prohibits acceptance by law laid down by the Supreme Court and this High Court. It is further argued by Mr. M.M. Ali that the medical certificate, Exhibit : C-12 has

been issued by the doctor concerned at the instance of the claimant to prove a higher percentage of permanent disability for the purpose of compensation. In that view of the matter it is submitted that Exhibit: C-12 cannot reflect the actual percentage of disability received by the claimant and it is doubtful. Had it been issued per Form 79 of the Rules it could have been accepted without any objection from the appellant side. Exhibit: C-12 has been obtained by the claimant with evil design from the doctor (witness No. 2 for the claimant).

6. Contention of Mr. M.M. Ali has been severely resisted by Mrs. Helen Dawngliani, learned Counsel for the respondent No. 1. It is submitted by her that genuineness of the Exhibit : C-12 can never be brushed aside on the ground that it is not issued per statutory Form No. 79. After the accident the claimant was admitted in Civil Hospital, Aizawl and he was discharged from the hospital on 16.9.2006. Discharge certificate, Exhibit : C-12 indicates the injury sustained by the respondent No. 1. In medical certificate, Exhibit: C-12 the injury sustained by respondent No. 1 is clearly indicated. Therefore, genuineness of Exhibit : C-12 cannot be doubted. Witness No. 2 for the claimant is the doctor who issued the said certificate. He is the Head of the orthopedic department of the Civil Hospital, Aizawl. Exhibit : C-12 is issued on the basis of the injury sustained by the respondent No. 1, the claimant. In the facts situation, it is argued by Mrs. Helan that the genuineness of the document, Exhibit: C-12 is beyond the scope of doubt and the same cannot be simply rejected on the ground that the same is not issued per Form 79 of MMV Rules, 1996.

7. There is no denial that no vehicular accident occurred on 21.8.2006. There is also no denial that in the said vehicular accident respondent No. 1, the claimant did not receive any injury. Exhibit : C-12, the discharge certificate indicates that claimant-respondent No. 1 received some injuries. The appellant herein while cross examining the doctor (witness No. 2 for the claimant) admitted 30% of permanent disability on account of receipt of injuries by claimant respondent No. 1 due to vehicular accident. Mr. M.M. Ali, while arguing the case submits that the appellant would not be dissatisfied if the award is calculated by taking 30% permanent disability instead of 70%. Since the appellant raises doubt about the percentage of permanent disability received by claimant respondent No. 1, on account of issuance of medical certificate without following statutory prescription and not availability of counter signature of the Superintendent of Hospital and when the appellant admits 30% of permanent disability, to resolve the doubt this Court is of considered view that without going into the merit of the case, the matter deserves remand to the Tribunal to have a fresh look in regard to percentage of permanent disability received by claimant-respondent No. 1 herein. On this ground alone the appeal warrants interference and accordingly the judgment and award dated 17.3.2009 passed by learned Member, MACT, Aizawl in MAC Case No. 110 of 2007 is set aside the quashed.

8. The case is remanded back to the learned Tribunal for a fresh decision with the following directions:

(1) On receipt of the records from this Court the Tribunal shall get the claimant-respondent No. 1 (injured) and examined by a medical board duly constituted and for constitution of such medical board a direction shall be made by the Tribunal to the Superintendent of Civil Hospital, Aizawl. This exercise shall be completed within a period of one month. The medical board so to be constituted for the purpose of determining the percentage of disability of the claimant-respondent No. 1 should not include the doctor (witness No. 2 for the claimant) who issued Exhibit C-12 (medical certificate) as one of the Members.

(2) The Tribunal thereafter shall hear the parties and pronounce the judgment.

9. With the above direction this appeal is disposed of. No cost.