

(2005) 09 GAU CK 0011
In the Gauhati High Court

United India Insurance Co. Ltd.

APPELLANT

Vs

Tlanlawmi and Another

RESPONDENT

Date of Decision : 21-09-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 170

Citation : (2007) 2 ACC 610

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

Bench : Division Bench

Judgement

I.A. Ansari, J.—The claimant-respondent herein made an application u/s 163A of the Motor Vehicles Act, 1988 (in short, "the M.V. Act") seeking compensation for the death of her husband, Lalruata, who, while driving an auto-rickshaw, on 9th October, 2003, was dashed against by a truck and died on the spot. This claim application gave rise to M.A.C. Case No. 122 of 2003.

2. As the owner of the said truck did not contest the claim proceedings, the insurer of the said truck, on being permitted in terms of Section 170 of the Motor Vehicles Act, contested the proceeding and took all such defences which were available to the owner of the said truck.

3. By the impugned award, dated 2nd August, 2004, passed in M.A.C. Case No. 122 of 2003 aforementioned, the learned Member, M.A.C.T., Aizawl, has granted, in all, Rs. 4,63,200 as compensation in favour of the claimant-respondent with interest @ Rs. 9% p.a. from the date of filing of the claim application until realisation of the entire awarded amount. Aggrieved by the award, so rendered, the insurer of the said truck has preferred the present appeal.

4. We have heard Mr. A.R. Malhotra, learned Counsel for the insurer-appellant, and Mrs. Helen Dawngliani, learned Additional G.A. Mizoram for the respondents.

5. While considering the present appeal, what needs to be borne in mind is that in every claim case, it is the duty of the Tribunal to ascertain as to what loss of income the insured or the dependents of the deceased in a motor vehicular

accident has suffered, this act of ascertainment is not a mere formality, but a onerous task, which the Tribunal has to perform, for, in a given case, the death of a person, in a motor vehicular accident, may cause total loss of income of his legal representatives and dependents or may result into partial loss. In a case, wherein the source of income of a deceased was agriculture or plantation, there may not be total loss of income to the heirs of the deceased. It is, therefore, required, in such cases, that the Tribunal determines not only as to what the income of the deceased was, but also as to whether any income is being derived by the heirs from the agricultural land or the plantation left by the deceased and if so, how much is the income derived by the legal representatives from such agricultural land or plantation. The case at hand required such an exercise, which, to our dismay, the learned Tribunal has completely ignored.

6. Bearing in mind what we have indicated above, when we turn to the present case, we notice that the evidence of the claimant is that her husband was cultivator, who has his sugarcane farm, he used to make molasses and sell the same in the market and earn thereby Rs. 3,500 p.m. In her cross-examination, however, the claimant has deposed that they are still having the said sugarcane plantation and cultivating sugarcane thereon. In the face of such clear evidence given by the claimant herself, there can be no escape from the conclusion that as a result of the death of her husband, the claimant has not suffered from total loss of income. The facts of the present case are, to some extent, akin to the case of *State of Haryana and Another Vs. Jasbir Kaur and Others*, wherein the Apex Court observed,

8. ...The land possessed by the deceased still remains with the claimants as his legal heirs. There is, however, possibility that the claimants may be required to engage persons to look after the agriculture. Therefore, the normal rule about the deprivation of income is not strictly applicable to cases where agricultural income is the source. Attendant circumstances have to be considered....

7. Bearing in mind the position of law as laid down in *Jasbir Kaur (supra)*, when we turn to the facts of the present case and after making allowance for the expenses, which maybe incurred by the claimant in respect of the labourers which the claimant might be required to engage for the propose of sugarcane plantation, we are of the view that the income derived from the said plantation by the claimant can be safely treated to be Rs. 1,500 p.m. Had the said deceased remained alive, he would have required 1/3rd of his income of Rs. 3,500 as his personal expenses. If 1/3rd of the income of the said deceased were kept excluded as his personal expenses, the amount actually contributed to his family by the said deceased would have been about Rs, 2,500 p.m. Thus, the loss of Income of the claimant Is to the tune of Rs, 1,000 p.m.

8. Since the age of the said deceased was 39 years, the appropriate multiplier to be used, In the present case, was 16, Considered, thus, the compensation comes to a sum of Rs, 1,60,000. To this amount need to be added Rs, 2,500 as loss of estate, Rs. 2,000 as funeral expenses and Rs. 5,000 as loss of consortium The

total amount of compensation, therefore, comes to the tune of Rs. 1,69,500, This amount shall be paid by the insurer-appellant to the claimant-respondent within a period of 3 (three) months from today with interest @ Rs. 9% per annum until realisation of the entire awarded amount.

9. The impugned award shall stand modified to the extent as indicated hereinabove.

10. With the above observations and directions, this appeal shall stand disposed of.

11. No order as to costs.

12. Send back the L.C.R.