

**THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA,
MANIPUR, TRIPURA, MIZORAM & ARUNACHAL PRADESH).**

SHILLONG BENCH

MAC Appeal No. (SH) 4 of 2009

The New India Assurance Co.Ltd having its registered and
Head Office at New India Assurance Building, 87, Mahatma
Gandhi Road, Fort, Mumbai 400 001 and one of its Branches
At Ulubari, GS Road, Guwahati C/o Divisional Office
Opp.Bawri
Mansion, Dhanketi, Shillong-793001.

Petitioner

-Versus-

1. Smti.Dri Langshiang,
W/o (L) Stelin,
R/o Cleve Colony, Shillong.
(Claimant in MAC Case No.72 of 2006).

2. Shri Balwinder Singh,
S/o Sdr Arjun singh,
C/o Assam Kata Jowahar Nagar,
Beltola, Guwahati.
(Owner of Truck No.AS 01 X 6637)

Respondents

**BEFORE
THE HON'BLE MR JUSTICE T VAIPHEI**

For the petitioner : Mrs T Yangi,

For the respondent No.1 : Mr S Rana.

Date of hearing : 25.2.2011

Date of judgment and order : 11.3.2011

JUDGMENT AND ORDER

This appeal under Section 173, Motor Vehicles Act, 1988 is directed against the judgment and award dated 30-1-2009 passed by the learned Member, Motor Accident Claims Tribunal, Shillong in M.A.C. Case No. 72 of 2006 awarding a compensation of `8,23,000/- together with interest at the rate of 9% per annum in favour of the claimant-respondent on account of the death of her husband in a vehicular accident.

2. The facts leading to the filing of the appeal, as pleaded by the claimant-respondent, may be briefly noted at the outset. On 23-10-2006 at about 7.30 P.M., the deceased Stelin Phawa along with friend, namely, Shri Soo Suting, hitched a lift in a goods carrying truck bearing No. AS 01 X 6637 at Mookyndur Bridge and after getting down there, he was walking on the extreme left of the road, but all of a sudden, he was ran over by the back wheel of the truck and died instantaneously. The accident took place due to the negligence of the driver, who falsely, in collusion with the police, stated in the FIR that he was drunk. The claimant also filed an FIR on 27-10-2006 to the S.P. Jaintia Hills for registering a case. The claimant-respondent, who is the wife of the deceased, then filed a claim petition before the Motor Accident Claims Tribunal seeking a compensation of ` 9,11,000/-. Both the owner of the offending vehicle and the insurer contested the claim petition

and filed their respective written statements denying their liability to pay the compensation. However, in the course of the proceedings, the owner of the vehicle failed to contest the case whereupon the case proceeded against him ex-parte. This prompted the insurer-respondent to file and was allowed to contest the claim petition under Section 170 of the Motor Vehicles Act., 1988. On the pleadings of the parties, the following issues were framed:

1. Whether the claim petition is maintainable in its present form?
2. Whether the accident was caused due to the rash and negligent driving of
the driver of Truck No. AS-01X-6637?
3. Whether the driver of the said vehicle had any valid driving license?
4. Whether the OP/New India Assurance Co. Ltd. is liable to pay compensation to the claimant to indemnify the OP/owner of the Truck No.
AS-01X-6637?
5. Whether the claimant is entitled to any relief?

3. In the course of trial, the claimant-respondent examined five witnesses including herself, while the insurer examined two witnesses to defend its case. At the conclusion of the trial, the Tribunal awarded the compensation together with interest as indicated above. There is no dispute that the deceased died in the motor vehicle accident in a public place in which Truck No. AS 01 X-6637 was involved. The first question to be decided in this appeal is whether the accident occurred due to rash and negligent driving of the truck in question. Mrs. T. Yangi, the learned counsel for the appellant-

insurer, submits that the deceased was a gratuitous passenger in the said truck, and as he was under the influence of alcohol, when he tried to get down from the running truck, he fell under the rear wheel of the same which resulted in his death. It is interesting to note that the driver was never examined as a witness. The Tribunal recorded the finding that there is no evidence that the deceased fell down from a running truck and the story that he was hit from the back by the rear tyre of the truck while walking has to be accepted to be true since the only eye-witness (CW 2) who saw how the accident actually happened deposed before the Tribunal to that effect. The Tribunal also has taken into consideration the evidence of the Medical Officer (CW 5), who conducted the post mortem examination of the deceased, that there was no alcohol content in his stomach. In my judgment, the aforesaid findings of the Tribunal cannot be said to be based on no evidence nor do they suffer from any perversity calling for my interference: in other words, there are some evidence which reasonably support the conclusion of the Tribunal. In a motor accident claim case, it is not necessary for the claimant to prove his case beyond reasonable doubt. On the other hand, if the insurer wants me to hold that the deceased was a gratuitous passenger in the offending truck; that as he was under the influence of liquor, he tried to get down from the running truck and in the process, he was hit from the back by the rear tyre of the truck while he was walking, the burden of proving this story lies upon them. In other words, since the claimant-respondent has made out a prima facie case of rash and negligent driving of

the offending truck, which resulted in the death of the deceased, it is for the insurer to disprove this prima facie evidence. On the evidence on record, the insurer has miserably failed to do so.

4. It is next contended by the learned counsel for the insurer that there is no evidence to prove that the deceased was a driver driving the truck of CW 4 and was earning a sum of `6,000/- per month inasmuch as neither the claimant-respondent could produce the driving licence of the deceased nor could his employer (CW4) produce the registration certificate of the truck he claimed to own. In my opinion, there is force in this contention of the learned counsel for the insurer. Whether the deceased was a driver and was having a driving license to drive the offending truck are facts especially within the knowledge of the claimant-respondent. Similarly, whether the so-called employer of the deceased is the owner of the offending truck could have been easily proved by him by producing the Registration Certificate when he was examined as CW 4 have failed to discharge the burden cast upon them by law, the finding of the Tribunal that the deceased was earning `6,000/- per month as a driver of a truck at the time of his death, cannot be sustained in law. Having said that, there is one aspect of the matter which cannot be overlooked. It is in the evidence of CW 5 that the body of the deceased looked healthy. This finding is not challenged by the insurer. If that is so, it will not be unreasonable to assume that an able-bodied person like the deceased could have earned not less than `100/- per day even by doing

manual works. Incidentally, the national minimum wage is also ` 100/- per day. Under the circumstances, it will not be unreasonable to assume that the deceased could have earned at least a sum of `100/- per day at the time of his death. Sometimes, it is not possible to escape from making some element of guesswork to enable the Court to arrive at just compensation for the victim of a vehicular accident. If the income of the deceased is determined at ` 100/- per day, his monthly would be $\text{`100} \times 30 = \text{`3,000/-}$ per month, which comes to an annual income of $\text{`3,000} \times 12 = \text{`36,000/-}$. As the deceased has been found to be 32 years at the time of his death and had left his wife and three minor daughters between the age group of 2 and 6 years, it will be appropriate to adopt a multiplier of 17, which will multiply ` 36,000/- to make it ` 6,12,000/- to which will be deducted one-third as his personal expenses i.e. $\text{`6,12,000} - 2,04,000 = \text{`4,08,000/-}$. In addition to that, the claimant-respondent will be awarded a sum of ` 2,000/- by way of funeral expenses and another sum of ` 5,000/- by way of loss of consortium. Keeping in mind the current rate of interest prevailing in the commercial banks, which is hovering around 8 per centum, I do not propose to modify the interest awarded by the Tribunal.

5. The offshoot of the foregoing discussion is that this appeal is partly allowed. The compensation awarded to the appellant by the Tribunal is reduced from ` 8,23,000/- to ` 4,15,000/-.The appellant is, accordingly,

directed to deposit with the Registry `4,15,000/- together with interest at the rate of 7% per annum with effect from the date of the claim petition within one month from the date of receipt of this Judgment for payment to the claimant respondent. The impugned judgment and award accordingly stands modified in the manner and to the extent indicated above. No costs. Needless to say, on receipt of the aforesaid amount from the appellant-insurer, the Registry will make the payment to the claimant-respondent without further reference to this Court subject, however, to her fulfilling the usual formalities.

JUDGE

dr