

(2008) 04 GAU CK 0065
In the Gauhati High Court
Case No : MAC Appeal No. 37 of 2006

United India Insurance Co. Ltd.	Vs	APPELLANT
Sh. Vanlalhruaia and Another		RESPONDENT

Date of Decision : 03-04-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2009) 4 GLT 153

Hon'ble Judges : H. Baruah, J

Bench : Single Bench

Advocate : A.R. Malhotra, for the Appellant; Zochhuana and Francis Vanlalzuala, for the Respondent

Judgement

H. Baruah, J.—The judgment and award dated 7.8.06 in MACT Case No. 17 of 2001 rendered by the learned Member, MACT Aizawl stands impugned by the present appeal by United India Insurance Co. Ltd. By the said judgment, an amount of Rs. 18,00,000/- with interest at the rate of 8% p.a. from the date of filing of the claim petition until realization has been awarded making the insurer, the Appellant Company liable to pay the entire amount.

2. The material facts which give rise to the present claim petition originated from a vehicular accident occurred on 1.12.2000, wherein one Zothansanga, aged 26 had received serious injuries on his person while he was driving his bike bearing registration No. MZ-01/B-0589 dashed by a truck bearing registration No. MZ-01/A-5871 belonging to Respondent No. 2 herein driven by one Lalthlamuana. The accident occurred at Bawngkawn-Chaltlang Road. After the accident, the injured Zothansanga was taken to Civil Hospital, Aizawl, wherein he was given preliminary treatment and thereafter, shifted to Greewood Hospital for improved treatment where he succumbed to his injuries on 5.12.2000. Police started investigation about the accident. The accident took place as claimed due to rash and negligent driving of the driver of the vehicle.

3. The father, on account of death of his son due to vehicular accident filed a

claim petition u/s 166 of the Act, claiming compensation. It is claimed that the deceased, while alive had engaged himself in a business by opening a fashion shop under the name and style "Atea Store" at New Market, Aizawl and was earning about Rs. 2,40,000/- p.a. from the said business. It is also claimed that the deceased son was the sole earning member of his family consisting of himself, his wife, one daughter and a son. On the death of the deceased, the business suffered to a considerable extent thereby loosening the income therefrom. It is also claimed that for the purpose of treatment of the deceased while he was in the Hospital, expended Rs. 3,696/-.

4. The claim was enquired by the learned Member, MACT. During enquiry, both the parties adduced evidence and proved documents. At the conclusion of the inquiry, the learned Member, MACT awarded compensation hereinabove stated. Hence, the present appeal.

5. We heard Mr. A.R. Malhotra, learned Counsel for the Appellant, United India Insurance Co. Ltd. and also heard Mr. Zochhuana, learned Counsel for the Respondent No. 1.

6. Mr. A.R. Malhotra, at the very outset of his argument criticized the judgment rendered by the learned Member in the context of assessment of the income of the deceased. Mr. A.R. Malhotra, referring to the evidence of the claimant, both examination in-chief and cross examination, submitted that the monthly income as calculated by the learned Member is not justified. It was argued by him that though, the deceased ran a business and the business actually belonged to the family. The business did not exclusively belong to the deceased, every family member had contribution towards the running of the business and therefore, Rs. 2,40,000/- could not be held to be the income of the deceased alone. According to Mr. A.R. Malhotra, this income ought to have proportionally distributed amongst the members of the family since each of them had contribution towards it. The average annual income to be found could have been calculated towards the loss of dependency or future income. That apart, it was also argued by him that 2/3rd of the annual income is also required to be deducted while calculating the loss of dependency or future income. Mr. A.R. Malhotra, in the context of reduction of the income by 2/3rd relied in a decision in the case between Donat Louis Machado and Others Vs. L. Ravindra and Others, wherein in Para 3 of the judgment, the Hon'ble Supreme Court held as under:

3. We have heard learned Counsel for the Appellant-claimants as well as learned Counsel for the Insurance Company, who is the real contesting party at this stage and who has to bear the burden of total amount of compensation made payable to the claimants. We may note certain salient features of the case which are not in dispute. The deceased was earning Rs. 2500 per month in his vocation as a journalist at the relevant time. He was aged 31 years when his life was cut short because of the unfortunate accident. Learned Counsel for the claimants contended that he was also earning extra income, but as there is no clear evidence, we will proceed on the basis that he was earning Rs. 2500 per month

at least. As he died at a comparatively younger age of 31 years, he had a very lucrative career before him for a number of years had he survived. Therefore, we can easily visualize that his total earnings would have gone up by at least Rs. 5000 per month by the time he would have rested on his oars and given up his work as a journalist after exhausting his full earning career. Consequently, the total amount would work out at Rs. 7500 per month during the whole span of future career and taking an average at 50%, his future monthly income during the rest of the life could have worked out at Rs. 3750. On that basis, 12 months' earning would have been Rs. 45,000 and adopting a multiplier of 15 looking to the young age of the deceased the total economical gain to his estate would work out at Rs. 6,75,000 at least. But taking a conservative figure of Rs. 6 lakhs it can easily be visualized that the claimants who are the parents and unmarried sister and who are dependent on him would have got at least 1/3 amount as he would have spent the rest of 2/3 amount of his earnings on his own family which he would have raised and on himself. This would come to a figure of Rs. 2 lakhs. This can easily be treated to be the appropriate compensation payable to the claimants on account of economical loss suffered by them as a result of the unfortunate accident to their breadwinner. The High Court has granted the compensation of Rs. 1,27,000 so that the remaining amount which can be assessed as payable by the Respondents would be Rs. 73,000 more.

7. Mr. A.R. Malhotra further argued in support of his contention that the Motor Vehicle Act being a beneficent piece of legislation, the tribunal may follow a summary procedure. While dealing with a claim by adopting such procedure, the tribunal cannot ignore all the basic principles of law while determining in the claim for compensation. Referring to the evidence appearing in the cross examination of PW/1, the claimant, it was argued that the learned Member MACT failed to concentrate to the evidence appearing therein in the context of management of the business. PW/1 in his cross examination admitted that the business ran by the deceased son is a family business and every member of the family had/has contribution towards it. So, the annual income which finds reflection in Exhibit C/5 ought not to have been taken as the annual income of the deceased son when the members of the family were/are enjoying usufruct of the said business and when members were/are contributing towards the business, the entire income amounting to Rs. 2,40,000/- annually ought not to have taken into consideration while calculating the loss of dependency or future income. According to Mr. A.R. Malhotra, the annual income amounting to Rs. 2,40,000/- ought to have been equally divided amongst the 5 family members who were all alive under the same roof and mess during the relevant period of time. Learned Member MACT thus committed error and illegality in calculating the award.

8. Mr. A.R. Malhotra in support of his contention relied in a decision reported in (2007) 5 SCC 248 *Oriental Insurance Co. Ltd. v. Meena Variyal and Ors.* wherein the Hon'ble Apex Court in Para 10 of the judgment held as follows:

10. Before we proceed to consider the main aspect arising for decision in this appeal, we would like to make certain general observations. It may be true that the Motor Vehicles Act, insofar as it relates to claims for compensation arising out of accidents, is a beneficent piece of legislation. It may also be true that subject to the rules made in that behalf, the Tribunal may follow a summary procedure in dealing with a claim. That does not mean that a Tribunal approached with a claim for compensation under the Act should ignore all basic principles of law in determining the claim for compensation. Ordinarily, a contract of insurance is a contract of indemnity. When a car belonging to an owner is insured with the insurance company and it is being driven by a driver employed by the insured, when it meets with an accident, the primary liability under law for payment of compensation is that of the driver. Once the driver is liable, the owner of the vehicle becomes vicariously liable for payment of compensation. It is this vicarious liability of the owner that is indemnified by the insurance company. A third party for whose benefit the insurance is taken, is therefore entitled to show, when he moves u/s 166 of the Motor Vehicles Act, that the driver was negligent in driving the vehicle resulting in the accident; that the owner was vicariously liable and that the insurance company was bound to indemnify the owner and consequently, satisfy the award made. Therefore, under general principles, one would expect the driver to be impleaded before an adjudication is claimed u/s 166 of the Act as to whether a claimant before the Tribunal is entitled to compensation for an accident that has occurred due to alleged negligence of the driver. Why should not a Tribunal insist on the driver of the vehicle being impleaded when a claim is being filed?

9. Mr. Zochhuana, learned Counsel for the Respondent, however, raised a vehement objection against the arguments advanced by Mr. A.R. Malhotra. Mr. Zochhuaria, while supporting his claim contended that though, the business belongs to the family members of the claimant, the deceased being the eldest son ran the entire show and thus earned an annual income of Rs. 2,40,000/- . Neither of the family members had any contribution towards the business and therefore, the learned tribunal was right in calculating the loss of income taking the basis of annual income at Rs. 2,40,000/- in respect of the deceased alone. Mr. Zochhuana, in support of his argument in the context of admission of the claimant in his cross examination that the business belonged to the family, and relied in a decision in the case between Sri Suresh Yallappa Patil Vs. The General Manager, K.S.R.T.C. and Another, In Para 10 of the judgment, the Hon'ble Supreme Court held as under:

10. In our view the reasoning and the conclusion arrived at by the High Court are not sustainable in law. No reasons have been recorded for disbelieving the statement of eyewitness PW-2. He has been disbelieved only on the ground that had the driver been negligent he himself would not have taken the injured to the hospital. This by itself is no reason to either disbelieve PW-2 or to believe RW-1. Thus the finding arrived at by the High Court that the Appellant himself contributed to the extent of 50 per cent in causing the accident cannot be

accepted. Similarly, only because the Appellant was working with his brother would not mean that the loss of future income could not be to the extent of Rs. 78,000. The Tribunal after detailed examination keeping in the income and the injury suffered by the Appellant assessed the loss of future earning at Rs. 78,000. No reasons, much less plausible reasons have been given for reducing the loss of future income to Rs. 25,000.

10. Mr. Zochhuana further argued that while assessing compensation on the basis of the evidence on record, future economic loss can be computed by taking actual income and future increase of the same. Giving a concession to the Appellant, it was argued by Mr. Zochhuana that if the annual income of Rs. 2,40,000/- is equally divided amongst the five members of the family, the share of the deceased would have stood at Rs. 48,000/- and thus the future income could have been calculated at Rs. $48,000 \times 2 = \text{Rs. } 96,000 + 48,000 = \text{Rs. } 1,44,000/-$. While calculating the loss of income, the total sum of Rs. 1,44,000/- reducing it to one-half which can be considered as the net income of the deceased. In support of his contention Mr. Zochhuana relied in a decision in the case between United India Insurance Co. Ltd. v. Chhaganlal Punamchand Jain and Ors. reported in 2005 ACJ 1046. In Para 6 of the judgment the Hon'ble Supreme Court held as under:

6. We have perused the award in question made by the Tribunal. We have also considered the submissions made by the learned advocates for the parties before this Court. The Tribunal has not recorded findings as regards contributory negligence in view of its findings given on issue No. 2 and before this Court also, contention as regards contributory negligence has not been raised by Appellant insurance company. It is not in dispute that the age of the deceased Anilkumar was of 19 years at the time of accident. It is the submission of Ms. Jani, learned advocate for Appellant insurance company that considering the age of the parents, the Tribunal ought to have deducted 2/3rd instead of 1/3rd. It is not in dispute that the claim petition was filed before the Tribunal u/s 166 of Motor Vehicles Act. The fact remains that deceased was having annual income of Rs. 60,000 and, therefore, if the submissions made by Ms. Jani are considered, then, the Tribunal has, while coming to the conclusion that the annual income of the deceased was of Rs. 60,000 has not taken into account the future prospects, has not considered future income of the deceased which is clear from the award and not disputed by Ms. Jani. As per the decision of the Apex Court in case of Sarla Dixit v. Balwant Yadav (supra), future economic loss can be computed by taking actual income, the future increase of double that income, adding both together and then reducing it to one-half, the average future income can be considered as net income of the deceased. Thus, according to the submission made by Ms. Jani, if the figure of Rs. 60,000 is taken as actual income of the deceased as proved before the Tribunal plus Rs. 1,20,000 as future increase/double, the figure available would be of Rs. 1,80,000 and one-half thereof would be of Rs. 90,000 which would have become the average income of the deceased had he not died and if one-third is considered as dependency benefit to the parents in

that case Rs. 30,000 per year would be available to the parents as dependency benefits and then if the multiplier of 16 is adopted, amount available would be Rs. 4,80,000 to the claimants for future economic loss.

11. The Hon''ble Supreme Court also approved deduction of 2/3rd of the income in case of unmarried deceased. It is in the evidence on record that the deceased died as a bachelor and was running 26 years of age during the relevant period, the multiplier to be applied in case of a death in a fatal accident of the person between the age group of twenty five to thirties stand at 18. The learned Member, MACT while computing the compensation applied multiplier 11 with reference to the age of the claimant to which neither of the party raised any objection.

12. Thus having considered the facts and evidence on record in the ratio laid down by the Hon''ble Supreme Court, the compensation can be calculated in the following manner:

$$\frac{240000}{5} \times 2 = 96,000 \quad 96000 + 48000 = 144000/2 = 72,000 \quad 72000 \times 11/2/3rd = 5,28,000$$

The amount of Rs. 5,28,000/- is thus awarded as compensation with 9% interest on the sum from the date of judgment and award of the tribunal below until payment. The Appellant Company is accordingly directed to make the payment of the compensation with interest to the claimant within a period of 2 (two) months from the date of receipt of the certified copy of this judgment.

13. Appeal is partly allowed.