

Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

MAC Appeal No. 4 of 2022 with
MAC Appeal No. 5 of 2022

Date of Decision: 19.12.2023

The Oriental Insurance Co. Ltd. Vs. Smti. Rajinder Kaur Diddan
The Oriental Insurance Co. Ltd. Vs. Smti. Rajinder Kaur Diddan

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

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

For the Respondent(s) : Ms. P. Bhattacharjee, Adv.

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

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

COMMON JUDGMENT

1. Two claim applications were filed before the Motor Accident Claims Tribunal (MACT), Shillong by the respondent herein as claimant seeking compensation on account of the death of her husband and also for injuries sustained by her as a result of a motor vehicle accident which occurred on 02.05.2003 at about 9:00 a.m. or so at Pahamrioh village on

the GS Road. The said applications were registered as MAC Case No. 3 of 2004 and MAC Case No. 4 of 2004 respectively.

2. According to the respondent/claimant on that fateful day, she along with her deceased husband, H.P.S. Diddan, their son Kabeer Singh Diddan, Shri. Mewalal (Driver) and Shri. Siddharth Maitreya was travelling in a Maruti van No. MH-04-BD-7260 from Shillong towards Gauhati on their way to Sikkim, at about 9:00 a.m. on reaching Pahamrioh village, GS Road the vehicle they were travelling in was hit by one truck bearing registration No. AS-25-B-5389. The occupants of the van sustained grievous injuries and were removed to the hospital where her husband succumbed to his injuries at Narazeth Hospital, Shillong while she sustained injuries on her person.

3. A motor vehicle accident having taken place, an FIR dated 01.07.2003 was filed by SI B.K. Mishra before the Officer-in-Charge Nongpoh Police Station and accordingly, Nongpoh P.S. Case No. 55(07) 2003 under Sections 279/427/304-A IPC was registered against Shri. Babul Boro the driver of the said truck No. AS-25-B-5389.

4. In the said claim applications, the insurer of the offending truck, that is, the Oriental Insurance Co. Ltd., the owner and the driver of the said truck as well as the owner of the Maruti van No. MH-04-BD-7260 were impleaded as Opposite Parties. However, except for the Oriental Insurance Co. Ltd., the other three opposite parties did not appear to contest the claim before the Tribunal following which the matter proceeded exparte against them. The opposite party/appellant herein then took recourse to the provision of Section 170 of the Motor Vehicle Act,

1988 to take over the defence of the owner and driver respectively, of the alleged offending vehicle. The written statement was also filed by the Oriental Insurance Co. Ltd.

5. In course of proceedings, the Tribunal framed four issues touching on the areas of maintainability, negligence, liability for compensation and whether the claimant is entitled for such compensation. In the case of injury, another issue was framed as to whether the injuries sustained was on account of these said accident and whether such injuries are serious and permanent in nature.

6. The respondent/claimant then produced nine witnesses to support her case while the appellant/Oriental Insurance Co. Ltd. also produced one witness as OPW-1. On conclusion of the recording of evidence, the parties present their respective argument before the Tribunal and on consideration of such argument the learned Member, MACT, Shillong vide a common judgment and order dated 30.07.2021 has awarded compensation of ₹ 21,56,660/- (rupees twenty-one lakh fifty-six thousand six hundred sixty) only in the case of death in MAC Case No. 3 of 2004 and compensation of ₹ 1,06,228/- (rupees one lakh six thousand two hundred twenty eight) only in MAC Case No. 4 of 2004. The learned MACT has also imposed interest @9% p.a. on the awarded amount which period of interest will run from 13.02.2004 to 20.11.2020.

7. Being highly aggrieved with and dissatisfied by the said judgment and award dated 06.08.2021 the appellant/Insurance company has now approached this Court with this instant appeal with a prayer to set aside and quash the said impugned judgment and order.

8. Heard Mr. A. Khan, learned counsel for the appellant who has submitted that the grievance of the appellant is with the appreciation of evidence by the learned Tribunal which has not taken into account that the liability of the appellant/Insurance Company is subject to the terms and conditions of the policy and Section 147 and 149(2) of the Motor Vehicle Act, 1988 not being complied with, the appellant is not liable to indemnify the owner of the Truck.

9. The learned counsel has also submitted that the learned Tribunal has failed to take note of the fact that two vehicles were involved in the said accident and even on perusal of the evidence of the CW-2, the Investigating Officer (I/O) who has taken up investigation of the criminal case registered against the driver of the alleged offending truck, evidence will reveal that the investigation was not taken up properly inasmuch as there was no sketch map of the place of occurrence prepared, no photographs of the accident scene were either taken or brought into evidence. No independent witnesses were produced to confirm the factum of accident. Instead the I/O had come to the conclusion that the driver was the party at fault and has, therefore, filed the charge sheet putting the blame squarely on the shoulders of the driver, which according to the learned counsel, this aspect of the matter was not taken into account by the learned Tribunal in course of the proceedings before it and has therefore, come to a wrong conclusion as far as fastening of liability is concerned.

10. On this point, the learned counsel has also submitted that even the respondent in her evidence as CW-1 has stated in her examination-in-chief that the accident occurred when the offending vehicle came from the

opposite direction and dashed against the vehicle they were travelling in. In this, the possibility of contributory negligence cannot be ruled out and as such, attributing rash and negligent driving only against the driver of the said truck could not have been done so by the learned Tribunal, submits the learned counsel.

11. On the evidence adduced by the respondent/claimant before the Tribunal, as regard the injuries sustained by her as a result of the said accident, the learned counsel has submitted that she has stated in her evidence that after the accident she was admitted at Nazareth Hospital where she was treated for her injuries, however, the Investigator of the appellant/Insurance company who had visited the said hospital confirmed that she was never admitted at the said hospital but was treated by one Dr. S.S. Sondhi at his private clinic at Happy Valley, Shillong for minor injuries. The learned Tribunal has come to a wrong conclusion that the injuries sustained by the respondent/claimant are serious in nature.

12. Even on the issue of income of the respondent/claimant, the learned counsel has submitted that she has stated in her evidence that she was in receipt of a monthly net income of ₹ 9000/- (rupees nine thousand) only and that her annual income comes to ₹ 96,228/- (rupees ninety-six thousand two hundred twenty-eight) only, however, the salary certificate purportedly issued by the Principal of the school she was teaching at, was never produced before the Tribunal in the original. She has further stated that as a result of the injuries sustained, she had gone on leave from the school for three months for which she received salary only for one month, but nothing was brought on record that she had indeed been on leave for the said three months' period. While computing income on this count, the

learned Tribunal has come to a wrong conclusion for which the amount awarded in this regard has to be relooked, further submits the learned counsel.

13. However, the main thrust of the argument of the learned counsel for the appellant/insurance company is on the total quantum of compensation awarded, particularly the interest factor which, according to the learned counsel has been calculated without considering the peculiar facts and circumstances of the case between the parties.

14. The learned counsel has pointed out that the claim for compensation has proceeded before the Tribunal for more than 17 years before the impugned award was passed on 30.07.2021. The learned Tribunal has also imposed interest @ 9% p.a. w.e.f. 13.02.2004 to 20.11.2020 without taking into account that for 17 long years the delay in the proceedings was mostly caused by the respondent No. 1/claimant. In fact, since the inception of the claim application, the evidence of the parties was closed on 27.05.2008 and after hearing the argument of the parties, the matter was posted for judgment on 17.06.2008. But before the judgment was pronounced, the respondent No. 1/claimant has filed an application seeking to adduce further evidence and also for introduction of additional documents which was allowed by the learned Tribunal. This has eventually led to the delay in the proceedings till the matter was finally disposed of as mentioned.

15. The learned counsel has submitted that this Court in similar cases where the rate of interest imposed by the Tribunal was about 9% p.a. or so, the same was reduced to about 6% p.a. To this extent, if the rate of

interest is reduced, the appellant would not have so much of an opposition as far as the award is concerned since the fact that the death and injury as a consequence of the said motor vehicle accident is not disputed. That the respondent is the legal heir of the deceased victim is also not disputed and in this regard, even the income of the deceased, who was an income tax payer during his lifetime and as such income of the victim cannot be disputed. However, the learned counsel has reiterated that it is only on account of the imposition of the high rate of interest that there is strong resistance from the part of the appellant.

16. Ms. P. Bhattacharjee, learned counsel for the respondent in response to the submission of the learned counsel for the appellant has submitted that the award of compensation awarded by the learned Tribunal suffers from no infirmity inasmuch as the same has been passed taking into account all aspect of the case of the respondent/claimant.

17. On the alleged breach of the policy conditions by the insured, the learned Tribunal has recorded the admission of the appellant/Insurance Company that the offending vehicle, being number AS-25-B-2389, was indeed insured with it and the same was valid on the relevant period, that is, on the date when the accident occurred.

18. As to the contention that since two vehicles were involved in the accident, therefore composite negligence cannot be ruled out, the learned counsel has submitted that evidence would show that the respondent who is the eye-witness to the accident has clearly stated that the place of occurrence was on a blind curve when the said offending vehicle came in a rash and negligent manner overtaking another vehicle as a result of

which the said accident occurred. This only goes to prove that the fault lies with the driver of the said offending vehicle and not the deceased husband of the respondent/claimant.

19. On delay in the proceedings before the Tribunal, which according to the appellant has resulted in a higher quantum of compensation awarded to the respondent/ claimant, particularly the alleged imposition of a high rate of interest which is not well founded under the facts and circumstances of the case where the cause of delay is attributed to the respondent/claimant, the learned counsel has submitted that a perusal of the order sheet will reveal that the alleged delay was caused not only on the part of the claimant, but also on the part of the opposite party/Insurance Company. However, taking into consideration the cost of living and the declining rate of purchasing power, the award as was passed is reasonable and cannot be faulted. The award of compensation as well as the interest imposed thereto is therefore, reasonable and the same may not be interfered with by this Court, further submits the learned counsel.

20. With no further argument advanced by the parties, this Court has duly considered the submission and contention made herein and has also perused the impugned judgment and award. The evidence adduced by all the witnesses before the learned Tribunal was also scrutinized to ensure that proper appreciation of the same has been undertaken by the learned Tribunal to come to the conclusion it did.

21. From the materials on record, that there had occurred a motor vehicle accident on 02.05.2003 at a place called Pahamrioh, on the GS

Road at about 9.00 a.m. or so is not disputed. That in the said accident, two vehicles were involved, one being a Maruti Van number MH-04-BD-7260 driven by the deceased husband of the respondent/claimant and the other being a truck number AS-25-B-5389 driven by Shri. Babul Boro is also not disputed.

22. As a result of such accident, the occupants of the Maruti Van including the deceased husband of the respondent, herself and other passengers sustained injuries, serious and grave injuries being sustained by the deceased husband of the respondent for which he eventually succumbed to the same and also injuries sustained by the respondent are also evident.

23. On the death of her husband and for the injuries sustained by her, the respondent has filed two separate claim applications before the Motor Vehicle Claims Tribunal (MACT), Shillong seeking compensation as claimed therein. However, since both the applications were taken up together, the cause of action having arisen out of the said singular motor vehicle accident, common evidence was accordingly adduced.

24. That the said offending vehicle was duly insured with the appellant/Insurance Company and was valid at the relevant date of the accident, has also been proved with no contradiction to such fact, the liability of the appellant/Insurance Company to indemnify the owner of the said truck No. AS-25-B-5389 has accordingly been established. Therefore, the provisions of Section 147 and 149(2) of the MV Act, 1988 have not been violated.

25. The issue of contributory negligence as far as the action of the

deceased husband of the respondent is concerned is also not a relevant issue to be considered as evidence has revealed that the accident took place at a blind curve of the road and the driver of the offending truck was proceeding at a very high speed and also overtaking another vehicle at that point of time. Negligence can therefore, be imputed on the action of the said driver of the said truck.

26. However, on the contention of the appellant that the learned Tribunal has come to a wrong finding as to the award of compensation for the injuries sustained by the respondent/claimant, that is, when a sum of ₹ 1,06,228/- (rupees one lakh six thousand two hundred twenty eight) only was awarded, a perusal of the impugned judgment in this respect would show that the learned Tribunal has computed the amount, taking into consideration the annual net salary of the respondent/claimant calculated at ₹ 9000/- (rupees nine thousand) only per month and an annual salary of ₹ 96,228/- (rupees ninety six thousand two hundred twenty eight) only and has taken the sum of ₹ 96,228/- (rupees ninety six thousand two hundred twenty eight) only as well as the actual medical expenses which amounts to ₹ 10,000/- (rupees ten thousand) only.

27. This method of computation is not proper as there is no record of how the pecuniary and non-pecuniary loss has been assessed. In fact, the learned Tribunal has not even come to any conclusion as to whether the injuries sustained by the respondent/claimant have resulted in permanent or partial disability. Be that as it may, it appears that only pecuniary loss was considered inasmuch as the actual medical expenses was acknowledged, which comes to ₹ 10,000/- (rupees ten thousand) only and under non-pecuniary loss, perhaps loss of earning capacity or loss of

future income which was invariably linked to the income derived from the salary of the respondent/claimant as a school teacher for which the annual salary of ₹ 96,228/- (rupees ninety six thousand two hundred twenty eight) only was computed. According to the finding of the learned Tribunal, the respondent/claimant was absent from school only for one month or at best only for three months which means that she has joined her duty soon after.

28. In all probability, the computation of the compensation on account of the injuries sustained by the respondent/claimant could be in this manner, ₹ 10,000/- (rupees ten thousand) only for actual medical expenses and for non-pecuniary loss for loss of earning capacity, the amount of ₹ 9000/- x 3 = ₹ 27,000/- (rupees twenty seven thousand) only that is, the monthly salary multiply by the three month's period of absence from the school. The total award under this head will then come to ₹ 37,000/- (rupees thirty seven thousand) only. As to the computation of income of the deceased husband of the respondent/claimant, the appellant has no quarrel with the amount computed by the learned Tribunal, the same will therefore, be maintained.

29. On the issue of delay of the proceedings before the Tribunal, which according to the learned counsel for the appellant is linked to the award of interest covering all those years taken up for disposal of the claim application, the submission of the appellant for reduction of the amount of interest has to be looked into keeping in mind the provision of Section 171 of the MV Act, 1988.

30. Section 171 of the Motor Vehicles Act reads as follows:

“171. Award of Interest where any claim is allowed.— Where any Claims Tribunal allows a claim for compensation made under this Act, such Tribunal may direct that in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf.”

31. In the case of *Abati Bezbarauh v. Dy. Director General, Geological Survey of India & Anr.*, (2003) 3 SCC, 148, the Hon’ble Supreme Court has spelt out the principle as regard imposition or award of interest in motor accident cases, the relevant paragraphs of the same, reproduced herein would also be the guiding factor for this Court to decide on this issue, the same reads as:

“6. The question as to what should be the rate of interest, in the opinion of this Court, would depend upon the facts and circumstances of each case. Award of interest would normally depend upon the bank rate prevailing at the relevant time.

18. Three decisions were cited before us by Mr. A.P. Mohanty, learned counsel appearing on behalf of the appellant, in support of his contentions. No ratio has been laid down in any of the decisions in regard to the rate of interest and the rate of interest was awarded on the amount of compensation as a matter of judicial discretion. The rate of interest must be just and reasonable depending upon the facts and circumstances of each case and taking all relevant factors including inflation, change of economy, policy being adopted by Reserve Bank of India from time to time, how long the case is pending, permanent injuries suffered by the victim, enormity of suffering, loss of future income, loss of enjoyment of life etc., into consideration. No rate of interest is fixed under Section 171 of the Motor Vehicles Act, 1988. Varying rates of interest are being awarded by Tribunals, High Courts and the Supreme Court. Interest can be granted even if a claimant does not specifically plead for the same as it is consequential in the eye of law. Interest is compensation for forbearance or detention of money and that interest being awarded to a party only for being kept out of the money which

ought to have been paid to him. No principle could be deduced nor can any rate of interest be fixed to have a general application in motor accident claim cases having regard to the nature of provision under Section 171 giving discretion to the Tribunal in such matter. In other matters, awarding of interest depends upon the statutory provisions, mercantile usage and doctrine of equity. Neither Section 34 CPC nor Section 4-A(3) of the Workmen's Compensation Act are applicable in the matter of fixing rate of interest in a claim under the Motor Vehicles Act. The courts have awarded the interest at different rates depending upon the facts and circumstances of each case. Therefore, in my opinion, there cannot be any hard-and-fast rule in awarding interest and the award of interest is solely on the discretion of the Tribunal or the High Court as indicated above."

32. Considering the prevailing situation, the rate of inflation and cost of living index, coupled with the fact that a look at the records of the proceedings before the Tribunal where delay can be attributed not only to the respondent/claimant but also to the appellant/Insurance Company, this Court is of the considered opinion that the rate of interest which is found reasonable would be 6% p.a. and not 9% p.a. as was imposed by the learned Tribunal.

33. Accordingly, these two sets of appeals are hereby disposed of in the manner as indicated hereinabove, with the award to be paid to the respondent/claimant within 2 months from today together with interest @6% p.a. from the date of filing of the claim application till realization of the same.

34. The respondent/claimant is also entitled to receive the amount already deposited by the appellant before this Registry which will be adjusted with the total amount to be paid to her. Also, any interim relief received by the respondent/claimant is required to be deducted from the

total amount due and payable to her.

35. Registry to send back the trial court case records.

36. Appeals disposed of. No costs.

Judge

Meghalaya
19.12.2023
"Tipilynti-PS"

