

GAHC010012012017



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

Case No. : MACApp./55/2017

MAZNUR ALI
S/O BAHAR ALI, VILL. BHOGPUR, P.O. and P.S. GORESWAR, DIST. BAKSA,
ASSAM, PIN 781366

VERSUS

SMTI JONALI DAS and 8 ORS
W/O HEMANTA DAS, VILL. GURMOW, P.O. and P.S. GORESWAR, DIST.
BAKSA, ASSAM, PIN 781366

2:HEMANTA DAS

S/O LATE KALIRAM DAS
VILL. GURMOW
P.O. and P.S. GORESWAR
DIST. BAKSA
ASSAM
PIN 781366

3:ACHYUT DAS

S/O BHABANI DAS
VILL. GURMOW
P.O. and P.S. GORESWAR
DIST. BAKSA
ASSAM
PIN 781366

4:GOGEN CH. KALITA

S/O SRI KALIRAM KALITA
VILL. LAKRA BARNAGAR

P.O. and P.S. GORESWAR
DIST. BAKSA
ASSAM
PIN 781366

5:MD. MUKUL HASSAN

S/O LATE AMIR ALI
VILL. PIALIKATA
P.O. and P.S. BAIHATA CHARIALI
DIST. KAMRUP R
ASSAM
PIN 781381

6:THE BRANCH MANAGER

ORIENTAL INSURANCE CO. LTD.
CITY DIVISION
OFFICE NO. 1 ML NEHRU ROAD
PANBAZAR
GUWAHATI-781001

7:THE REGIONAL MANAGER

ORIENTAL INSURANCE CO. LTD.
ULUBARI
GUWAHATI-781007

8:THE BRANCH MANAGER

UNITED INDIA INSURANCE CO. LTD. N.T. ROAD
RANGIA
DIST. KAMRUP R
ASSAM
PIN 781354

9:THE REGIONAL MANAGER

UNITED INDIA INSURANCE CO. LTD.
PANBAZAR
GUWAHATI-78100

Advocate for the Petitioner : MR.E HUSSAIN

Advocate for the Respondent : MSP DEKA(R- 1-4)

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Appellant : None appears.

For the Respondents : Mr. R. C. Paul, Advocate,
Ms. C. Mozumdar, Advocate.

Date of Hearing : 04.01.2023

Date of Judgment : 04.01.2023.

JUDGMENT & ORDER (ORAL)

Mr. M. S. Mandal, learned counsel appearing on behalf of Mr. D. A. Kaiyum, learned counsel submits that the client/appellant has taken away the brief from them. Also heard Mr. R. C. Paul, learned counsel for the respondent No. 6 and Ms. C. Mozumdar, learned counsel for the respondent Nos. 8 and 9. None appears for the other respondents though notice has duly been served.

2. The accident took place on 07.03.2014, the claim was awarded on 13.10.2016. This matter is pending in this Court since 2017. Record reflects that no new counsel has been engaged after return of the brief as submitted by the learned counsel. In that view of the matter, this Court shall proceed with the matter on its own merit.
3. The present appeal is preferred against the Judgment and Order dated 13.10.2016, passed in MAC Case No. 854/2014 by the learned Member of MACT, No. 2, Kamrup,(M) at Guwahati.
4. The claimant's case in brief is that on 07.03.2014, at about 05:00 PM, while the deceased, son of the claimant was proceeding towards Goreswar in a motor cycle bearing registration No. AS-01-BD-9587 as pillion rider, the offending Bus bearing registration No. AMP-1823 dashed the motor cycle from behind and as a

result of which, the deceased sustained grievous injury and died on the spot. It is the claim of the claimant that the accident occurred due to rash and negligent driving of the bus.

5. The owner and the driver of the offending vehicle filed their written statement and took a stand that as the motor cycle was duly insured and was driven by a person with a valid driving license and, therefore, the insurance company of the motor cycle is liable to pay the compensation. It was further stand that the Bus was driven by a driver having valid license and that Bus was duly insured with the Insurance Company namely United India Insurance Company Limited, i.e. respondent Nos. 8 and 9. The claimant also laid their evidence.
6. After completion of the trial, the learned Tribunal below held that the offending Bus bearing registration No. AMP-1823 dashed the motor cycle bearing registration No. AS-01-BD-9587 from behind, in which the deceased Lohit Das was travelling as pillion rider and caused death.
7. The learned Tribunal below after perusal of the materials and evidence, came to a conclusion that the Insurance policy of the offending Bus was issued on 12.03.2014 with validity up to 11.03.2015, and the accident occurred on 07.03.2014. Therefore, the said policy does not cover any third party on the date of accident and hence the Insurance Company is not liable to pay.
8. Being aggrieved by such finding, the present appeal has been filed by the owner of the Bus.
9. The basic ground pleaded in the memo of appeal are that:-
 - (i) Two vehicles were involved but the learned Tribunal below did not consider such fact inasmuch as this was a case of composite

negligence and even if, no insurance policy was there then, half of the liability ought to have been fastened on the insurer of the motor cycle.

(ii) The appellant has already paid an amount of Rs. 80,000/- to the claimants on humanitarian ground for assistance and funeral expenses and the same should be deducted from the award.

(iii) It is the further case that even if it is held that the owner is liable to pay, then also the learned Tribunal below has committed serious error by awarding such huge compensation inasmuch as the deceased was a student of Class-VIII and he did not have any monthly income.

10. Mr. R. C. Paul, learned counsel for the respondent No. 6 i.e. the Oriental Insurance Co. Ltd., the insurer of the motor cycle submits that there is no iota of evidence on record to suggest a case of composite negligence inasmuch as it is an established and proved case that the driver of the offending Bus drove the Bus in rash and negligent manner and hit the motor cycle from behind. Therefore, there cannot be any case of composite negligence. Accordingly, the learned Tribunal below has rightly awarded the compensation.

11. This Court has given anxious consideration to the submissions made by the learned counsel for the parties. Also perused the materials available on record including the evidences and the insurance policy.

12. The appellant has not disputed that on the date of the accident, the vehicle was not covered by any insurance policy rather the appellant is trying to project a case of composite negligence as well as on the quantum of the compensation.

13. The materials available on record, nowhere discloses any payment of compensation on its own volition by the owner of the offending vehicle.

Therefore, the contention of the appellant that already an amount of Rs. 80,000/- has been paid is rejected.

14. So far coming to the composite negligence, this Court is in total agreement with the argument of Mr. R. C. Paul, learned counsel for the respondent No. 6, that the motor cycle was dashed from behind. The materials available on record including the deposition of the witnesses clearly establishes that the offending Bus was driven in rash and negligent manner and it dashed the motor cycle from behind and there was no fault on the rider of the motor cycle. Therefore, this Court is of the considered opinion that this is not a case of any composite negligence and the learned Tribunal below has rightly passed the award.
15. This Court also do not find the amount of compensation awarded to be not just compensation inasmuch as in case of death of a minor, though the income may not be ascertained, however, the other considerations such as pain and shock of the parents, frustration, deprivation of love of the deceased children are relevant and in that view of the matter, this Court is of the considered opinion that the compensation awarded by the Tribunal below is equitable, fair and reasonable and the amount determined by the learned Tribunal below cannot be said to be a windfall or bonanza to the claimant.
16. Accordingly, this Court finds no merit in the present appeal and same is dismissed.
17. Parties to bear their own cost. LCR be sent back forthwith to the learned Tribunal below.

JUDGE

Comparing Assistant