(2011) 04 GAU CK 0041

Gauhati High Court (Aizawl Bench)

Case No: MAC Appeal No. 13 of 2010

United India Insurance Co. Ltd.	APPELLANT
Vs	
Smt. K. Lalsawmi, Smt. Lalremsiami and Lalsiamliana (Minor) represented by Smt. Lalremsiami	RESPONDENT

Date of Decision: April 28, 2011

Acts Referred:

- Motor Vehicles Act, 1988 - Section 163A, 166

Hon'ble Judges: H. Baruah, J

Bench: Single Bench

Advocate: M.M. Ali, for the Appellant; Helen Dawngliani and M. Guite, for the Respondent

Judgement

H. Baruah, J.

The MAC Appeal No. 13 of 2010 and Cross Objection No. 3 of 2010 are being disposed of by this common judgment and order in view of involvement of similar facts and law. MAC Appeal No. 13 of 2010 is preferred against the judgment and award dated 23-2-2010 passed by learned Member, MACT, Aizawl in MAC Case No. 68 of 2006 whereby an amount of Rs. 7,57,608/- with 9% interest per annum has been awarded against the Appellant, the United India Insurance Co. Ltd. The Cross Objectors on the other hand by filing the cross objection have sought for enhancement of the award in view of the averments made in the cross objection petition.

2. We have heard Mr. M.M. Ali, learned Court for the Appellant, the United India Insurance Co. Ltd. as well as Mrs. Helen Dawngliani, learned Court and Mr. M. Guite, learned Court for the Cross Objectors, namely, Smt. K. Lalsawmi, claimant-Respondent in the appeal, Smt. Nitu Pandya, the owner of the offending vehicle, Smt. Lalremsiami and Lalsiamliana, counter claimant-opposite party No. 3 and 4 in the appeal.

3. The primary grievance of the Appellant is in respect of failure on the part of the tribunal to take account of the contributory negligence and apportionment of the award, while the cross objectors claim is for enhancement of the award. In respect of the other issues the Appellant has not make any submission in other words not taken any ground as against the judgment and award. Mr. M.M. Ali, learned Court appearing for the Appellant submits before this Court that death occurred to the deceased on account of his own negligence in a vehicular accident. It is submitted by him that the deceased at the time of accident was playing Football on the highway with his friends and while playing the offending vehicle hit him and accordingly died due to run over by the rear wheels. Mr. M.M. Ali in support of his contention put reliance in the evidence of P.C. Rohmingthanga, ASI, witness No. 2 for the claimant who was the investigating officer deputed by the Officer-in-charge of Sairang Police Station. This witness in his cross-examination stated that the deceased, the police constable was playing Football on the road with some of his friends on a blind curve of the road. Taking assistance of this particular piece of evidence Mr. M.M. Ali, leaned Court for the Appellant submits strenuously that it would have been appropriate on the part of the Member, MACT to hold that the accident took place on account of contributory negligence on the part of the deceased and in that view of the matter it would have been appropriate for the Member not to saddle the Appellant with the cent percent liability of the payment of the award. By playing Football on the road by the deceased with his friends that too in a blind curve of the road contributed some negligence on his part towards the accident. Therefore, according to Mr. M.M. Ali, the award so computed ought to have been apportioned 50 : 50.

4. On the contrary Mrs. Helen Dawngliani, learned Court and Mr. M. Guite, learned Court for the cross objectors-Respondents submit that there was no negligence on the part of the deceased and he had not contributed any thing towards accident. It is also submitted that the deceased was not playing Football on the road with his friends as claimed by witness No. 2. Mrs. Helen and Mr. Guite, learned Court for the cross objectors-Respondents submit that such fact is not appearing in the evidence of witness No. 3, the Investigating Officer of the case and that being so the evidence forthcoming in the cross examination of the witness No. 2 would have no bearing and accordingly the submission advanced by Mr. M.M. Ali would have no leg to stand.

5. Witness No. 2, Mr. P.C. Rohmingthanga, the ASI of Police during the relevant point of time was posted as second officer of Sairang Police Station, while he was at Sairang police station he received a telephonic information of an accident involving a truck that occurred at PTC junction on Sairang road, where Constable James Lalthanzauva was reportedly injured. He being detailed by the Officer-in-charge of the police station immediately rushed to the spot to enquire into the matter and on reaching thereat had the knowledge of evacuation of the injured constable to Civil Hospital, Aizawl in the same vehicle, which had injured. Before proceeding to Civil

Hospital he came to know from one Lalluta about the accident. He also received information over telephone that the constable after reaching Civil Hospital, Aizawl succumbed to his injuries. He also deposed before the tribunal that the accident occurred due to negligence on the part of the driver of the truck being registration No. AS-11/6561, driven by one Babul Laskar. The witness was thoroughly cross examined and during cross examination he stated that the deceased constable was playing Football on the road with some of his friends at a blind curve. Witness No. 3 of the Opposite Party Nos. 3 and 4 stated on oath before the tribunal that the at the relevant point of time he was officer-in-charge of Sairang police station and having received a telephonic information of the accident, where Constable James Lalthanzauva was run over by the truck bearing registration No. AS-11/6561, deputed ASI Shri P.C Rohmingthanga, witness No. 2 of the claimant to make a preliminary inquiry about the accident. Witness No. 2, P.C. Rohmingthanga after his preliminary inquiry submitted a report stating therein that the accident took place due to rush and negligent driving on the part of the driver of the truck. He also stated that he personally investigated the case and during investigation he visited the place of occurrence and examined witnesses. He also stated in his evidence that during investigation he came to know that the deceased was run over by the rear wheels of the truck who was standing on the road side and the vehicle was running at a high speed.

6. Mrs. Helen Dawngliani and Mr. M. Guite, learned Court representing the cross objectors-Respondents strenuously argue that of witness No. 3 of the Opposite party has not supported the evidence of the witness No. 2 in respect of playing of Football by the deceased along with his friends on the road that too at a blind curve, who is also an Investigating Officer of the case. Therefore, the stand taken on contributory negligence on the part of the deceased would not be acceptable and the learned tribunal rightly has not taken any account of alleged contributory negligence on the part of the deceased.

7. Witness No. 2 is a witness for the claimant while witness No. 3 is a witness for the Opposite Party Nos. 3 and 4. When one of the witnesses for the claimant stated without any ambiguity that at the time of accident the deceased along with his friends were playing Football on the road in a blind curve, such positive statement in view of the evidence of witness No. 3 of the opposite party who is not the first hand Investigating Officer cannot be brushed aside at will. His evidence also plays pivotal role in arriving at a decision in respect of negligence which is required to be proved by the claimant in an application u/s 166 of the M.V. Act. This Court having gone through the facts and evidence on record meticulously finds it appropriate to record a finding that the deceased was also guilty of contributory negligence since the evidence of witness No. 2 speaks so. Admittedly the road over which the accident took place is a highway and no game of Football is allowed over the road, over which there is frequent traffic. The deceased knowing fully well of the traffic over the road engaged himself in playing Football over the highway with his friends that

too in a blind curve. Evidence of witness No. 2 appearing in cross examination apparently goes to show that the deceased is guilty of contributory negligence. On a highway not only the drivers but also the pedestrians should take precaution while driving vehicle or proceeding through. They must be cautious and vigilant of the nature of the road and precaution is required to be taken by every one. The deceased and his friends however did not take such precaution while playing Football on the road. Therefore, in considered view of this Court the submission advanced by Mr. M.M. Ali, learned Court for the Appellant has sufficient force and it cannot be thrown lightly in view of the evidence on record, evidence of witness No. 2 in particular. This Court sees no reason to accept the submissions advanced by Mrs. Helen Dawngliani as well as Mr. M. Guite, learned Court for the cross objectors-Respondents.

8. The learned tribunal appears to have not applied its judicial mind in the evidence available on record. Evidence of witness No. 2 being in the line that the deceased was also guilty of contributory negligence ought to have apportioned the award so computed by it 50 : 50.

9. Taking note of the facts and evidence on record, this Court finds sufficient cogent ground to interfere with the judgment and award passed by the tribunal as claimed by the Appellant. This Court accordingly holds that liability should be 50 : 50. In the result the appeal is partly allowed.

10. In regard to the cross objection filed by the cross objectors, it is submitted by Mrs. Helen as well as Mr. Guite that the tribunal committed error and illegality in awarding compensation of Rs. 7,57,608/-. It is submitted by Mrs. Helen as well as Mr. Guite taking recourse to the ratio laid down in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, that the learned tribunal failed to apply the appropriate multiplier as per table enunciated by the Apex Court in the Sarla Verma's case (supra). The deceased being in the age group of 21 to 25, multiplier 18 ought to have applied while computing the compensation. It is also argued by them that the learned tribunal also committed error and illegality in not taking into consideration the future prospect of the deceased while computing the compensation. The income of the deceased being not disputed 50% of monthly income is required to be added for computing the loss of dependency. The deceased being married 1/3rd income is required to be deducted. The aspect of future prospect was not taken into consideration by the tribunal while computing the award. The learned tribunal also failed to adopt the multiplier 18 as enunciated by the Apex Court in the Sarla Verma's case (supra) taking note of the age of the deceased. In Sarla Verma's case (supra) the Apex Court formulated a table of the age group for application of multiplier in juxtaposition with the multiplier mentioned in the second schedule for claims u/s 163A of the M.V. Act. The Apex Court provided multiplier 18 for the age group of 15 to 20 years and 21 to 25 years. The deceased at the time of his death was 23 years of age, therefore, his age would

fall in the age group of 21 to 25 and for the age group multiplier 18 is suggested. The tribunal, however, while computing award adopted the multiplier indicated in the second schedule of the M.V. Act in the age group of 20 to 25 years. As already indicated the monthly income is not disputed, the future prospect of the income of the deceased was not taken into consideration by the tribunal. The Apex Court while rendering the judgment in Sarla Verma's case (supra) also considered this aspect for the computation of loss of dependency. Mrs. Helen Dawngliani as well as Mr. Guite, learned Counsel for the cross objectors-Respondents, therefore, submit that the computation of the award is to be made per decision of the judgment rendered by the Supreme Court in Sarla Verma's case (supra).

11. Mr. M.M. Ali, learned Court appearing for the Appellant, however, raises no objection in computing the award taking the ratio of the Sarla Verma''s case (supra). This Court, therefore, finds no hurdle in applying the ratio laid down by the Apex Court in Sarla Vermas case (supra) in computing the award. Since the age of the deceased falls within the age group of 21 to 25 years as per table, multiplier 18 is required to be applied towards computation of award. Deceased was a police constable and he died at the age of 23 years and he would have earned more from the service had he been alive. Therefore, the Apex Court in Sarla Verma''s case (supra) took 50% of the monthly income as income of the deceased for computation of loss of dependency. The deceased having dependent family had to expend some portion of his monthly earning for his personal expenses.

12. Thus, taking into consideration of all the matters in its entirety, the ratio laid down by the Apex Court in Sarla Verma''s case (supra) will hold the field and therefore, this Court finds no impediment to compute award as under:

=Rs. 5203 x 2601 x 12 x 18 x 2 3

1. Loss of dependency = Rs. 11,23,776.00

2. Loss of

3. Loss of consortium

4. Funeral expenses

Total = Rs. 11, 38,776.00

(Rupees eleven lakhs thirty eight thousands
seven hundred seventy six) only.

Cross Objection is therefore, allowed. The award is modified to the extent as indicated above. Since the appeal is partly allowed on the point of contributory negligence, the Appellant is to bear 50% of the award so computed. Award shall carry 9% interest per annum from the date of filing of the claim petition till realization.

13. The aforesaid amount with interest shall be paid by the Appellant to the cross objectors-claimants within a period of two months from the receipt of a certified copy of the judgment and order.

14. MAC Appeal as well as Cross Objection stand disposed of. No cost.