IN THE GAUHATI HIGH COURT

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

AIZAWL BENCH: AIZAWL

MOTOR ACCIDENT CLAIMS APPEAL NO. 2 OF 2010

M/S National Insurance Co. Ltd., having its registered Office at 3, Middleton Street, Kolkata- 700071 with one of its Branch Office at K.T. Khuma Building, Bazar Bungkawn, Aizawl represented by its Branch Manager.

… Appellant

- ***Versus-***

1. Smt. Thangpuii
   W/o Zosanglura
   R/o Mission Veng Aizawl,
   Mizoram.

2. Sh. Lalthlengliana,
   S/o Vanlalmawia
   R/o Model Veng
   Aizawl, Mizoram.

….. Respondents.

B E F O R E
THE HON'BLE MR.JUSTICE T. VAIPHEI

For the appellant	:-	Mrs. Dinari T. Azyu, Advocate.
For the respondents	:-	Mr. S.N. Meitei, Advocate for respondent No. 1, Mr. Zochhuana, Advocate for respondent No. 2.

Date of hearing :- **19-06-2013**

Date of Judgment & Order :- **21-06-2013**

J U D G M E N T (CAV)

To borrow from Nikita Khruschev, the former Soviet leader, if the injured, the survivor of the vehicular accident and now in a vegetative condition, in this claim case can ever recover his senses, which is highly unlikely, he would envy his death co-passengers. This is, to say the least, a tragic case. The legality of the judgment and award dated 16-7-2009 passed by the Motor Accident Claims Tribunal, Aizawl in M.A.C. No 112 of 2005 awarding a compensation of Rs. 29,88,497/- with interest @ 9% per annum from date of filing the claim application to the injured represented by respondent No. 1 is called into question in this appeal.

2. Before proceeding further, the facts giving rise to the appeal may be briefly noticed. On 22-10-2006 at about 8.45 PM, the husband of the respondent No. 1, namely, Zosanglura, was dashed by a motor cycle bearing registration No. MZ-01/D-2286, which was driven by the respondent No. 2. The accident was stated to have been caused by the negligent driving of the bike by the respondent No. 2. The Kukikawn Police Station accordingly registered a regular case against the

respondent No. 2 being KLK PS No. 172/06 U/s 279/338 IPC. As a result of the injuries sustained by her husband, he had to be treated from one hospital to another including a hospital at Kolkata thereby incurring lakhs and lakhs of rupees. The injured could not be cured, is now completely bed-ridden unable to move about and certified to be permanent disabled to the extent of 100% disability. The respondent No. 1 thereupon filed the claim petition under Section 166, Motor Accident Claims Tribunal, Aizawl for compensation as admissible under the law.

3. The claim petition was not contested by the respondent No. 2 before the Tribunal despite proper service of notice upon him. The appellant, who is the insurer, contested the claim petition and filed its written statement denying any liability whatsoever. In particular, the appellant asserted that the respondent No. 2 did not have learner's license, and the learner's license enclosed with the claim application is not even a license but an application to renew the learner's license. Moreover, claimed the appellant, as there was no pillion driver accompanying the injured, there was breach of policy condition thereby exonerating the appellant of any liability to satisfy the award. The appellant also questioned the genuineness of all the medical bills/cash memos accompanying the claim application as they are not original documents but merely Xerox copies, of the income of the injured as well

as the disablement certificate of the injured. The appellant, therefore, urged the Tribunal to dismiss the claim application.

4. The Tribunal, after taking evidence and after hearing the parties, passed the impugned judgment and award as indicated earlier. Assailing the impugned judgment, Mr. Dinary T. Azu, the learned counsel for the appellant, submits that in a claim case filed under Section 166 of the Act, the claimant is required to prove with adequate evidence that the accident was caused by the negligent driving of the offending vehicle by the driver, but the respondent No. 1 in the instant case has miserably failed to produce a single ocular or other reliable evidence to show that the respondent No. 2 negligently drove the bike which resulted in injuring the respondent No. 1. As there is no proof of negligence by the respondent No. 2 in the accident, contends the learned counsel, the appellant cannot be held liable to satisfy the compensation. She maintains that the respondent No. 2, who claimed to be a learner, was admittedly unaccompanied by a pillion driver meaning thereby without a competent driver, there is breach of policy condition, which exonerates the appellant from any liability. She also seriously disputes the finding of the Tribunal on the income of the injured, which is based on doubtful salary certificate, and submits that such dubious certificate should not have been relied on by the Tribunal in assessing the income of the injured. The learned counsel also seriously questions the findings of the

Tribunal on the expenditures incurred by the injured for his treatment inasmuch as all the documents exhibited by the respondent are merely Xerox copies, which are inadmissible in law: this resulted in awarding exorbitant and unjust compensation to the respondent No. 1, which cannot be sustained in law. To fortify her various submissions, the learned counsel relies on the decision of the Apex Court in ***Oriental Insurance Co. Ltd. v. Meena Varial, (2007) 5 SCC 428*** and of this Court in ***Oriental Insurance Co. Ltd. V. Vanlalhliri & anr., 2007 (4) GLT 575***. In any view of the matter, argues the learned counsel, the impugned judgment is based on unreliable evidence and is, accordingly, not sustainable in law.

5. On the other hand, Mr. S.N. Meitei, the learned counsel for the respondent No. 1 supports the impugned judgment and submits that no interference by this Court is called for on the proved facts and circumstances of the case. It is his contention that the very fact that the respondent-claimant chose to file the claim petition under Section 166 of the Act will go to show that the accident was caused by the negligent driving of the offending vehicle by the respondent No. 2. According to the learned counsel, as per the police report at Ext. C-1, it is revealed from the spot verification made by them that the cause of accident was found to be due to rash and negligent driving on the part of the respondent No. 2 and, as such, in the absence of any evidence to the

contrary produced by the appellant as is the case here, no further proof by the respondent No. 1 is hardly called for, more so, when no whisper of statement was made by the appellant in their written statement that it was not due to the rash and negligent driving of the respondent No. 2 that the accident took place. On the question of the income of the injured, the learned counsel contends that unnecessary dispute has been raised by the appellant on the genuineness of the certificate simply on the ground that the appointment letter at Ext.C-8 showed the respondent No. 1 joining his job earlier than the date of his appointment, which has been satisfactorily explained by PW 2, wife of the injured, by clarifying in her re-examination that her husband indeed joined her job before the appointment order was issued because he wanted to get the job. On income of the injured determined by the Tribunal, the learned counsel submits that the finding of the Tribunal based on Ext. C-8 that the injured was earning Rs. 6,470/- per month cannot be said to be perverse as this income or more than this income can be earned nowadays by any able-bodied person, and there is no evidence to show that the injured was not an able-bodied person before the accident. It is, therefore, strenuously urged by the learned counsel that the appeal has no merit at all and is, therefore, liable to be dismissed.

6. Mr. K. Zochhuana, the learned counsel for the respondent No. 2 supports the submissions of the learned counsel for the respondent No. 1

and contends that the rash and negligent driving of the driver of the offending vehicle has been proved by the police report, the deposition of PW 1 and the surrounding circumstances, which are valid consideration in the absence of ocular evidence, which is hard to come by in majority of the vehicular accident cases. He further submits that the burden of proof of establishing fundamental breach heavily lies on the insurer, who is unable to do so: it was for the insurer to lead evidence to show that the respondent No. 2 was not accompanied by a competent driver as a pillion rider. He, therefore, submits that the respondent No. 2, on the proven facts and circumstances of this case, has no liability at all to satisfy the award.

7. I have carefully considered the submissions advanced by the learned counsel appearing for the rival parties. I have also perused the evidence available on record. On the question of negligence, it is true that no ocular witness was examined by the respondent No. 1 to prove that the accident was caused by the rash and negligent driving of the respondent No. 2. The best evidence could have been extracted from the injured, but who has now been admittedly rendered a vegetable due to the accident. It is most tragic. It is a notorious fact that eye witnesses are hardly available in majority of accident cases. The police also failed in their duty in conducting perfunctory investigation with the result that no evidence worth the name was collected to bring home the charges

against the respondent No. 2. There are, however, some features in this case which are worthy of giving weightage, namely, (i) though the claimant did not say so in many words, the claim petition was filed under Section 166 of the Act, which is based on no fault liability and which can succeed only if negligence of the driver in the accident, is proved by the claimant; (ii) the police report ext. C-1 categorically held that the respondent No. 2 was guilty of rash and negligent driving resulting in the accident; (iii) PW 1 clearly deposed in her evidence that it was due to the speedy and negligent driving of the respondent No. 2 that the accident occurred resulting in the permanent total disablement of her husband; (iv) the appellant in their written statement never took the plea that the accident did not take place due to the negligent driving of the bike by the respondent No. 2 even though it was well-known to them right from the very beginning that the claim application made under Section 166 of the Act and (v) the testimony of PW 1 in her examination-in-chief that "[T]he accident was caused due to the negligence and fast speed made by the driver and the owner Lalthlengliana" was *never denied* by the appellant in their cross-examination. In my judgment, in the light of those proven facts, a high degree of prima facie case has been made out by the respondent No. 1 that the accident was caused by the rash and negligent driving of the bike by the respondent No. 2. Once a prima facie case, much less, a high degree of prima facie case, is successfully shown by the claimant-

respondent, the burden of proof inevitably shifts to the insurer to prove that there was no negligent driving by the respondent No. 2. Interestingly, no evidence was led by the appellant to prove their case. Under the circumstances, I have no alternative but to hold that the vehicular accident of 22-10-2006 which caused serious injuries to the injured was caused by the rash and negligent driving of the respondent No. 2.

8. Coming now to the question of breach of policy condition, undoubtedly, if the injured, who claimed to be holding a learner's license, was driving the bike unaccompanied by a competent driver in the pillion, he would be guilty of violation of the policy condition thereby freeing the insurer from any liability whatsoever. There is no evidence emerging from the evidence on record that the respondent No. 1 was unaccompanied by a competent driver. A desperate attempt was, however, made by the insurer to establish from the testimonies of the witnesses produced by the injured that the respondent No. 2 was all alone while driving the bike at the time of the accident, but the effort came a cropper. Under the circumstances, it was for the insurer-appellant to adduce evidence to prove that the respondent No. 2 was not accompanied by a competent driver. Moreover, the appellant is required not only to prove that there was breach of policy condition but also to prove that such breach contributed to the vehicular accident. This, it

could not do so. Therefore, I hold that there was no breach of policy condition by the respondent No. 2 at the time of driving the offending bike.

9. As for the dispute raised by the learned counsel for the insurer concerning the genuineness of the learner's license, it is true that no license book of the respondent No. 2 was annexed with the claim application at the time of filing thereof: what was filed was merely an application for renewal of the learner's license. However, vide Ext. C-14, a certificate was issued by the District Transport Officer, Aizawl District certifying that Learner's License was issued upon the respondent No. 2 on 27-7-2006 which was valid up to 26-10-2007 for a period of six months, whereafter permanent Driving License was issued and that the Learner's License had been submitted to his office for issuing Permanent Driving License. In my opinion, this completely addressed the concern of the insurer. Moreover, since this certificate has been issued by the competent authority, there is always presumption of regularity of an official act under Section 114(*e*) of the Evidence Act, 1872. Of course, this is rebuttable presumption. But then, where is the rebuttal evidence? No attempt was made by the insurer to summon this official for clarification or for confrontation. Under the circumstances, the contention of the learned counsel for the insurer that the respondent

No. 2 did not have Learner's License at the time of the vehicular accident has no leg to stand on and is, accordingly rejected.

10. This then takes me to the quantum of compensation awarded to the respondent No. 1. Before proceeding further, it may be apposite to ascertain the nature of disability sustained by the injured. The respondent No. 1, who is the wife of the injured and who was examined as PW1, in her evidence deposed that after the accident, the injured was taken to Civil Hospital, Aizawl, stayed there for one night and the next day, he was shifted to Care Hospital, Aizawl for four days for treatment and after four days, he was referred to CMRI Hospital, Kolkata and was treated there for four months. According to her, after he returned to Aizawl, he was treated at Aizawl, and after one week, he was again treated at Care Hospital for another two months. She further testified that due to the accident, her husband sustained grievous injury on his head and he could hardly open his eyes and could not recognize her and their small son: he was totally disabled and could not even move on his own. Her testimony is fully corroborated by her father-in-law, father of the injured, who was examined as PW 2. That apart, more important, the evidence of Dr. S.T. Lalruatfela, PW 3, who was at the relevant time working as Specialist, Surgery Department at Aizawl Hospital, has revealed the true state of the disability of the injured. He testified that apart from the development of little sense to physical touching like

pinching (after treatment), there could not be further improvement; that he would not be able to walk, talk and eat by himself or do anything by himself; he would be vegetative throughout his life, and he would need help from other people for eating, doing toilet; that was the reason he certified him to be 100% disabled and for lifelong; he would not able to live without *catheter* as he had lost control of his bladder and defecation; *even if he is given the best medical treatment in this world, he would not improve.* The above testimony of PW 1 is not seriously disputed by the insurer except to make general denial thereof. Truth cannot be suppressed or buried or demolished. From the evidence so established, there can thus be two opinions that the injured has suffered permanent total disability due to the vehicular accident of 22-10-2006.

11. Though the learned counsel for the appellant time and again harps upon the inadmissibility of the medical expenses incurred by the injured on the ground that virtually all the supporting documents exhibited by the claimant-respondent, interestingly, she has completely overlooked the glaring statement of PW 1 that Ext.C-13(3(1) 13(271) were the cash memos/vouchers for buying medicines and other expenditures made in the treatment of the injured amounting to Rs. 15,85,977/-. Apparently, in his/her anxiety to challenge the admissibility of the Xerox copies of the cash memos/vouchers, he/she failed to deny the statement of PW 1 on the amount incurred by the injured for his medical expenses, namely, Rs.

15,85,977/-. Moreover, once those Xerox copies were admitted in evidence without any objection from the insurer, they can no longer be held inadmissible. The learned counsel for the respondent No. 1 submits that the original documents are still with the respondent No. 1, which were not produced by her when no objection were raised by the insurer when the Xerox copies were exhibited and that had such objection been raised at that time, she would have no difficulty in exhibiting the same. In any case, the admissibility of xerox copies of original documents was decided by the Apex Court in ***RVE Venkatachala Gounder v. A.V. & V.P. Temple*** reported in ***AIR 2003 SC 4548*** (the case cited by Mr. K. Zochhuana, the learned counsel for the respondent No. 2) in the following manner:

> *"23. Since documents A30 and A34 were admitted in evidence without any objection, the High Court erred in holding that these documents were inadmissible being photo copies, the original of which were not produced.*
>
> *24. So is the observation of the High Court that the photocopy of the rent note was not readable. The photocopy was admitted in evidence, as already stated. It was read by the trial court as well by the first appellate Court. None of the said two Courts appear to have felt any difficulty in reading the document and understanding and appreciating its contents. May be, that the copy had fainted by the time the matter cam up for hearing before*

the High Court. The High if it felt any difficulty in comfortable reading of the document then should have said so at the time of hearing and afforded the parties an opportunity of either producing the original or a readable copy of the document. Nothing such was done. The High court has not even doubted the factum of the contents of the documents having been read by the two Courts below, drawn deductions therefrom and based their finding of fact on this document as well. All that the High Court has said is that the document was inadmissible in evidence being a photocopy and with that view we have already expressed our disagreement. Nothing, therefore, turns on the observation of the High court that the document was not readable when the matter came up for hearing before it."

12. In my judgment, considering the nature of injuries sustained by the injured, the different hospitals in which he had to be and was treated and the high cost of medicines needed for treating the type of injuries sustained by him and the prohibitive cost of treatment at private hospital as well as the months and months of hospitalization, the case of the respondent No. 1 that a sum of Rs. 15,85,977/- was incurred for treating the injured amount cannot be wide off the mark. Moreover, from the evidence of PW 2, who is the father of the injured, it is evident that the injured has a wife and small daughter. He also deposed that he had spent

more than twenty lakhs for the medical treatment of the injured, for which he had to sell almost all his landed properties. This is not denied in his cross-examination.

13. The Tribunal has assessed the amount of compensation payable in the following manner:

> **"Now to decide the quantum of compensation payable to the claimant, it is imperative that the income of the victim should be decided first. The claimant has enclosed along with her claim application an order/letter of appointment of the victim Zosanglura as Pilot Sales Representative and the same has been exhibited by the claiomant as Exhibit C-9 without any objection by the Ld. Counsel of the O.P. No. 2 and it is evident from this appointment order/letter (Exhibit C-8) that the injured husband of the claimant namely Zosanglura was getting a net salary of Rs. 6470/- per month. And at the time of the accident, Zosanglura, the victim was 29 years and 29 days old and due to the said accident he is 100% permanently disabled. Therefore, the amount of award payable to the claimant who is the wife of the victim may be assessed by applying the Second Schedule of the Motor Vehicles Act, 1988 as amended as follows:**
>
> **1. Loss of income Rs. 6470 x 12 x 18 = Rs. 1397520/-**
>
> **2. Pain and sufferings Rs. 5,00,000/-**

3. Medical expenses Rs. 1585977.00

Total = Rs. 29,88,497.00

(Rupees twenty nine lakhs eighty-eight thousands and four hundred ninety-seven only)"

14. In this connection, the manner in which the assessment for the quantum of compensation made by the Apex Court in ***N. Suresh v. Yusuf Shariff and others, (2012) 11 SCC 281*** is instructive. According to this decision, multiplier of 16 was adopted for the appellant, aged about 32 years at the time of the accident. He was suffering from permanent disability to the extent of 90% and was earning Rs. 8,500/- per month. The Apex Court awarded a sum of Rs. 19,75,800/- carrying interest @ 6% per annum from the date of the petition till realization in favor of the appellant. In the instant case, the injured was about 29 years at the time of the accident. Under the circumstances, the Tribunal is correct in adopting a multiplier of 18. The income of the injured was fixed by the Tribunal at Rs. 6470/- per month. In my opinion, a well-bodied person of his age can easily earn this income these days. There is thus no perversity in the determination of this income either. No compensation was, however, awarded in respect of conveyance, nourishing food and attendant, which will be required throughout his life (there is every possibility of living at least another 30 years or so though on vegetative condition), loss of amenities and future medical expenses,

which will quite considerable. However, as no cross appeal is filed by the respondent No. 1, these aspects need not be considered by me now. Moreover, the amount awarded in terms of this judgment will cover all these expenses/costs. Thus, on the whole, the quantum of compensation payable to the appellant as determined by the Tribunal hardly requires any interference by this court. However, as in ***N. Suresh case*** *(supra)***,** the interest may be reduced to 6% per annum, which shall be payable from the date of filing the claim application.

15. For what has been stated above, this appeal is bereft of merit and is, therefore, dismissed but by directing the parties to bear their respective costs. The appellant-insurer is, accordingly, directed to deposit with the Motor Accident Claims Tribunal, Aizawl a sum of Rs. 29,88,497/- (Rupees twenty-nine lakhs eight-eight thousand four hundred and ninety-seven only) together with interest at the rate of 6 (six) percent per annum with effect from the date of filing the claim petition within a period of two months from the date of receipt of this judgment. On being so deposited, the Tribunal shall disburse it to the respondent No. 1 after due identification without any loss of time.

JUDGE

Sushil