

GAHC030003852023



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

Case No. : MACApp. 6/2023

Appellant:

Smt. Lalhruitluangi
D/o Rangchhingpuii (L)
R/o Sihphir Venghlun, Aizawl District.

By Advocates :

Mr. C. Lalfakzuala
Ms. Mercy Lalhriattluangi
Ms. H. Lalrosangi

– Versus –

Respondents :

1. Bajaj Allianz Gen. Insu. Co. Ltd.
Represented by the Branch Manager
Sreeji Tower 2nd Floor,
Guwahati, Assam-781005.

2. Sh. R. Lalchhuanmawia
S/o R. Hrangchhuana
Sihphir Venghlun, Aizawl District.

By Advocates :

Mr. Roshan Subedi for respondent No. 1.

Mr. Pradeep Chhetri

Ms. Ruthi Vanlalhrui

:::B E F O R E:::

HON'BLE MR. JUSTICE NELSON SAILO

Date of Hearing & Judgment : 05.12.2023

JUDGMENT & ORDER

Heard Mr. C. Lalfakzuala, learned counsel for the appellant and Mr. Roshan Subedi, learned counsel for the respondent No. 1. None appears for the respondent No. 2 despite notice.

[2.] By filing this appeal under Section 173 of the Motor Vehicles Act, 1988 (as amended) (M.V. Act), the appellant/claimant being aggrieved with the Judgment & Order dated 29.05.2023 passed by the learned Presiding Officer, Motor Accident Claims Tribunal, Aizawl (Tribunal) in MACT Case No. 26/2020 dismissing the claim of the appellant has preferred the instant appeal. It is the case of the appellant that her parents while travelling in a Grand i10 vehicle bearing registration No. MZ-09 - 1721 on 15.04.2020 driven by the respondent No. 2 met with an accident at Nausel Phai road in the outskirt of Sihphir Venghlun village, Aizawl District, Mizoram. As a result of the accident, both her parents died on the spot. However, the owner-cum-driver of the

vehicle i.e., respondent No. 2 survived with minor injuries. The appellant due to the said accident and loss of her parents filed two (2) claim applications before the Tribunal i.e., MACT Case Nos. 25 and 26 of 2020 under Section 164 of the M.V Act as amended. In support of her claim, the appellant examined herself as the sole claimant's witness while the respondent No. 2 who was the owner-cum-driver of the accident vehicle besides filing written statement examined himself as his own witness. As for the respondent No. 1 Insurance Company, no witness was examined but they filed their written statement. The learned Tribunal vide its Judgment & Order dated 29.05.2023 awarded a sum of Rs. 6,25,000/- to the appellant along with interest @ 7% per annum in MACT Case No. 25/2020. However, vide the impugned Judgment & Order dated 29.05.2023, the learned Tribunal dismissed the claim of the appellant in MACT Case No. 26/2020 upon finding that the appellant was not dependent upon her deceased stepfather. Aggrieved, the appellant is before this Court.

[3.] Mr. C. Lalfakzuala, learned counsel for the appellant submits that the learned Tribunal in coming to its finding that the appellant was not dependent upon her stepfather solely relied upon the submissions made by the respondent No. 2 in his written statement. The respondent No. 2 in his written statement had stated that the appellant was residing with her grandfather and that she was not dependent upon her deceased stepfather particularly since her parents did not enter into marriage during their lifetime. The learned counsel however submits that apart from making such statement, the evidence to that effect is nowhere to be found in the deposition of the

respondent No. 2 either in his examination-in-chief or in his cross-examination. Therefore, the statements made by the respondent No. 2 has no evidential value in so far as the allegation that the appellant was not dependent upon her stepfather or her parents. In this connection, the learned counsel relies upon the decision of the Apex Court rendered in *Manjuri Bera (Smt) -Vs- Oriental Insurance Company Ltd. (2007) 10 SCC 643* wherein, at paragraph No. 13 of the said judgment, the Apex Court has held amongst others that the liability under [Section 140](#) of the Act does not cease because there is absence of dependency. The right to file a claim application has to be considered in the background of right to entitlement. The learned counsel submits that before the amendment of the M.V Act, the relevant Section was Section 163A as well as Section 140 of the M.V Act, under which a claim can be made for compensation on no fault basis. The said Sections have now been replaced by Section 164 of the M.V Act after amendment. Therefore, as long as the appellant is able to show that she is the heir of her deceased parents, there is no requirement on her part to show that she was dependent upon her deceased parents. The learned counsel submits that the appellant even otherwise had clearly proved the fact that she was dependent upon her deceased parents. In this connection, the learned counsel has drawn the attention of this Court to the deposition of the appellant as sole claimant witness, both the examination-in-chief as well as her cross-examination. He therefore submits that the learned Tribunal has committed error in law in dismissing the claim of the appellant in MACT Case No. 26/2020 and therefore, the impugned Judgment &

Order is liable to be set aside and appropriate relief be awarded to the appellant.

[4.] The learned counsel further submits that the M.V Act was amended vide Act No. 32 of 2019 with effect from 01.09.2019 but however, the Central Government has notified that Section 50 - 57 of the Motor Vehicles (Amendment Act), 2019 (M.V Amendment Act) shall come into force with effect from 01.04.2022, which concerns 3rd party insurance and filing of claim before the Tribunal. The appellant having filed her claim application on 16.10.2020, she is therefore entitled to receive compensation under Section 163A of the M.V Act along with all other benefits given under non-conventional heads. The learned counsel therefore submits that the appellant should be granted appropriate compensation as prayed for.

[5.] Mr. Roshan Subedi, learned counsel for the respondent No. 1 on the other hand submits that the learned Tribunal was correct in coming to a finding that the appellant was not dependent upon her deceased stepfather. He submits that as per the evidence of the respondent No. 2, the parents of the appellant did not enter into a valid marriage during their lifetime and that her father is not her biological father but her stepfather. The learned Tribunal therefore rightly held that the appellant was not entitled to any compensation. In so far as her dependency upon her mother is concerned, the Tribunal has awarded compensation to the appellant in MACT Case No. 25/2020 and that the respondent No. 1 Insurance Company have also paid the amount as awarded by the Tribunal. He therefore submits that since the appellant was unable to establish her dependency upon her stepfather, the impugned Judgment &

Order dismissing the claim of the appellant should be upheld.

[6.] I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record. As may be noticed, the claim of the appellant is that she is entitled to be compensated for the death of her parents who met with a car accident on 15.04.2020 as she is the legal heir to her parents and that she was dependent upon their income for her sustenance. She accordingly filed two (2) claim applications i.e., MACT Case Nos. 25 and 26 of 2020. While MACT Case No. 25/2020 was allowed, MACT Case No. 26/2020 was dismissed. Hence, the present appeal. It is seen that in both the claim applications, the appellant examined herself as the sole claim witness. In her evidence-in-chief in both the cases, she deposed that her parents were farmers during their lifetime and that she was dependent upon their earnings. In her cross-examination, she stated that after the death of her parents, she was staying with her maternal grandmother, but otherwise she use to stay with her parents during their lifetime. The fact that she was dependent upon their income has neither been shaken nor falsified in her cross-examination by the opposite parties and further, in her reexamination, she deposed that she has no source of income. The documents exhibited by the appellant also appear to have been admitted by the opposite parties without any objection. The respondent No. 1 Insurance Company in their written statement had also maintained that the accident vehicle was covered at the relevant time under the policy of Insurance issued by the Insurance Company and which was subject to the terms and conditions, acceptance and limitations of the said

policy. There is no dispute to the fact that the Insurance policy at the time of accident was valid. Upon coming to such a conclusion, the learned Tribunal had awarded compensation to the appellant in MACT Case No. 25/2020. With a same set of evidence, the learned Tribunal however rejected the claim of the appellant in MACT Case No. 26/2020 solely on the ground that the appellant was found to be not dependent upon her late stepfather. As submitted by the learned counsel for the appellant, this finding of the learned Tribunal appears to be a solid base of the written statement made by the respondent No. 2. However, the respondent No. 2 as already noticed has not mentioned anything about the dependency or otherwise of the appellant upon her parents in his examination-in-chief or in his cross-examination. Therefore, the finding of the learned Tribunal appears to be misconceived. Furthermore, the Apex Court in *Manjuri Bera (Smt)* (supra) in the given facts of that case held that the liability to pay compensation under no fault basis and under Section 140 of the M.V Act does not cease even in the absence of dependency. Further, the right of the person to file a claim application has to be considered on the background of the right to his or her entitlement. In the present case, there is no material available on record to show that the appellant does not have the right or is not authorized to file the claim applications in the manner she had filed. Therefore, even on this ground, the finding arrived at by the learned Tribunal about the non-dependency of the appellant on her late parents is found to be erroneous.

[7.] Coming to the further claim made by the appellant that she will be entitled to

the benefits under the old Act i.e., under Section 163A of the M.V Act along with any other such benefits under the non-conventional heads provided under the said provision due to the fact that Section 50 - 57 of the M.V Amendment Act came into force only with effect from 01.04.2022 while the claim application and the accident were much before the said date. The submission made by the learned counsel for the appellant in this regard has been considered. It is an admitted position that the appellant has accepted the compensation awarded to her in MACT Case No. 25/2020 and as on date, there is no appeal filed by her seeking enhancement on the ground stated herein above. On the claim made by the appellant, this Court has also perused the records received from the learned Tribunal wherein, the claim of the appellant in the prescribed form is available. On perusing the same, it is seen that the appellant as claimant had made a specific claim for compensation under Section 164 of the M.V Act as amended up to date. Therefore, in view of such a position, this Court is of the considered view that it would not be open for the appellant to ask for such benefits which otherwise was not claimed by her at the very initial stage. Therefore, this Court is not inclined to entertain the claim made by the appellant in this regard.

[8.] In view of the above discussion and finding arrived at, this Court finds merit in the claim made by the appellant in so far as the award of compensation under Section 164 of the M.V Act is concerned and which should be similar to what was awarded in MACT Case No. 25/2020. Since the amount of compensation entitled to a claim under the said provision is already quantified, this Court finds no requirement for remanding

the matter back to the learned Tribunal for computation of the amount of compensation. Accordingly, the amount of compensation payable to the appellant will also be in terms of the amount already computed by the learned Tribunal in MACT Case No. 25/2020, which is as below:-

Fatal accident compensation	= Rs. 5,00,000/-
5% increase for five years	= Rs. 1,25,000/-
TOTAL	= Rs. 6,25,000/-

(Rupees six lakh twenty five thousand) only.

[9.] In addition to the above, the appellant will be entitled to interest @ 7% per annum from the date of filing of the claim i.e., 16.10.2020. The respondent No. 1 Insurance Company shall deposit the amount so awarded including interest before the Tribunal i.e., Motor Accident Claims Tribunal, Aizawl in form of account payee cheque or in cash or demand draft in favour of the MACT for onward disbursement to the claimant/appellant. The respondent No. 1 Insurance Company shall make such deposit within a period of one (1) month from the date of receipt of a certified copy of this Order. The MACT Account Details as reflected in MACT Case No. 25/2020 is abstracted below for the sake of convenience:-

MACT Account Details:

MACT Account No : 000101960002763

Account Name: Presiding Officer, MACT

Bank: Mizoram Cooperative Apex Bank Ltd.

IFSC Code: YESBOMAB002.

[10.] With the above observations and directions, the appeal stands disposed of.

JUDGE

Comparing Assistant