
(2005) 09 GAU CK 0010
In the Gauhati High Court
Case No : MAC Appeal No. 12 of 2004

United India Insurance Co. Ltd.

APPELLANT

Vs

Sapchhawna and Another

RESPONDENT

Date of Decision : 20-09-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 110, 110A, 163A, 168, 170

Citation : (2006) 1 GLR 564

Hon'ble Judges : M.B.K. Singh, J; I.A. Ansari, J

Bench : Division Bench

Advocate : A.R. Malhotra, for the Appellant; Vanlalenmawia, for the Respondent

Judgement

I.A. Ansari, J.—On 1.7.2000, a vehicle (Mahindra Jeep) bearing registration No. MZ-01/A-5156 met with an accident, while the said vehicle was proceeding to Aibawk from Darlung. In the accident, M. Buchhawna, who was travelling in the said vehicle, sustained injuries and succumbed thereto on 7.7.2000. Seeking compensation for the death of the said deceased, an application u/s 163A was made by the claimant respondent herein, who is one of the brothers of the said deceased. This claim application gave rise to MAC No. 43/2002.

2. Since the owner of the vehicle did not contest the claim proceeding, the present appellant, as insurer of the said vehicle, on being permitted u/s 170 of the M.V. Act, 1988, contested the proceedings on all such grounds, which were available to the owner of the said vehicle. By the award, dated 17.2.2004, passed in MACT Case No. 43/2002, the learned Member of the Motor Accident Claims Tribunal, Aizawl, granted, in all, Rs. 3,89,000 as compensation to the claimant. Aggrieved by the award, so rendered, the insurer has impugned the same in the present appeal.

3. We have heard Mr, A.R. Malhotra, learned Counsel for the insurer-appellant, and Mr. Vanlalenmawia, learned Counsel, appearing on behalf of the claimant respondent No. 1.

4. Assailing the impugned award, Mr. A.R. Malhotra, learned Counsel for the appellant, has pointed out that according to the evidence adduced by the claimant-respondent, the said deceased was a farmer by profession having lemon garden and paddy field and used to earn from his cultivation about Rs. 3,000 per month. This apart, further point out Mr. A.R. Malhotra, there is nothing in the evidence on record that as a result of the death of the said deceased, the claimant suffered from any loss of dependency, for, according to claimant's own evidence, submits Mr. A.R. Malhotra the claimant is a daily wage labourer and that according to the evidence given by the V.C.R of the village to which the said deceased belonged, the garden left behind by the said deceased is being looked-after and managed by the present claimant and his elder brother and that the fruit plants, standing thereon, are, now, at fruit bearing stage. Since an agricultural land can be used even by a dependent, no substantial loss of income, according to Mr. A.R. Malhotra, is suffered by such a dependent. In the present case too, according to Mr. A.R. Malhotra no loss of income has been suffered by the claimant. In support of his submission, Mr. A.R. Malhotra has relied on State of Haryana and Another Vs. Jasbir Kaur and Others,

5. Controverting the submissions made on behalf of the insurer-appellant, Mr. Vanlalenmawia, learned Counsel for the claimant respondent No. 1, submits, that one of the brothers of the said deceased is deaf and was dependent on the income of the said deceased. Mr, Vanlalenmawia, learned Counsel for the claimant-respondent, further submits that the claimant-respondent was dependent on the income of the said deceased and in such situation the learned Tribunal was within the ambit of law in awarding compensation to the claimant.

6. Before we answer the question as to whether the claimant could have maintained an application, u/s 163A, as a person dependant on the income of his said deceased brother, it is, to our mind, appropriate to point out the material facts, which clearly emerge from the pleadings of the parties and the evidence on record. In this regard, it is worth noticing that according to the evidence of the claimant, the said deceased was his elder brother, who was a farmer, having lemon garden and paddy fields and used to earn about Rs. 3,000 per month. It is also in the evidence of the claimant that he is aged about 35 years and he is a daily wage labourer and earns about Rs. 3,000-4,000 per month.

7. Coupled with the above witness No. 2 for the claimant has deposed that after the death of the said deceased, his two brothers including the claimant have continued to look after their garden, which are, now, at fruit bearing stage.

8. It is, thus, clear that the agricultural income, which the said deceased used to derive from his said plantation, has not substantially reduced. This apart, the claimant himself earns as much as was the income of his said deceased brother.

9. We are, now, required to determine if the present claim application could have been maintained by the claimant. While considering this aspect of the matter, it is pertinent to note that in Gujarat State Road Transport Corporation,

Ahmedabad Vs. Ramanbhai Prabhatbhai and Another, the Apex Court has held that the brother of a person, who dies in a motor vehicle accident, is entitled to maintain a claim application u/s 110A of the Act, if he is a legal representative of the deceased.

10. Since the claimant is one of the brother's of the said deceased, he could have maintained, as a legal representative, an application u/s 163A. This does not mean, we must hasten to add, that a brother, such as, the claimant, would receive, in all cases and invariably, similar amount of compensation as a widow of a person may receive.

11. Section 168 of the M.V. Act, casts a duty on the Tribunal to determine the amount of compensation, which appears to it to be just and reasonable. The expression just and reasonable is of great importance. While every legal representative may institute a claim application, yet, while making assessment of the compensation, it is the duty of the Tribunal to determine as to what is, as a result of the death of the deceased, loss of income suffered by the person, who claims compensation. This determination is not a mere formality, but an onerous responsibility assigned to the Tribunal. Considered, thus, it is clear that in the present case a duty was cast on the learned Tribunal to determine as to what loss of income, if any, the claimant-respondent herein has suffered. In this regard, the learned Tribunal does not appear to have paid adequate attention.

12. As already indicated herein above, the evidence on record reveals that the said deceased as well as the claimant used to earn about Rs. 2,000-3,000 per month individually. This apart, the claimant has left behind his agricultural land and, normally, there is no deprivation of income from the agricultural land. In fact, the evidence on record discloses, as we have already mentioned above, that the claimant has been making use of the land of his said deceased brother and have been looking after the same. In the face of such facts, the claimant respondent cannot be said to have suffered substantial loss of income as a result of the death of the said deceased. In fact, in the facts and circumstances of the present case, it is difficult to hold that the claimant was dependent on the earning of his deceased brother for, the claimant has also been earning as much as his said deceased brother.

13. Be that as it may, in the context of the facts of the present case, we are of the view that, apart from the statutory liability of Rs. 50,000, which the claimant was entitled to receive as compensation, the claimant ought to have been paid a lump sum amount of Rs. 50,000 as compensation including the funeral expenses. The impugned award, therefore, needs to be modified.

14. With the above end in view, we hold that the claimant respondent is entitled to receive, in all, a sum of Rs. 1,00,000 as compensation for the death of his said deceased brother and the same shall be made available to him by the insurer-appellant with interest @ of 9% p.a. from the date of presentation of the claim application until realisation of the awarded amount.

15. With the above modifications made in the impugned award, the present appeal shall stand disposed of. No order as to costs.