

(2007) 01 GAU CK 0029
In the Gauhati High Court

United India Insurance Co. Ltd.

APPELLANT

Vs

H.C. Khono and Another

RESPONDENT

Date of Decision : 12-01-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 170

Citation : (2009) 4 GLR 633 : (2007) 1 GLT 770

Hon'ble Judges : A.B. Pal, J

Bench : Single Bench

Judgement

A.B. Pal, J.—This is an Insurer's appeal calling in question the correctness and legality of the judgment and award dated 14.06.2005 passed by the learned Member, Motor Accident Claims Tribunal, Aizawl in MACT Case No. 31 of 2003, whereby an amount of Rs. 2,00,000 (rupees two lacs) with interest at the rate of interest 9% per annum has been awarded making the appellant liable to pay the same. Having permitted u/s 170 of the Motor Vehicles Act, 1988 (for short the Act) the Insurer contested the claim before the said tribunal on all grounds, which are available to the owner of the vehicle and the insurer.

2. I have heard Mr. A.R. Malhotra, learned Counsel for the appellant and Mr. M. Guite, learned Counsel for the claimant/respondent.

3. On 13th August, 1997 one H.C. Hiali was travelling by the Jeep bearing the registration No. MZ-03/0041, which met an accident. He sustained injuries and died on the same day. He was 60, survived by wife, two sons and a daughter. The daughter only instituted the claim case on 28.02.2003, after a period of about six years from the date of accident. Other legal heirs of the deceased do not appear to have joined the claim. No explanation has been offered there for. The claim petition has been preferred u/s 163A of the said Act.

4. After filing the written statement the owner refrained from contesting the claim and then the Insurer took up the cudgel to contest the claim on the whole hog. According to the claimant, her father was agriculturist earning Rs. 3,000/-

per month from his land and garden. The claim was contested on the grounds that the claim was barred by limitation and the amount claimed is exorbitant. The strong defence taken by the Insurer/appellant before the tribunal is that the Jeep being registered as goods vehicle and the policy of insurance taken accordingly, the Insurer cannot be held liable for the compensation awarded. As regards the quantum of compensation the contention advanced by the learned Counsel for the appellant is that the claimant did not produce any evidence, except her own deposition, to show that the deceased was earning Rs. 3,000/- per month. The tribunal without any supporting evidence should not have accepted such claim when admittedly the land and garden from which the deceased was making his livelihood continued to be looked after by the legal heirs.

5. The learned tribunal in the judgment impugned made a clear observation that the Jeep was a goods carrying vehicle and the insurance policy covering it clearly mentioned that it was a goods vehicle only. Nowhere it has been explained why after such observation, the Insurer has been made liable to pay the compensation awarded. For determining the amount of compensation the learned tribunal accepted the claim that the deceased was earning Rs. 3000/- per month, which was multiplied by 12 to determine the annual loss of income. Choosing correctly the multiplier, the amount was further multiplied by 8 from which one third has been deducted to make the amount to Rs. 1,92,000/-. A further amount of Rs. 8,000/- has been added to raise the amount of Rs. 2,00,000, which has been awarded along with the interest as noticed.

6. Mr. Malhotra, learned Counsel for the Insurer/appellant has taken me through the policy of insurance (Annexure-D-I) and the Public Carrier permit (Annexure-D-2), which unmistakably show that the vehicle was permitted to use for carrying goods. Mr. Guite, learned Counsel for the claimant/respondent has strongly placed reliance on the motor insurance certificate issued by the insurer (exhibit C-10) which contains the Policy No., Certificate No., address of the insured, registration No. and other particulars of the vehicle including seating capacity (1+5). The make of the vehicle has been stated to be "M.V. Jeep, Public". According to the learned Counsel the seating capacity and the word "public" would go to show that it was a passenger vehicle. This argument seems to be misplaced for the reason that the capacity alone which has been expressed in terms of the seating capacity does not indicate the purpose for which the vehicle was intended to be used. That has to be inferred from the permit granted by the transport department and the policy issued by the Insurer. Once it is held that the vehicle was a goods vehicle and, therefore, the deceased was an unauthorised gratuitous passenger, the Insurer cannot be held as liable to compensate the death.

7. As regards the quantum of compensation, Mr. Malhotra, submitted that when admittedly agricultural land was the only source of income of the deceased and the said land is still being looked after by his legal heirs, the tribunal should not

have held that with the demise of the deceased there was loss of the entire amount of Rs. 3000/- per month. Certainly, the legal heirs have been deriving income from the said agricultural land, which may be less than the amount the deceased was earning. It is his submission that in view of the ratio laid down by the Supreme Court in *State of Haryana and Another Vs. Jasbir Kaur and Others*, , the tribunal should have deducted a portion of the said amount in stead of holding that the loss of income was exactly the entire amount earned by the deceased. Per contra, learned Counsel for the claimant respondent submitted that the legal heirs of the deceased being not agriculturist failed to earn anything from the said land. The argument has not support from the evidence on record, particularly when the claimant herself stated that she has been looking after the land and gardens after the demise of her father, though she indicated nothing about the quantum she has been earning. Thus there is no material for the tribunal to take a view that the entire amount of Rs. 3,000/- per month was the loss of income. Taking into consideration all the relevant factors, it can be safely held that the maximum loss of income cannot be by any stress of guesswork, more than two thousand per month. The same shall be multiplied by 12 and 8 to make it 1,92,000/-. Deducting one third from the same the amounts comes to Rs. 1,28,000. In my considered view, this amount shall be the just amount of compensation. In terms of the structural formula given in the second schedule of the said Act the claimant shall also be entitled to Rs. 2,000/- funeral expenses, Rs. 2500/- loss of estate and Rs. 5000 on pains and sufferings. Thus the net amount would come to Rs. 1,28,000 + Rs. 2000/- + Rs. 2500 + 5000/- = Rs. 1,37,500/- which shall bear simple interest at the rate of 9% per annum from the date of filing of the claim petition.

8. For the discussions and reasons aforementioned this appeal is partly allowed modifying the award from Rs. 2,00,000/- to Rs. 1,37,500/- making the owner of the vehicle liable to pay the entire amount of compensation. Having regard to the facts and circumstances of the case, it is further ordered that the insurer shall pay the amount initially and then proceed to recover the same from the owner of the vehicle.

There shall be no order as to cost.