
(2008) 09 GAU CK 0014
In the Gauhati High Court
Case No : MAC Appeal No. 12 of 2007

United India Insurance Co. Ltd.

APPELLANT

Vs

Lalzuia and Others

RESPONDENT

Date of Decision : 17-09-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2009) 2 GLR 109

Hon'ble Judges : H. Baruah, J

Bench : Single Bench

Advocate : M.M. Ali, for the Appellant; L.H. Lianhrima and Helen Dawngliani, for the Respondent

Judgement

H. Baruah, J.—Heard Mr. M.M. Ali learned Counsel for the Appellant. Also heard Mrs. Helen Dawngliani, learned Counsel for the Respondent No. 1. None appears for the Respondent Nos. 2, 3 and 4.

2. By this appeal the impugned judgment and order dated 17th April 2004 passed by learned Member, MACT, Aizawl in MACT Case No. 118 of 2005 has been challenged by which an amount of Rs. 2,10,870 was awarded as compensation on account of injury sustained by the claimant due to vehicular accident.

3. On 24.5.2005 at about 11.15 a.m. while claimant Lalzuia was travelling in a bike bearing registration No. MZ-01/A-1623 from Aizawl towards Zanlawn at Sentlang near Lungdai, the said bike met with an accident involving vehicle No. MZ-01/B-6449 (Tata Sumo). As a result of accident, the claimant suffered injury to the extent of 40% permanent disability. The motorbike belonged to O.P No. 2 (Respondent No. 3 herein) which was validly insured with Oriental Insurance Co. Ltd., the Respondent No. 4 while the Tata Sumo involved in the accident belonged to O.P No. 1 (Respondent No. 2 herein) validly insured with M/s. United India Insurance Co. Ltd., of the appellate herein.

4. On account of sustention of injury by the claimant to the extent of 40% permanent disability due to vehicular accident filed the claim petition u/s 166 of the M.V. Act, 1988 claiming compensation as admissible under the law. It was contended in the claim petition that he was a farmer during the relevant period and was earning Rs. 4,000 per month.

5. The claim was contested by Respondent No. 2, the Appellant and Respondent No. 4 by filing written statement. After due inquiry, the learned tribunal awarded a compensation to the claimant Respondent No. 1 herein to the tune of Rs. 2,10,870 with 9% interest per annum from the date of filing till realization and the United India Insurance Co. Ltd., the Appellant herein was directed to pay the said award with interest as stated above.

6. Being feeling aggrieved and dissatisfied, this present appeal has been preferred by the Appellant challenging its legality and correctness.

7. Mr. M.M. Ali, learned Counsel for the Appellant at the very out set of his argument submits that the motorbike bearing registration No. MZ-01/A-1632 and the Tata-Sumo bearing registration No. MZ-01/B-6449 met with a head-on collision resulting injuries to the Respondent No.1. There is ample evidence on record to show that both the vehicles met with head-on collision. There is also evidence on record that the accident took place as a result of contributory negligence in respect of drivers of the both the vehicles of but the learned tribunal failed to consider the aspect of contributory negligence in spite of overwhelming evidence available on record. Mr. M.M. Ali, the learned Counsel for the Appellant, therefore, submits that it would have been proper and justified on the part of the tribunal to take into consideration the fact of contributory negligence contributory negligence since both the vehicle collided head to head and for that the learned tribunal ought to have apportioned the award so calculated. But, Mrs. Helen Dawngliani though has conceded contributory negligence on the part of both the vehicle, however, refuses to carry liability at 50:50, in view of ratio of the composite negligence on the part of the driver of the Tata Sumo and the motorbike. Mrs. Helen Dawngliani in support of her contention placed reliance in the decision of the case between Uma Rathore and Ors. v. Om Prakash and Ors. 2007 (3) T.A.C. 965 (MP). The High Court of Madhya Pradesh did not interfere with the findings of tribunal in respect of the ratio of the contributory negligence on account of head-on collision between the Truck and the Jeep. Facts involved in the case (supra) are somewhat different to the facts of our present case. When there is overwhelming evidence on record to establish the fact of head-on collision between the motorbike and the Tata Sumo, it would be in the fitness things to make an apportionment of award at 50:50.

8. Having carefully considered the facts and circumstances of the case and evidence on record and the findings of the learned tribunal as well as the submissions and law laid down by the Supreme Court and the High Court, this Court is of view that the award so calculated by the tribunal requires apportionment at 50:50. In view of the matter, the Appellant insurance company

is required to pay fifty per cent of the award calculated by the learned tribunal with interest thereon. Remaining 50% is recoverable from the Respondent No. 4, the Oriental Insurance Co. Ltd., Aizawl, the insurer of the motorbike bearing registration No. MZ-01/A-1632 with interest. The respective portion/share of the award with interest shall be paid to the claimant within two months from the date of this judgment.

9. This appeal is partly allowed, however with no cost.