

MACApp. 16/2012

BEFORE

THE HON'BLE MR. JUSTICE B.P. KATAKEY

This appeal by the claimant for enhancement of the quantum of compensation awarded by the learned Member, Motor Accident Claims Tribunal, Darrang, Mangaldoi vide award dated 13.12.2010 passed in MAC Case No.240/2009, whereby and whereunder an amount of Rs.2,05,000/- has been awarded as compensation for the death of the claimant's mother in a motor accident occurred on 19.08.2009 involving the motor vehicle bearing Registration No.AS-27-1471 belonging to the respondent No.3.

The appellant has filed an application under Section 166 of the Motor Vehicles Act, 1988 (in short the Act) claiming Rs.10,00,000/- for the death of his mother alleging that on 19.08.2009 at about 9.30 A.M. while his mother was proceeding towards Bhergaon from her native village and reached the village Harshapara suddenly the motor cycle bearing Registration No.AS-27-1471, belonging to the respondent No.3, having lost control dashed against his mother resulting in her death. It was also alleged that the offending vehicle was driven by the owner himself in a rash and negligent manner. The further contention of the appellant in the said claim application was that at the time of the accident the deceased was 48 years old and her monthly income was about Rs.5,000/- and from the said income she used to contribute to her family consisting of her daughters, namely, Smt. Anjana Boro, Smt. Alaka Boro apart from the claimant/appellant, who were dependent on the income of the deceased. The said proceeding was registered and numbered as MAC Case No.240/2009 before the Motor Accident Claims Tribunal, Darrang at Mangaldoi.

The owner of the vehicle filed the written statement admitting the accident but denying the allegation of rash and negligent driving with the further contention that he drove the vehicle having a valid driving licence and since there is a subsisting contract of insurance with the respondent insurance company, any amount of compensation found to be payable by him is to be paid by the insurance company under the contract of insurance.

The respondent insurance company also contested the proceeding by filing written statement denying each and every averment made in the claim petition including having an insurance policy.

The Tribunal on the basis of the pleadings framed the following issues for determination:-

1. Whether the deceased died out of the alleged accident and due to the rash and negligent driving of the driver of the offending vehicle No.AS-27-1471 (Motor Cycle)?
2. Whether the vehicle was covered by Insurance Policy at the time of the accident?
3. To what relief/reliefs, if any, parties are entitled to?

While the appellant/claimant examined 2(two) witnesses and proved 2(two) documents, namely, the accident report (Ext.-1) and the post-mortem examination report (Ext.-2), neither the insurance company nor the owner of the motor vehicle lead any evidence though they filed the respective written statements.

The learned Member, Motor Accident Claims Tribunal upon appreciation of the evidences on record has come to the finding that there was a contract of insurance between the owner of the motor vehicle involved in the accident as well as the insurance company, in relation to the vehicle in question. The factum of an accident due to rash and negligent driving of the vehicle by the owner of the motor vehicle was also found to be proved. The learned Member, however, has taken the monthly income of the deceased as Rs.3,000/-, though the appellant/claimant claimed the deceased monthly income as Rs.5,000/-. The learned Member after deducting 1/3rd from the monthly income of the deceased towards her personal expenses ascertained the annual loss of dependency at Rs.24,000/- which was multiplied by multiplier 8, taking the age of the deceased as 55 years and arrived at the amount of compensation payable towards the loss of dependency at Rs.1,92,000/-. A further amount of Rs.10,000/- for loss of expectation of life and Rs.3,000/- for funeral expenses was added to the said amount, which comes to the total of Rs.2

,05,000/- as compensation.

I have heard Mr. T.J. Mahanta, learned counsel for the appellant and Mr. Bhatra, learned counsel appearing for the respondent Nos.1 and 2. None appears for the respondent No.3 today, though the names of the learned counsel appearing for the said respondent, are reflected in the cause list.

As agreed to by the learned counsel for the parties, the appeal is taken up for disposal at the admission stage itself.

Mr. Mahanta, learned counsel for the appellant has submitted that even if the age of the victim is accepted as 55 years, the appropriate multiplier would be 11, in view of the Apex Court judgment in Sarla Verma & ors. Vs. Delhi Transport Corporation & anr. reported in (2009)6 SCC 121. The learned counsel, therefore, submits that the amount of compensation needs to be adequately enhanced.

Mr. Bhatra, learned counsel appearing for the respondent Nos.1 and 2 submits that the learned Tribunal has awarded just compensation of Rs.2,05,000/- for the death of the claimant's mother arising out of an accident involving the aforesaid motor vehicle.

It appears from the award passed by the learned Member, Motor Accident Claims Tribunal that the multiplier was taken as 8 though the age of the deceased was taken as 55. In paragraph 42 of Sarla Verma (supra) the Apex Court has held that the multiplier to be used should be as mentioned in column No.4 of the table mentioned in paragraph 40 of the said report to avoid inconsistency. The age of the deceased having been taken as 55 the appropriate multiplier, therefore, would be 11. The appellant/claimant would, therefore, be entitled to the compensation for loss of dependency amounting to Rs.24,000/- $11 = \text{Rs.}2,64,000/-$, as the annual loss of dependency was worked out after deducting 1/3rd from the monthly income of the deceased, the deceased having left 3(three) dependant, who were dependant on the income of the deceased. The appellant shall also be entitled to a further sum of Rs.10,000/- and Rs.3,000/-, as awarded by the Tribunal, totaling Rs.2,77,000/-, which amount would carry interest @6% per annum w.e.f. 16.09.2009 i.e. the date on which the claim petition was filed till the date of recovery.

The respondent Nos.1 and 2 are directed to satisfy the said award and deposit the balance of the amount, taking into account the interest accrued on the enhanced amount of compensation from 16.09.2009 till the date of payment, as there is no dispute relating to the contract of insurance between the respondent insurance company and the respondent owner of the offending vehicle. The said amount shall be deposited with the Registry of the Tribunal within a month from today. On such deposit the learned Member shall release Rs.30,000/- each in favour of two daughters of the deceased, namely, Smt. Anjana Boro and Smt. Alaka Boro by separate account payee cheques and the remaining amount shall be released to the appellant Shri Kasta Boro also by an account payee cheque and on being identified by the learned counsel.

The award dated 13.12.2010 passed by the learned Member, Motor Accident Claims Tribunal, Darrang at Mangaldoi, accordingly stands modified.

The appeal is accordingly allowed as indicated above. No cost.