

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND
ARUNACHAL PRADESH)

AIZAWL BENCH: AIZAWL

MAC. App. No. 10 of 2012

M/s United India Insurance Co. Ltd.

..... Appellant

-Versus-

1. Smt. K.L.T. Liani,
W/o Zorambuaia,
R/o Cheural,
Lawngtlai District.
2. Shri R. Hrangdailova,
S/o Zakamlova (L)
R/o Armed Veng South, Aizawl,
Mizoram.

..... Respondents

B E F O R E
THE HON'BLE MR.JUSTICE L.S. JAMIR

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| For the appellant | :- | Mr. Zochhuana, Advocate. |
| For the respondents | :- | Mr. L.H. Lianhrima, Advocate for respondent No. 1. |
| Date of hearing | :- | 21-08-2013 |
| Date of Judgment & Order | :- | 21-08-2013 |

JUDGMENT AND ORDER (ORAL)

This appeal is directed against the judgment and
award dated 13.4.2012 passed by the learned Motor Accident

Claims Tribunal, Aizawl in MACT Case No. 10 of 2010 awarding a compensation of Rs. 2 lakhs with simple interest @6% per annum from the date of filing i.e., 25.2.2010 till realization in full to the respondent No. 1.

[2]. The brief facts of the case leading to the filing of the claim petition is that on 14.11.2009, a Mini Bus, MZ-01/C-4487, belonging to the respondent No. 2 met with an accident between Khawzawl and Kawlkulh village in East Mizoram when it ran off the road and rolled about 210 metres down to a river gorge. Ms. Sonia (L) who was a Class-XII student was travelling in the Bus and had died at the spot of the accident. The vehicle was driven by Sh. Lalthlenmawia of Armed Veng South, Aizawl and the Mini Bus was insured by the owner with the appellant Insurance Company which was valid from 8.1.2009 till 7.1.2010. The claimant (respondent No. 1) is the mother of the deceased Ms. Sonia.

[3]. Heard Mr. Zochhuana, learned counsel appearing on behalf of the appellant as well as Mr. L.H. Lianhrima, learned counsel appearing on behalf of the respondent No. 1. None appeared on behalf of the respondent No. 2 despite service of notice.

[4]. It is submitted by Mr. Zochhuana, learned counsel appearing on behalf of the appellant that the claim petition

was filed under section 166 of the Motor Vehicles Act and therefore, it was for the claimant/respondent No. 1 to prove that the cause of the accident was due to rash and negligence on the part of the driver of the accident vehicle and/or the default of its owner. However, in the instant case, even the police report and all evidence did not show any negligence on the part of the driver of the accident vehicle and or the default of its owner. As such, the appellant could not be liable for the award. He also contends that the alleged driver was not having a valid driving licence at the time of the accident and therefore, the appellant/Insurance Company is not liable to pay any award. He submits that the deceased was not earning at the time of the death and therefore, there was no loss of dependency on the part of the claimant and that the award made by the learned Motor Accident Claims Tribunal, Aizawl is on the higher side and on these grounds, he submits, that the judgment and award dated 13.4.2012 passed by the learned Motor Accident Claims Tribunal, Aizawl should be set aside and quashed.

[5]. Mr. L.H. Lianhrima, learned counsel appearing for the claimant/respondent No. 1 submits that the impugned judgment and award needs no interference by this Court inasmuch as the very fact that the claim petition was filed

under section 166 of the Act would automatically show that the accident was caused due to negligent driving of the offending vehicle by the driver. He also submits that the appellant had led no evidence to show that the alleged driver of the offending vehicle was not having a valid driving licence and therefore, the appellant cannot take this ground to assail the judgment and award at this stage. He further submits that the award made by the Tribunal was reasonable and assessed on notional basis and therefore there is no scope for interference by this Court. He, therefore, submits that this Court may be pleased to dismiss the present appeal.

[6]. I have given my anxious consideration to the submissions forwarded by the learned counsel for both the parties. I have also perused the evidence available on record. There is no dispute that the Bus belonging to the respondent No. 2 had met with an accident on 14.11.2009. It is also not disputed that Ms. Sonia who was travelling in the Bus died on the spot due to the accident. The parties are also in agreement that the vehicle was driven by Shri Lalthlenmawia and that the offending vehicle (Mini Bus) was insured by the respondent No. 2 with the appellant, namely, M/s Untied India Insurance Co. Ltd. under a policy of Insurance which was valid from 8.1.2009 till 7.1.2010 to cover liability under the Act.

[7]. From the evidence as well as the materials on record it is seen that no evidence was adduced to establish that due care and caution have been exercised at all stages and that the accident had occurred which was beyond the control of the driver or the respondent No. 2. In the absence of such evidence it is not possible to draw any conclusion that the driver or the respondent No. 2 had taken due care and caution in the maintenance or in the operation of the offending vehicle. The very fact of the accident, that the bus has rolled down about 210 meters down to a river gorge by itself goes to show negligence on the part of the driver.

[8]. In the written statement of defence filed by the appellant before the learned Tribunal they denied that the driver of the accident vehicle had a valid driving licence to drive the accident vehicle at the time of accident. It is seen that it was not the case of the appellant that it was entitled to avoid or cancel the contract of insurance on establishing lack of a valid licence. The learned Tribunal has discussed in detail as regards this issue and this Court finds no infirmity in the conclusion arrived at by the learned Tribunal.

[9]. In the case at hand, the deceased was 18 years and a non-earning member, hence, as per Schedule appended to Section 163A, her dependency has to be assessed on notional

basis. The learned Tribunal has rightly assessed the same and the award is reasonable.

[10]. On consideration of all the facts and circumstances of the case, this Court finds no infirmity in the judgment and award dated 13.4.2012 passed by the learned Motor Accident Claims Tribunal, Aizawl in MACT Case No. 10 of 2010. Accordingly, this appeal is dismissed.

[11]. The appellant/insurer is accordingly directed to deposit Rs. 2 lacs alongwith interest @6% per annum from the date of filing of the claim petition i.e. 25.2.2010 with the Registry of this Court within a period of 2 (two) months from the date of receipt of this judgment. On being so deposited, the Registry shall make payment to the claimant/respondent No. 1 without delay after proper identification and without reference to this Court.

This appeal is accordingly disposed of. No cost.

JUDGE

Sushil