

CASE NO.:
Appeal (civil) 3731-3732 of 2002

PETITIONER:
Bijoy Kumar Dugar

RESPONDENT:
Bidyadhar Dutta & Ors

DATE OF JUDGMENT: 01/03/2006

BENCH:
B. N. Srikrishna & Lokeshwar Singh Panta

JUDGMENT:
J U D G M E N T

Lokeshwar Singh Panta, J.

These two appeals involve identical questions of facts and issues, and are, therefore, disposed of by this common judgment.

Civil Appeal Nos. 3731-3732 of 2002 are filed by the appellant impugning two judgments and orders dated 19th July, 2001 passed by the Division Bench of the High Court of Gauhati in M.A.C. Appeal No. 56 of 2000 and in Writ Petition (C) No. 4418 of 2000. Facts of Civil Appeal No. 3731/2002 shall cover the facts of the other Appeal No. 3732 of 2002.

C. A. No. 3731 of 2002

Facts in brief are that on 15.4.1988 at about 4.00 p.m. an accident took place at Kharjan Pol of Sahab Pathar, Tingrai, a place between Tinsukia and Digboi in the State of Assam wherein two vehicles, namely, Maruti car bearing registration No. UPI 237 and a bus bearing registration No. ASQ 8446, were involved in a head-on collision. Raj Kumar Dugar, the owner of the Maruti car, died in the accident on the spot. Bidya Dhar Dutta, respondent No. 1, is the owner of the bus and Ajay Baruah, respondent No. 2 herein, was driving the offending bus, when it met with an accident. The bus was insured with the Oriental Insurance Company Limited-respondent No.3. The car of the deceased was not insured as he had purchased it hardly a day or two before the accident. The appellant-Bijoy Kumar Dugar and his wife-Smt. Panna Devi Dugar [now dead] were the original claimants before the Motor Accident Claims Tribunal (hereinafter referred to as 'the MACT'), Tinsukia. They claimed a sum of Rs. 25,00,000/- as compensation from the respondents. The MACT, relying upon the evidence and other material on record, came to the conclusion that the deceased Raj Kumar Dugar and Ajay Baruah, driver-respondent No. 2, both were driving their respective vehicles in a rash and negligent manner and the accident was as a result of their contributory negligence for which the insurer respondent No. 3 was liable to pay half of the amount of compensation, i.e. Rs. 1,76,800/-, to the claimants. It also directed that the amount of compensation as awarded be paid with interest at the rate of 10% per annum from the date of filing of the claim petition till payment.

Aggrieved by the inadequacy of the amount of compensation, the claimants filed MAC Appeal No. 56/2000 before the High Court. The Oriental Insurance Company also challenged the award in Writ Petition (C) No.4418/2000, on the sole ground that the Company is not liable to pay interest

on the compensation amount from 1988 as directed by the MACT. The High Court dismissed the appeal of the claimants for enhancement of the compensation, but allowed the writ petition of the insurer holding the claimants entitled to interest on the award amount only for a period of two years, i.e. from 10.1.1989 to October, 1990 when the Insurance Company appeared and filed its written statement before the MACT. The Award to that extent, accordingly, was modified. Now, the claimants are before this Court in these two appeals assailing the correctness and validity of the judgments and orders dated 19th July, 2001 passed by the High Court. During the pendency of these appeals, claimant Smt. Panna Devi Dugar had died and her legal representatives are proforma respondents herein.

We have heard the learned counsel appearing for both sides at length. Three submissions were advanced by Shri Jos Chiramel, learned counsel for the appellant, to assail the order of the High Court dismissing the claimants' appeal for enhancement of the amount of compensation. First, that the High Court has failed to consider the future prospects of the deceased who was a Science Graduate, prosecuting law studies and at the same time he was earning Rs. 4,000/- per month as an attorney-holder of a petrol pump. According to the learned counsel, Raj Kumar would have earned minimum Rs. 8,000/- to 10,000/- per month, if not more, if he had not died in the accident. In support of this submission, reliance is placed on G.M., Kerala S.R.T.C. Vs. Susamma Thomas (Mrs.) & Ors., reported in [1994] 2 SCC 176 = [1994] ACJ 1, and Sarla Dixit (Smt.) & Anr. Vs. Balwant Yadav & Ors. [1996] 3 SCC 179.

It was next contended that the High Court has erred in accepting the finding of the MACT in apportioning the liability of the deceased and the driver of bus in the ratio of 50:50. It was then contended that the interest at the rate of 10% per annum awarded by the MACT is on the lower side and ought to have been enhanced by the High Court to 18% per annum as claimed by the claimants.

The learned counsel appearing for the contesting respondent on the other hand, has sought to support the orders of the High Court. He submitted that this Court, in exercise of power under Article 136 of the Constitution of India, would ordinarily not interfere with the concurrent findings of facts recorded by the MACT and affirmed by the High Court.

To appreciate the respective contentions of the learned counsel for the parties, we have gone through the relevant material on record. It is by now well-settled that the compensation should be the pecuniary loss to the dependants by the death of a person concerned. While calculating the compensation, annual dependency of the dependants should be determined in terms of the annual loss, according to them, due to the abrupt termination of life. To determine the quantum of compensation, the earnings of the deceased at the time of the accident and the amount, which the deceased was spending for the dependants, are the basic determinative factors. The resultant figure should then be multiplied by a 'multiplier'. The multiplier is applied not for the entire span of life of a person, but it is applied taking into consideration the imponderables in life, immediate availability of the amount to the dependants, the expectancy of the period of dependency of the claimants and so many other factors. Contribution towards the expenses of the family, naturally is in proportion to one's earning capacity. In the present case, the earning of the deceased and consequently the amount which he was spending over the members of his family, i.e. dependency is to

be worked out on the basis of the earnings of the deceased at the time of the accident. The mere assertion of the claimants that the deceased would have earned more than Rs. 8,000/- to Rs.10,000/- per month in the span of his lifetime cannot be accepted as legitimate income unless all the relevant facts are proved by leading cogent and reliable evidence before the MACT. The claimants have to prove that the deceased was in a trade where he would have earned more from time to time or that he had special merits or qualifications or opportunities which would have led to an improvement in his income. There is no evidence produced on record by the claimants regarding future prospects of increase of income in the course of employment or business or profession, as the case may be. It is stated that the deceased was about 24 years at the time of the accident. The MACT has accepted Rs. 4,000/- per month, as the earning of the deceased and after deducting Rs. 400/- per month for his pocket expenses, the remaining sum of Rs. 3600/- has been divided into three equal shares, out of which two shares, i.e. Rs. 2400/- per month or Rs. 28,800/- (wrongly mentioned as Rs. 28,000/- in the award), were assessed as loss to both the claimants, who were the parents of the deceased. The ages of the claimants are stated to be between 45 and 50 years and accordingly multiplier of 12 was applied. Thus, a sum of Rs. 28,800/- X 12 = Rs. 3,45,600/- was awarded as compensation. In addition thereto, a sum of Rs. 2,000/- has been given for funeral expenses and a further amount of Rs. 6,000/- under the head "Loss of Estate". The total sum awardable is Rs. 3,53,600/- but since the deceased was held liable for contributory negligence, the liability of the insurer with whom the bus in question was insured is fixed at 50%, i.e. to the extent of Rs. 1,76,800/- with interest at the rate of 10% per annum from the date of the filing of the claim application till the date of payment. The deceased, a young boy of 24 years old, was unmarried and the claimants were his father and mother, the dependency has to be calculated on the basis that within two or three years the deceased would have married and raised family and the monthly allowance he was giving to his parents would have been cut down. Thus, in our view, the MACT has awarded just and reasonable compensation to the claimants.

We have gone through the ratio of the above decisions relied upon by the claimants in support of the submission for the enhancement of the amount of compensation. In G.M., Kerala SRTC's case (supra), the claimants have satisfactorily proved on record that the deceased person in that case had a more or less stable job in the newspaper establishment of Malayala Manorama on a monthly salary of Rs. 1032/-. On the basis of the evidence found on record in regard to the prospects of the advancement in the future career of the deceased, this Court has made higher estimate of monthly income at Rs. 2,000/- per month as the gross income and granted relief to the claimants.

In Sarla Dixit's case, the widow and minor daughter of Captain Ramakant Dixit who died in the accident filed claim petition before the Motor Accident Claims Tribunal claiming a sum of Rs. 6,12,524/- on various heads. The Claims Tribunal found deceased Ramakant guilty of contributory negligence to the extent of 75% and the truck driver was negligent only to the extent of 25% and awarded in all Rs. 42,569/- to the claimants. On appeal, the High Court held that the claimants were entitled to get total compensation of Rs. 54,000/- and observed that deceased Ramakant was not guilty of any contributory negligence and the entire negligence rested on the shoulder of driver of truck and consequently the owner of the truck was held liable to meet the claim of compensation

awarded to the claimants. Interest at the rate of 6% from the date of filing of the claim petition was awarded. Being aggrieved, the claimants filed Special Leave Petition before this Court against the inadequacy of the compensation granted by the High Court. This Court, after taking into consideration the material facts on record, found that the deceased was the only breadwinner in the family of the claimants. His life was cut short in the prime period at the age of 27 by way of an accident. He had put in seven years' of military service by that time. He was earlier a Lieutenant in the Army. Then he was promoted to the rank of the Captain and was fully qualified for promotion to the rank of a Major at the time of his death. The claimants filed a certificate of Deputy Commandant and OC Tps. to show that the deceased had obtained Sena Seva Service Medal, Sangram Medal, Poorvi Star and 25th Indept. Anniversary Medal during Military active service in various operation areas. The deceased at the time of his death had passed his M.A. examination and he was in the time-scale of Rs. 1000-50-1550. He had a large number of years of military service ahead of him which would have certainly taken him to higher echelons in his military career. The evidence proved that the deceased was a teetotaler and he did not smoke or drink. On the basis of the entire evidence, the claimants were held entitled for the enhancement of the amount of compensation.

In the present case, as noticed, there is no evidence brought on record by the claimants to show the future prospects of the deceased. This contention, in our view, is not tenable to sustain it.

Adverting to the next contention of the claimants, no doubt the High Court has not dealt with the point in issue. However, we have noticed the reasoning and finding of the MACT recorded under Issue No.2. It is the evidence of Rajesh Kumar Gupta-P.W.2 who was travelling in the Maruti car along with the deceased Raj Kumar Dugar on the day of the accident that he also suffered some injuries in the said accident. He stated that while coming from Digboi, the Maruti car being driven by the deceased met with an accident at a place near Kharjan Pol. Before the accident, Raj Kumar Dugar noticed a passenger bus coming from the opposite direction and the movement of the bus was not normal as it was coming in a zigzag manner. The Maruti car being driven by the deceased Raj Kumar Dugar and the offending bus had a head-on collision. The MACT has not accepted the evidence of P.W. 2 to prove that the driver of the offending bus was driving the vehicle in abnormal speed. If the bus was being driven by the driver abnormally in a zigzag manner, as P.W. 2 wanted to believe the Court, it was, but natural, as a prudent man for the deceased to have taken due care and precaution to avoid head-on collision when he had already seen the bus from a long distance coming from the opposite direction. It was head-on collision in which both the vehicles were damaged and unfortunately, Raj Kumar Dugar died on the spot. The MACT, in our view, has rightly observed that had it been the knocking on one side of the car, the negligence or rashness could have been wholly fastened or attributable to the driver of the bus, but when the vehicles had a head-on collision, the drivers of both the vehicles should be held responsible to have contributed equally to the accident. The finding on this issue is a finding of fact and we do not find any cogent and convincing reason to disagree with the well-reasoned order of the MACT on this point. The MACT has awarded interest at the rate of 10% per annum on the amount of compensation from the date of filing of the claim application till the date of payment. It is a discretionary relief granted by the MACT and,

in our view, the discretion exercised by the MACT cannot be said to be inadequate and inappropriate.

For the above said reasons, we find that the amount of compensation awarded by the MACT to the claimants is just and equitable and warrants no further enhancement. We find the pleas raised by the claimants wholly untenable as there is no material on record to sustain them. Hence, the appeal filed by the claimants for enhancement of compensation stands dismissed.

C. A. No. 3732 of 2002

This appeal arises out of the order of the High Court allowing C.W.P. No. 4418/2000 filed by the Oriental Insurance Company Limited against the award of the MACT to the extent of payment of interest. The ground of challenge was that the claim petition was filed by the claimants on 3rd October, 1988 in which the Insurance Company was arrayed as respondent No. 3. The claimants failed to take steps for the service of the respondents when the claim petition was taken by MACT on 6th December, 1988 and further time was given to take the steps. It was on 10th January, 1989 when prayer was made by the insurer to allow it to file the written statement. Ultimately, the written statement was filed in the month of October, 1990. The defence of the Insurance Company was that it was liable to pay interest on the amount of compensation from the period starting from 10th January, 1989 to October, 1990 and not prior to that date as the insurer had put in appearance before the MACT only on 10th January, 1989. The High Court accepted the writ petition of the Insurance Company and quashed the Award of the MACT to the extent that the claimants shall be entitled to interest only for a period of two years, i.e. from the date of the appearance of the Insurance Company on 10th January, 1989 to October, 1990 when it filed the written statement.

Being aggrieved against the said order of the High Court, the claimants have filed this appeal contending that the writ petition of the Insurance Company against the award of interest on the amount of compensation by the MACT was not maintainable when it had not obtained the right to contest the proceedings on merit under Section 170 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act").

As noticed in the earlier part of this judgment, the High Court modified the Award of the MACT to the extent that the Insurance Company is only liable to pay interest at the rate of 10% per annum on the amount of compensation from 10th January, 1989 to October 1990, when it filed written statement to the claim petition and prior to those dates the insurer was not at fault.

It is not in dispute that the right of appeal is a statutory right to the parties and where the law provides a remedy by filing an appeal on limited grounds, the grounds of challenge cannot be enlarged by filing a petition under Articles 226/227 of the Constitution on the premise that the insurer has limited grounds available for challenging the Award given by the MACT. Under Section 173 of the Act, an insurer has a right to file an appeal before the High Court on limited grounds available under Section 149(2). The appeal being a product of the statute it is not open to an insurer to take any plea other than those provided under Section 149(2) of the Act. However, in a situation where there is collusion between the claimant and the insurer or the insured does not contest the claim and further, if the MACT does not implead the Insurance Company to contest the claim, in such a situation it is open to the insurer to seek permission of the MACT to contest the claim on the ground available to the insured or to a person against

whom the claim has been made. If permission is granted and the insurer is allowed to contest the claim on merit, in that case it is open to the insurer to file an appeal against the Award of the MACT on merits. Thus, in such a situation, the insurer can question the quantum of compensation awarded by the MACT. As noticed earlier in the present case, the insurer made a challenge to the Award of the MACT before the High Court in the writ petition on the ground of its liability to pay the interest on the amount of compensation for a specified period without obtaining the permission of the MACT as contemplated under the statute. Thus, in the light of the decision of this Court in *Sadhana Lodh v. National Insurance Co. Ltd. & Another* [2003] 3 SCC 524, dealing with the provisions of Ss. 173 and 149(2) of the Act and the provisions of Articles 226 and 227 of the Constitution and also Section 115 of the Code of Civil Procedure, 1908, this Court held that since the insurer has a remedy by filing an appeal before the High Court on the available defences envisaged under the statute, writ petition under Article 226/227 of the Constitution by an insurer challenging the Award of the MACT is not maintainable.

In our view, the above judgment clinches the issue that the writ petition filed by the Insurance Company was not maintainable against the order of the MACT awarding interest at the rate of 10% per annum on the amount of compensation from the date of the institution of the claim petition till the date of payment. The impugned order, accordingly, is set aside. This appeal is allowed. Consequently, the writ petition is dismissed. The award of the MACT granting compensation to the claimants along with interest is fully justified and it is accordingly maintained. The parties are left to bear their own costs.