

GAHC030003512023



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

Case No. : MACApp./4/2023

United Insurance Co. Ltd., Aizawl Branch, Aizawl
Canteen kua, Aizawl, Mizoram

VERSUS

Smt Vanlaldinpuii and 2 Ors.
W/o Laldanmawia (L), Hunthar, Aizawl

2:Mrs Lalthai

3:Sh Lalchullov

Advocate for the Petitioner : Mr K Laldinliana

Advocate for the Respondent : Ms. Babie Lalhlimpuii for R1

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

AIZAWL BENCH :AIZAWL

MAC App. No. 4 of 2023

Appellant:

United Insurance Co. Ltd., Aizawl Branch, Aizawl

Canteen kual, Aizawl, Mizoram

VERSUS

Respondents:

Smt Vanlaldinpuii and 2 Ors.
W/o Laldanmawia (L), Hunthar, Aizawl

2:Mrs Lalthai
W/o Lalrinmawia
Ramhlun South
Aizawl

3:Sh Lalchullova
S/o Lalneihthuama
Bairabi
Mizoram

Advocates for the appellant:

Mr. K Laldinlana

Advocates for the respondent:

Mr. Zoramchhana for respondent No. 1

B E F O R E

THE HON'BLE MR. JUSTICE NELSON SAILO

Date of Hearing & Order : 23.07.2024

JUDGMENT & ORDER (ORAL)

Heard Mr. K Laldinliana, learned counsel for the appellant and Mr. Zoramchhana, learned counsel for respondent No. 1. None appears for the respondent Nos. 2 & 3 despite notice.

[2.] Being aggrieved with the Judgment & Order dated 07.12.2022 passed by the Motor Accident Claims Tribunal (Tribunal) in MACT Case No. 28/2019, the appellant has preferred the instant appeal.

[3.] Brief facts essential for disposal of the instant appeal may be narrated at the outset. On 22.03.2019, there was a motor vehicle accident in Sairang road near Fishery cold storage, Aizawl involving scooty bearing registration No. MZ 01 M 4879 and a truck bearing registration No. MZ 01 J 0659. There were two riders on the scooty and the husband of the respondent No. 1/claimant was the pillion rider. According to the respondent claimant, both the vehicles were proceeding towards Bawngkawn, Aizawl and while the truck was trying to overtake the scooty, it hit the scooty and as a result, the husband of the respondent No. 1/claimant was run over by the rear wheel of the truck and he succumbed to his injuries on the spot. As a result of the fatal accident leading to the death of the deceased, the respondent No. 1 who is the wife of the deceased filed a claim before the Tribunal which was

registered as MACT Case No. 28/2019. The case was disposed of by the Judgment & Award dated 07.12.2022 by awarding a sum of Rs. 47,93,000/- to the respondent No. 1 alongwith interest @ 7% per annum from the date of filing of the claim i.e. 23.05.2019. The awarded amount was directed to be paid by the appellant insurance company and who shall then recover the amount from the owner of the truck i.e. respondent No. 2.

[4.] Appearing for the appellant Mr. K Laldinliana, learned counsel submits that although a few grounds of appeal has been taken, the two main grounds of appeal are that the learned Tribunal having regard to the fact that the claimant was solely dependent upon the deceased, the Tribunal ought to have deducted 50% towards personal and living expenses of the deceased husband instead of 1/3. In this regard, the learned counsel relies upon the decision of a Co-ordinate Bench of this Court rendered in MAC App. No. 698/2022 which was decided on 14.09.2022 (*United India Insurance Company Ltd vs. Rajumai Medhi & Anr.*). Secondly, the learned counsel submits that although the claim was filed before the Tribunal in the year 2019, summon was served to the appellant only on 04.02.2020 and therefore, interest for payment to the claimant should have been directed to be calculated from 04.02.2020 and not from the date of filing of the claim before the Tribunal. In this connection, the learned counsel submits that under Order VIII Rule 1 of the Code of Civil Procedure, 1908 (CPC), a defendant is required to present a written

statement of his defence within 30 days from the date of service of the summon on him. He submits that a similar principle should be adopted in the present case for calculation of interest payable to the claimant with effect from the date of receipt of summon by the appellant. The learned counsel, therefore, submits that the impugned Judgment & Order should therefore be interfered with by this Court and suitably modified.

[5.] Mr. Zoramchhana, learned counsel for the respondent No. 1, on the other hand, submits that the accident occurred solely due to the rash and negligent driver of the truck as it was driving in high speed and was trying to overtake the scooty which was also travelling in the same direction. The learned counsel further submits that the claimant's witness No. 2 who is the elder brother of the deceased in his evidence before the Tribunal clearly stated that he and his family alongwith the deceased and his wife were staying together and since he did not have any proper income, they were all dependent upon the income of the deceased who earned a monthly salary of Rs. 25,000/- while working as a senior welder-cum-mistiri under L.R Steel and alluminium, Bawngkawn, Aizawl. He, therefore, submits that the learned Tribunal rightly deducted 1/3 as the personal and living expense of the deceased while computing the award. The learned counsel further submits that there is no basis on the submission made by the learned counsel for the appellant that interest should be calculated from the date of receipt of the summon from the

Tribunal and that no comparison can be drawn with Order VIII Rule 1 of the CPC in this regard. He submits that when the claim is decided in favour of the claimant by the Tribunal, interest is generally directed to be paid from the date of filing of the claim till final payment is made as awarded by the Tribunal. In this connection, the learned counsel relies upon the case of *Anjali & Ors. vs. Lokendra Rathod & Ors., 2022 SCC Online SC 1683*. The learned counsel therefore submits that the appeal has no merit and therefore, the same should be dismissed.

[6.] I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record.

[7.] Although the learned counsel for the appellant had initially pointed out that the driver of the truck did not have a valid driving license to drive the truck but in view of the Tribunal having relied upon the Apex Court's decision rendered in *United India Insurance Company Ltd. vs. Lehu & Ors.*, reported in (2003) SCC 569, he has not seriously pressed this ground. The learned counsel has however raised objection to the award of the Tribunal, insofar as only 1/3 deduction has been made towards the personal and living expenses of the deceased by relying upon the case of *United India Insurance Company Ltd vs. Rajumai Medhi & Anr. (supra)*. A perusal of the said authority would go to show that the Court while coming to the conclusion that 50% should be deducted towards the personal and living expenses of the deceased in view of there being only one defendant was also

of the view that had it been the case in evidence that the claimant/defendant was pregnant, the situation would have been different on the percentage to be deducted towards living and personal expenses of the deceased. As pointed out by the learned counsel for the respondent No. 1 in the instant case as well, it is seen that as per the evidence of CW No. 2 who is the elder brother of the deceased, he and his family and alongwith the wife of the deceased were all dependent upon the income of the deceased since she did not have a proper source of income. Such evidence having not been rebutted by the appellant before the Tribunal, the ground taken in this regard in the instant appeal cannot be accepted and the same is rejected.

[8.] Coming to the issue regarding payment of interest from the date of receipt of the summon from the Tribunal, no similarity can be drawn from Order VIII Rule 1 CPC since the same is only a prescription of time for filing written statement by the defendant and therefore, cannot be co-related with regard to the date from which interest is to be computed. It may also lead to a situation where the defendants/opposite parties may refuse to accept the notice or summon in order to gain an advantage for waving a period for computation of payment of interest. In any case, the Court has to proceed on the premise that once a claim is filed before the Tribunal, notice or summon is generally to be issued within a reasonable time before proceeding further with the case/claim. Therefore, having

regard to the purpose and intent of the Motor Vehicle Act, 1988 insofar as the awarded compensation on account of injury or death is concerned, the direction for computation of interest from the date of filing of the claim is only found to be justified and therefore, requires no interference.

[9.] Thus, upon due consideration of the case in its entirety, I do not find any merit in the appellant and accordingly, the same is dismissed.

[10.] It is submitted at the bar that during the pendency of the appeal, the appellant Insurance Company has deposited 50% of the awarded amount before the Registry of this Court and the same has been withdrawn by the respondent No. 1/claimant. Therefore, the appellant is directed to deposit the remaining balance of the compensation awarded alongwith interest before the Registry of this Court within a period of two months from the date of receipt of a certified copy of this order. The appellant is also permitted to withdraw the statutory deposit made for filing the instant appeal before the Registry as per the formalities required.

JUDGE

Comparing Assistant