

(2005) 09 GAU CK 0075
In the Gauhati High Court

United India Insurance Co. Ltd.

APPELLANT

Vs

Joeeph Rochhunga and Another

RESPONDENT

Date of Decision : 22-09-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 149, 166, 170

Citation : (2007) 2 ACC 562

Hon'ble Judges : Maibam B.K. Singh, J;Iqbal Ahmed Ansari, J

Bench : Division Bench

Judgement

I.A. Ansari, J.—On the death of his unmarried son, Anthony Laldawangliana, in a motor vehicular accident, which took place on 20th April, 2004, at a place near Tuirial River, the claimant respondent No. 1 herein made an application u/s 166 of the Motor Vehicles Act, 1988 (in short, the M.V. Act, 1998) seeking compensation. This claim application gave rise to M.A.C. Case No. 109 of 2003. By the impugned award, dated 19th May, 2005, the learned Tribunal has in all, granted Rs. 3,50,540 as compensation and directed the same to be paid by the present appellant as insurer of the offending vehicle with interest at the rate of Rs. 9 per cent from the date of filing of the claim application until realisation of the entire amount.

2. We have heard Mr. M.M. Ali, learned Counsel for the appellant, and Mr. Lalremtlunanga, learned Counsel for the respondents.

3. In the present case, the accident took place when the said deceased was moving on a motor cycle as a pillion-rider, a truck came from the opposite direction allegedly driven rashly and negligently and collided against the motor cycle, the collision between the two caused injuries to the person of the said deceased leading to his death.

4. Presenting the appeal, it has been submitted by Mr. Ali, on behalf of the insurer-appellant, that in view of the fact that there was a collision between the said two vehicles, the owner of the said motor cycle was a necessary party, but

as the owner of the motor cycle had not been made a party, the learned Tribunal ought not to have held the present appellant as the person solely liable to pay the compensation to the claimant.

5. While considering the above submission made on behalf of the insurer-appellant, it needs to be noted that the present insurer contested the claim proceeding by obtaining permission u/s 170 of the M.V. Act, and in terms of the provisions u/s 170 of the Act, took all such defences as were available to the owner of the said truck. In their written statement, the insurer did not allege that there was any fault on the part of the driver of the motor cycle and/or that the driver of the motor cycle had contributed to the negligence. In a situation, such as the present one, though the owner of the said motor cycle might have been a proper party, he was certainly not a necessary party, for, the presence of the owner of the said motor cycle, in the absence of any negligence on the part of the driver of the said motor cycle, could not have created any impediment in making an effective award. We find, therefore, no substance in the grievance expressed in this regard, by the insurer-appellant.

6. It is next contended by Mr. Ali that the driving licence of the said driver of the offending vehicle, i.e., the truck has not been produced and in such a situation, the insurer ought not to have been settled with the liability. It needs to be noted, in this regard, that the present appellant's case, as presented before the Tribunal, was that the driver did not have any valid driving licence. In the context of the case, the burden was on the insurer to prove, in terms of Section 149(2), that the driver of the truck was not duly licensed. Hence, the fact that the driving licence was not produced in the claim proceeding, can be of no avail to insurer.

7. Turning, however, to the appellant's grievance with regard to the quantum of compensation, we find that the claimant is the father of the said deceased, who was unmarried. It is well settled that in such a case, it is the age of the beneficiary and not the age of the deceased, which is the relevant factor. In the case at hand, the claimant's age was 50 years, the multiplier to be applied was 12. This apart, the learned Tribunal has calculated the loss of income by assuming that 2/3rd of the income of the deceased would have been contributed to the claimant, which is not reasonable, for, had the deceased survived, he would have got married and he would have grown his own family and marital responsibilities. Viewed from this angle, the learned Tribunal, instead of taking 2/3rd of the income of the deceased for the purpose of calculating the loss of income, ought to have taken 1/3rd of the income of the said deceased as the amount, which would have been contributed to the claimant. Considered, thus, when the annual income of the deceased was Rs. 27,000, the learned Tribunal ought to have held that the claimant could have received Rs. 9,200 annually from the said deceased. If the said amount was multiplied by 12, the loss of income would have worked out to an amount of Rs. 1,10,400 to this amount should have been added Rs. 1,140 as medical expenses, which the claimant has proved by production of medical records, and the conventional sum of Rs.

10,000. The total compensation, therefore, comes to the tune of Rs. 1,21,540.

8. In the facts and circumstances of the present case, we hold that the insurer-appellant is liable to pay, in all, Rs. 1,21,540 and after deducting the amount, which has already been paid and/or deposited by the insurer-appellant, the balance amount of money shall be paid to the claimant by the insurer at the rate of Rs. 6 per cent p.a. from the date of filing of the claim petition until realisation of the entire amount.

With the modification in the impugned award, this appeal is disposed of.