Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

MACApp. No. 4 of 2018

Date of Decision: 23.12.2022

Oriental Insurance Co. Ltd. Vs. Smti. Chinta Devi & Ors.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. A. Khan, Adv.

For the Respondent(s) : Mr. M. Sharma, Adv.

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

JUDGMENT AND ORDER

1. The appellant/Oriental Insurance Co. Ltd. being aggrieved and dissatisfied with the award passed by the learned Member, Motor Accident Claims Tribunal (MACT) at Shillong in the East Khasi Hills District of Meghalaya dated 28.03.2018 in MAC Case No. 29 of 2009, has come before this Court on appeal with a prayer to set aside and quash and/or to modify the impugned judgment.

2. Facts not disputed by the parties herein revealed that on 10.05.2009 a motor vehicle accident occurred inside the compound of Vishal Roadways at Umsohsun, Shillong where one vehicle, a Mahindra Max Pick-up bearing registration No. ML-10-5458 belonging to the respondent No. 2, driven by one Subash Singh on being parked in the said place, rolled back and dashed against the deceased husband of the respondent No. 1, who, on being injured was rushed to Woodland Hospital, Shillong, but however succumbed to his injuries on 18.05.2009. A criminal case vide Shillong Sadar P.S. Case No. 78(5) of 2009 under Section 279/338/427/304(A) IPC was registered against the driver of the said vehicle.

3. The respondent No. 1 as Claimant along with other next of kin of the deceased filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of ₹ 45,13,316/- (Amended claim). The appellant on receipt of notice has entered appearance and contested the case by filing the written statement. It is however averred that the owner and driver of the said vehicle involved having entered appearance have not filed any written statement but only a common show cause was filed. The said driver had also expired on 22.12.2011 during the pendency of the claim before the Tribunal.

4. The learned Tribunal then framed as many as four issues to be decided, the same being the following:

1. Whether the claim is maintainable?

2. Whether the deceased died due to motor vehicle accident which occurred on 10.05.2009?

3. Whether the claimants are entitled to compensation. If so to what extent? and

4. Who is liable to pay and to what extent?

5. To answer the above issues, the Tribunal then examined 9 witnesses on the part of the claimants, but the appellant/Insurance Company and the respondent No. 7/owner of the vehicle choose not to examine any witnesses from their side. However, the claimant's witnesses were cross-examined separately by the owner and driver as well as by the Insurance Company.

6. On conclusion of the examination of the witnesses and upon hearing the argument of the parties, oral and written, the learned Tribunal then passed its judgment and order and has awarded compensation to the claimant to the extent of ₹ 22,01,248/- (rupees twenty-two lakhs one thousand two hundred forty-eight) only, to be paid within two months of the receipt of the copy of the judgment along with interest @ 9% pa.

7. Mr. A. Khan learned counsel for the appellant assailing the said award has submitted that the impugned judgment and order cannot be sustained both in law as well as in facts.

8. The first contention raised by the learned counsel for the appellant is that the appellant/Insurance Company is not liable to indemnify the respondent No. 2/Owner of the vehicle for the loss sustained as there has occurred a breach of the terms and conditions of the insurance policy by the driver of the said vehicle, particularly Section 147 and 149(2) of the Motor Vehicles Act.

9. There is also the allegation that the driving licence of the said driver (Subash Singh) bearing DL No. 6326 originally issued by the DTO, Tura and renewed by DTO Nongstoin vide DL No. F/312/n/93 and subsequently renewed by DTO Jowai vide DL No. F-1828 and finally renewed by DTO, Shillong upto 16.01.2012 vide DL No. F-1438s/03 is a fake licence. This fact, according to the learned counsel for the appellant was not fully appreciated by the learned Tribunal in view of the report of the Investigator that the driving licence of the driver could not be verified from the records of the District Transport Officer, Office at Tura, West Garo Hills, Meghalaya.

10. The age and income of the deceased husband of the respondent No. 1 was also disputed by the appellant inasmuch as it is submitted that as far as the age is concerned, only oral evidence was produced whereas there was no documentary evidence to prove the same. But the learned Tribunal has accepted the version of the respondent No. 1/claimant to believe that the age of the deceased at the time of the accident was 38 years.

11. As to the income of the deceased, the learned counsel for the appellant has submitted that the respondent No. 2/owner has failed to prove that the income of the deceased was ₹ 10,000/- per month since the person who came to depose before the Tribunal was the so-called Manager of the owner and in his deposition, he has only orally stated that the income of the deceased was ₹ 10,000/- per month without any documentary evidence.

12. The final limb of argument put forth by the learned counsel for the appellant is that records would show that in these proceedings, during the pendency thereof, the respondent No. 2, the father of the deceased victim and also the respondent No. 3, the mother has expired on 25.09.2017 and 17.03.2018 respectively. In this regard, it is submitted that the learned Tribunal in the impugned Award has apportioned the share of the deceased respondents No. 2 and 3 to be ₹ 3,60,208/- each out of the total award given. The fact that the said deceased respondents have not been formally substituted in these proceedings by any of their legal heirs, the share due and payable to them would stand forfeited. The claim of the respondent No. 1/claimant that she can now be substituted in their stead, being the only legal heir of the deceased cannot be accepted by this Court as she is already a party in these proceedings. In this regard, the learned Tribunal has already apportioned the share payable to the respondent No. 1/claimant as well as to the deceased respondents No. 2 and 3 and as such, since no legal heirs or

representatives have been substituted in their place, the respondent No. 1 already being on record, their share of the award cannot be added to that of the respondent No. 1, further submits the learned counsel for the appellant.

13. As to the quantum of award, the learned counsel for the appellant has submitted that the rate of interest given is too excessive and the same ought to be reduced.

14. In the light of the above argument, the learned counsel for the appellant has submitted that impugned judgment and order as well as the award passed in MAC Case No. 29 of 2009 be set aside and quashed.

15. Mr. M. Sharma learned counsel for the respondents while countering the argument of the learned counsel for the appellant has submitted that the fact that the deceased victim who was the husband of the respondent No. 1 died on 18.05.2009 as a consequent of the motor vehicle accident which occurred on 10.05.2009 is not disputed.

16. The deceased during his lifetime was working as a driver/salesman with M/s. B.R.'s Furnishing & Textiles, Police Bazaar, Shillong and was earning about ₹ 10,000/- per month has also been proved by the witnesses, that is, claimant's witnesses No. 1, 2, 3, and 6, who have deposed accordingly before the Tribunal and their testimony could not be shaken even in the cross-examination.

17. As to the age of the deceased, the learned counsel has submitted that the learned Tribunal has taken the age as between 36 and 40 and this can be substantiated from the fact that at the time of his demise, his eldest daughter was 13 years having been born on 07.04.1996 and even if the deceased had got married at the age of 25 years, he would still be about 38 years at the time of his death. This fact was never challenged by the appellant during the trial and as such, the same cannot be raised at this stage. That the learned Tribunal has taken 15 as the multiplier when calculating the award is therefore justified.

18. On the issue of apportionment of the share of the award to the deceased respondents No. 2 and 3 and the contention of the learned counsel for the appellant that since the learned Tribunal has already set apart the specific amount to be received by them, on their demise, the same stands forfeited, submits the learned counsel.

19. The learned counsel for the respondents has again submitted that the respondent No. 1 has, since the demise of her deceased husband taken care of her father-in-law and mother-in-law, the respondents No. 2 and 3 respectively and as such, they are in a way dependent on her. Therefore, to say that she is not the rightful legal heir and not entitled to their estate is not the correct proposition. Indeed, the fact that she is the legal heir of the

deceased respondents has not been challenged by the appellant/company during the trial as well as in these proceedings.

20. The learned counsel for the respondents has submitted that all the legal heirs of the deceased respondents are already on record in these proceedings and therefore, there is no question of a formal substitution since the purpose of substitution means that there ought to be some legal representative or legal heir who is to be brought on record in place of the deceased party to the case, which is not the case herein.

21. This Court has given due consideration to the submission and contentions of the parties and have concluded that the issues raised by the appellant have to be answered.

22. The first issue to be answered is whether there has been a breach of the terms and conditions of the policy on the ground that the driver of the vehicle involved in the accident possessed a fake driving licence at the time of the said occurrence?

23. In this regard, from the pleadings of the appellant/Insurance Company herein, an averment has been made in the written statement questioning the validity of the driving licence of the driver of the said offending vehicle. However, nowhere in the evidence has this issue been pursued by the appellant. The only reference found in the evidence is when the CW-7 (the I/O) was crossed-examined by the appellant/Insurance Company, he has

stated that "… the driving licence reflect the date of issue in the year 2003…" Nothing can be read in this statement except to accept that the driving licence in question was validly issued in the year 2003. The claim of the appellant that it was a fake driving licence has not been brought out in the evidence nor has the appellant brought any witnesses to prove this point. This being the case, this Court has to prima facie accept that the driving licence in question is valid.

24. The second issue is to the negligence of the driver of the said offending vehicle which, according to the appellant was a breach of the policy conditions. As to the negligence of the driver, CW-7 has stated that "… According to my investigation the accident was due to the fault and negligence of the driver of the Mahindra pick up…" Even in the cross-examination by the owner of the said Mahindra pick up as well as in the cross-examination by the appellant/ Insurance Company, this fact could not be dislodged. Thus, it can be accepted that the cause of the accident was due to the fault of the driver of the said vehicle. However, there is nothing on record to say that the said vehicle belonged to the said driver. In the claim application, the claimants have arrayed the owner of the said vehicle as a party therein and this fact was not disputed even by the appellant. This being the case, without anything to the contrary, it can be assumed that the driver

of the said vehicle was in the employ of the owner, Smti. Manju Bajoria who was impleaded as respondent No. 7 in this appeal.

25. As has been observed above, there is no evidence to prove that the said driver is not under the employ of the said owner of the offending vehicle and as such, as far as fixation of liability is concerned, the principle of 'Vicarious Liability' will apply in this case, as has been well settled in a catena of judgments of the Hon'ble Supreme Court as well as by various High Courts.

26. For the sake of clarity, let us look at the Latin phrase 'Respondeat Superior'– which means "let the master answer." This means that someone with a supervisory role over another may be held financially responsible for the negligent actions of that person. It is thus settled that a master is vicariously liable for the acts of his servant acting in the course of his employment. In the light of this aspect, the appellant cannot say that the act of negligence of the driver in this case is his sole responsibility. It is the owner of the vehicle who is liable for the same and the vehicle being duly insured with the appellant Insurance Company, the liability now shifts to the appellant/Insurance Company.

27. The second issue is with regard to the income of the deceased. From the evidence, it is seen that the respondent No. 1/Claimant, who was the wife of the deceased victim in her deposition has stated that her husband during

his lifetime was working at B.R.'s Furnishing & Textiles, Police Bazar, Shillong. In the cross-examination by the owner and driver, the Claimant has stated that her deceased husband was working as a salesman in a cloth shop and that he was earning a salary of ₹ 10,000/- (rupees ten thousand) only per month. Again, it is noticed that the appellant/Insurance Company has failed to cross-examine the Claimant on this aspect and there is not even a whisper as to the employment status or the monthly salary of the deceased husband of the Claimant.

28. CW-6, Shri Ramesh Kumar Jhunjhunwala is the Manager of the shop known as B.R.'s Furnishing & Textiles where the deceased used to work during his lifetime. This witness has stated in his examination-in-chief that the deceased used to be paid ₹ 10,000/- (rupees ten thousand) only per month. An employment-cum-salary certificate was produced and exhibited by this witness as Exhibit-14. Though the appellant herein has cross-examined this witness, it was only to disprove the said certificate, but no specific question was put to the witness as to whether the monthly salary of the deceased was ₹ 10,000/- or not. This witness has categorically denied that the said exhibit-14 was not issued by him and that the same was false and fabricated. In the light of counter evidence by the appellant/Insurance Company and sufficient corroboration of this piece of evidence by other witnesses as pointed out by the learned counsel for the respondent No. 1, this

Court has no other option but to accept that the said exhibit-14 has stood the test of legal scrutiny and the monthly salary of the deceased at the time of his death was ₹ 10,000/-.

29. Even otherwise, if the income or salary of the deceased is not confirmed, though it is not the case here, the courts, even the Supreme Court have time and again resorted to application of notional income, monthly or annual, to determine the income of the deceased. In the case of ***Chandra alias Chanda alias Chandraram & Anr. v. Mukesh Kumar Yadav & Ors: (2022) 1 SCC 198***, the Hon'ble Supreme Court in a case of assessment of income or salary of the deceased in the absence of documentary evidence has held that there is no reason to discard the evidence of the claimant/wife of the deceased as far as monthly income of the deceased is concerned and by applying some amount of guesswork has assessed the monthly income at ₹ 8000/- in that case. Para 9 of the said judgment is relevant as a pointer in this instant case, the same reads as:

> "*9. It is the specific case of the claimants that the deceased was possessing heavy vehicle driving licence and was earning Rs 15,000 per month. Possessing such licence and driving of heavy vehicle on the date of accident is proved from the evidence on record. Though the wife of the deceased has categorically deposed as AW 1 that her husband Shivpal was earning Rs 15,000 per month, same was not considered only on the ground that salary certificate was not filed. The Tribunal has fixed the monthly income of the deceased by adopting minimum wage notified for the skilled labour in the year 2016. In absence of salary certificate the minimum wage notification can be a yardstick but at the same time cannot be an absolute one to*

fix the income of the deceased. In absence of documentary evidence on record some amount of guesswork is required to be done. But at the same time the guesswork for assessing the income of the deceased should not be totally detached from reality. Merely because the claimants were unable to produce documentary evidence to show the monthly income of Shivpal, same does not justify adoption of lowest tier of minimum wage while computing the income. There is no reason to discard the oral evidence of the wife of the deceased who has deposed that late Shivpal was earning around Rs 15,000 per month."

30. In view of the above, this Court is convinced that the monthly income of the deceased husband of the respondent No. 1/claimant is ₹ 10,000/- per month. The findings of the learned MACT on this score cannot be upset in this appeal.

31. The next issue is with regard to the age of the deceased husband of the respondent No. 1/claimant. There is nothing on record to show the exact age of the deceased and nothing has come forth in evidence as to his age at the time of the accident. However, even though the learned Tribunal has not come to any definite findings on the age aspect, considering all other factors, has taken the multiplier at 15 for the purpose of determining the compensation. However, as was submitted by the learned counsel for the respondents, it is on record that the eldest child of the deceased was born on 07.04.1996 and therefore she was 13 years of age at the time of the death of the deceased. The claimant wife of the deceased has recorded her age as 35 years when she filed her deposition by affidavit on 26.10.2010. This means that she must be about 21 years when she gave birth to her daughter. The

deceased must have been older to her and by a possible calculation, he must have been 25 years at the time when his eldest daughter was born. Therefore the estimation of the learned Tribunal, though not exactly spelled out, that the age of the deceased was 38 years or so at the time of his death cannot be far from the truth. This age is therefore accepted by this Court in absence of contrary evidence.

32. The last issue to be determined is the objection raised by the appellant as to the status of the respondent No. 1 as the legal heir of the deceased respondents No. 2 and 3 respectively, who has since expired during the pendency of this appeal.

33. Though the fact that the respondent No. 1 is the legal heir of the respondents No. 2 and 3 have not been disputed by the appellant, the only contention of the appellant is that in the award passed by the learned Tribunal, for loss of dependency, separate apportionment was made for the respondent No. 1/wife and also for the respondents No. 2 and 3 respectively who were the father and mother of the deceased husband of the respondent No. 1/ wife and therefore, on the demise of the said respondents named herein, it was argued that their share of the award cannot be added to the share of the respondent No. 1/claimant/wife.

34. This reasoning is not logical or proper, inasmuch as the law of devolution of assets and liabilities of a deceased upon his or her legal heir(s)

is well settled. The award of the Tribunal made in favour of the deceased father-in-law and mother-in-law of the respondent No. 1/wife would have become the property/assets and on their death, the same would have been inherited by their heirs. Their son apparently has pre-deceased them and the next of kin or the legitimate heir, amongst others would definitely be their daughter-in-law and their grand-children. This being the case, even in the facts and circumstances of the case of the parties herein, it can be logically deduced that the assets and liabilities including properties, tangible and non-tangible of the said respondents No. 2 and 3 would devolve upon their daughter-in-law who is the respondent No. 1 herein. This, settles the issue of entitlement of the award made in favour of the respondents No. 2 and 3 respectively.

35. The appellant has also contended that the award made by the learned Tribunal is excessive, particularly while awarding interest at the rate of 9% p.a. on the awarded compensation and as such, the claimant not being entitled to such rate of interest, the same may be suitably modified by this Court.

36. As far as the award of interest is concerned, in the case of ***Kaushnuma Begum (Smt) & Ors v. New India Assurance Co. Ltd. & Ors: (2001) 2 SCC 9***, at paragraph 24, the Hon'ble Supreme Court has devised a mechanism in respect of rate of interest that is to be awarded by the

Tribunals, which rate is to be linked to the rate of interest offered by nationalised banks on fixed deposit for one year. The said paragraph reads as under:

> "24. ……Earlier, 12% was found to be the reasonable rate of simple interest. With a change in economy and the policy of Reserve Bank of India the interest rate has been lowered. The nationalised banks are now granting interest at the rate of 9% on fixed deposits for one year. We, therefore, direct that the compensation amount fixed hereinbefore shall bear interest at the rate of 9% per annum from the date of the claim made by the appellants……"

37. However, in the case of ***Chandrakanta Tiwari v. New India Assurance Company Limited & Anr: (2020) 7 SCC 386***, at para 8, the Hon'ble Supreme Court has upheld the award of 6% interest, keeping in view the present economic condition in the country. This approach, according to this Court is the correct one as far as award of interest is concerned and accordingly this Court would hold that the rate of interest awarded by the learned Tribunal is required to be reduced from 9% p.a. to 6% p.a.

38. On an overall consideration of the matter in hand, this Court would hold that the award of the learned Tribunal is just compensation and the same cannot be upset under the facts and circumstances thereon. The award

is accordingly maintained, except as regard the rate of interest which is now awarded at 6% p.a.

39. The statutory deposit as provided under Section 173 of the Motor Vehicles Act, 1988 deposited by the appellant herein shall now be withdrawn by the respondents/claimants to be adjusted against the final award.

40. This appeal is accordingly disposed of and the award is modified to the extent indicated at para 38 above.

41. Registry is directed to send back the case record.

Judge

Meghalaya
23.12.2022
"Tiprilynti–PS"