

GAHC010051112017



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

Case No. : MACApp./586/2017

SHRIRAM GENERAL INSURANCE COMPANY LIMITED
HAVING ITS CORPORATE AND REGISTERED OFFICE AT E-8 EPIP RIICO
INDUSTRIAL AREA, SITAPURA, JAIPUR RAJASTHAN, INDIA PIN 302022
AND ONE OF THE BRANCH OFFICES AT B.R. ARCADE 3RD FLOOR,
OPPOSITE TO PRIYA PALACE HOTEL 21, JANAPATH, ULUBARI, GUWAHATI
781007, KAMRUP M, ASSAM.

VERSUS

SHRI KHITIN CHANDRA ROY and 5 ORS
S/O LATE TUNI CH. ROY

2:SMTI MINATI BALA ROY
W/O SHRI KHITIN CH. ROY

3:UTPAL ROY
S/O SHRI KHITIN CH. ROY

4:BISHNU ROY
S/O SHRI KHITIN CH. ROY
ALL ARE R/O VILL. DHORARGHAT PART-I
P.O. SAHEBGANJ
P.S. GAURIPUR
DIST. DHUBRI
ASSAM
PIN 783331 RESPONDENT NO. 1 WILL REPRESENT RESPONDENTS NO. 2
TO 4

5:ZAHANGIR ALOM

S/O LATE TOZAMMEL HOQUE
R/O VILL. MADHUSOULMARI PART-II

P.O. and P.S. GAURIPUR
DIST. DHUBRI
ASSAM
PIN 783331

6:ABUL HUSSAIN

S/O LATE MONSUR ALI
R/O VILL. MADHUSOULMARI
P.O. and P.S. GAURIPUR
DIST. DHUBRI
ASSAM
PIN 78333

Advocate for the Petitioner : MR. U K DUTTA

Advocate for the Respondent : MR. A R AGARWALA (R1 to R4)

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

JUDGEMENT AND ORDER

Date : 10-03-2023

Heard Mr. A.J. Saikia, learned counsel for the appellant. Also heard Mr. A.R. Agarwal, learned counsel for the cross-objector/claimants as well as Mr. A.M. Khan, learned counsel for the respondent Nos. 5 and 6.

2. This appeal has been preferred by the appellant/insurance company under Section 173 of Motor Vehicles Act, 1988 against the judgment and order dated 07.03.2017 passed by the Id. Member, MACT, Dhubri in MAC Case No. 88/2015.

3. The brief facts of the case is that on 28.01.2015 at about 7.30 a.m., son of the claimants while travelling in a tractor bearing Regd. No. AS-17B-5189 on the way to Bousmari village, due to rash and negligent driving of the vehicle, son of the claimants fell down from tractor as a result of which, the offending vehicle had run over his body and he sustained grievous injuries on his person and subsequently died on the spot.

4. The factum of the accident has not been challenged in this case. The insurance company is on appeal on the ground that the victim was travelling in the vehicle as gratuitous passenger as the vehicle was a tractor which has seating capacity of only one person i.e. the driver. Hence, Insurance Company is not liable to pay any compensation.

5. The learned counsel for the appellant has submitted that the claimant's side did not adduce any evidence from the owner of the vehicle to prove that the victim was engaged as a labour of the said tractor. It is also submitted that the seating capacity of the tractor was only one i.e. the driver. The exhibited policy amply proves that no premium was paid by the owner covering any risks of the victim. The learned trial court had erred in fastening liability to the insurance company in absence of any risks of the victim being covered in the exhibited policy in question.

6. It is further submitted by the learned counsel for the appellant that the learned trial court had erred in taking age of the victim for selection of multiplier in place of age of the parents. The learned trial court had erred in adding amount for loss of future prospect in this case. It is also submitted that there is no valid and effective driving licence of the driver of the involved tractor and hence, the appellant should not have been saddled with any liability. Hence, the impugned judgment and order is liable to be set aside.

7. On the other hand, the claimants/respondents have also filed cross-objection wherein, it is stated that the deceased was not a gratuitous passenger or unauthorized traveller in the vehicle and he was travelling as a labourer in the alleged tractor from which he fell down and run over by the said tractor and died on the spot. He was a third party only and not a gratuitous passenger as alleged by the appellant/insurance company.

8. It is further submitted by the learned counsel for the claimants/respondents that the learned tribunal has considered the monthly income of the deceased only Rs.3,000/-, though the proved monthly income of the deceased was Rs.9,000/- at the time of the accident vide exhibit 12. The future prospect, which was also not considered by the learned tribunal while

calculating the quantum of compensation.

9. The learned counsel for the claimants/respondents has also submitted that the learned tribunal has not awarded any compensation towards filial consortium, parental consortium, loss of estate and funeral expenses.

10. In support of his submissions, learned counsel for the claimants/respondents has placed reliance on the following case laws-

(i) 2019(3) R.C.R.(Civil) 303 (Union of India vs Tikka Rajinder Prakash Bedi and Ors.)

(ii) 1992(46) DLT 364 (Union of India vs Jhutter Singh)

(iii) 2011(3) CivCC 796 (State of Maharashtra vs Kalu Ladku Mhatre)

(iv) 2018(2) T.A.C. 307 (M.P.) (National Insurance Company Ltd. vs Mukandi and Ors.)

11. I have considered the submissions made by the learned counsel for the parties. I have also perused the judgment of the tribunal as well as documents available in the record.

12. Admittedly, the deceased was travelling in a tractor at the relevant time of alleged accident. P.W.2 is the eye witness to the accident. According to him, he had seen the accident and had stated that the deceased was travelling in the offending vehicle as a labour. The said vehicle was carrying bricks from one brick factory of village Dhorarghat Part-I to another IBP brick factory. After unloading the bricks, at the time of returning, the accident occurred as the driver of the vehicle was driven in a rash and negligent manner, as a result of which, the deceased fell down from the tractor and died on the spot.

13. As per registration certificate of the offending vehicle vide Ext. 8, the seating capacity of the offending vehicle is one including driver which implies that the vehicle has the capacity

to carry only one person, not more than that. As per insurance policy, the owner of the offending vehicle has not paid any premium for labour. The insurance policy was exhibited vide Ext.10 from which it reveals that premium was paid for owner/driver Rs.100/- and for paid driver Rs.50/-. It transpires that no premium for labour was paid by the owner of the said vehicle.

14. To prove the fact that the deceased was a labour at the relevant time of accident who was travelling on that day in the alleged offending vehicle, the owner did not appear before the learned tribunal and no written statement was submitted to contest the case and the case was proceeded ex-parte accordingly.

15. It is an admitted fact that the deceased was travelling in offending tractor at the relevant time of accident. Law with respect to such proposition is well settled.

16. It is held by Hon'ble Supreme Court in the case of *Susheelabai and Ors. vs Basavaraj and Anr.* reported in *2012 AIR SC(Civil) 115*, that in any event the tractor being a vehicle with one seat, nobody else apart from the driver thereof could travel in the tractor.

17. It is held by Hon'ble Punjab and Haryana High Court in the case of *United India Insurance Company Ltd. vs Ramji Lal and Ors.* reported in *2010 (4) PLR 436*, that the person sitting on the mudguard of the tractor is an unauthorized passenger and his claim is not covered under Section 147(1) as such, principle of pay and recovery under Section 149(5) is not applicable.

18. It is further held by Hon'ble Punjab and Haryana High Court in the case of *Smt. Chameli Devi and Ors. vs Mukesh @ Kalu & Ors.* reported in *2014(3) RCR(Civil) 1029*, that the tractor was not meant for passengers. Claim is maintainable against driver and owner but not against the insurance company.

19. As it appears that the seating capacity of the alleged vehicle is only one i.e. the driver

as such, it transpires that the deceased was travelling in the tractor as a gratuitous passenger. Hence, the insurance company is not liable to pay any compensation. However, the owner of the offending vehicle is liable to pay the entire compensation.

20. In the instant case, as the claimants have failed to prove the income of the deceased by producing any documents or by adducing any evidence, the income of the deceased be considered as Rs.7,200/- as unskilled labour, vide Government of Assam notification No.GLR.503/81/Pt-/38 dated 03.11.2015.

21. From the post mortem examination report and school leaving certificate vide Ext. Nos. 7 and 11, it reveals that the age of the deceased was around 18 years at the time of accident and the learned tribunal also has considered the age of the deceased as 18 years, which has not been agitated by the appellant/insurance company. Hence, as per the case of **Sarla Verma Vs. DTC**, (supra), the multiplier would be 18.

22. In the case of **National Insurance Company Ltd. v. Pranay Sethi and Ors.** reported in **SLP (Civil) No. 25590/2014**, it was observed that while determining the income of the deceased in case of self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40-50 years and 10% where the deceased was between the age of 50-60 years should be regarded as the necessary method of computation.

23. In the instant case, it appears that the deceased was around 18 years of age at the time of the accident. As such, 40% should be added with his established income of Rs.7,200/-. Hence, monthly income of the deceased is considered as Rs.7,200/-+Rs.2,880/- (40%)=Rs.10,080/-

24. In the present case, it appears that the deceased was a bachelor as such, the standardized deduction towards personal and living expenses of the deceased is applicable as stated in the case of *Sarla Verma (supra)*. Considering the aforesaid mandate in the instant

case, 50% of the income of the deceased is required to be deducted with a presumption that had the deceased been alive, he could have spent 50% for his personal and living expenses.

25. As per ***SLP(Civil) No. 25590 of 2014 (National Insurance Co. Ltd. Vs- Pranay Shethi & Ors.)*** the Hon'ble Supreme Court has fixed compensation in case of death reasonable figures on conventional heads namely- Loss of estate and funeral expenses should be Rs. 15,000/- and Rs.15,000/-respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.

26. In the case of ***Magma General Insurance Co. Ltd. Vs. Nanu Ram (2018) ACJ 2782***) Hon'ble Supreme Court has held that the Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of filial consortium.

27. In the said case, Hon'ble Supreme court awarded a sum of Rs. 40,000/- each towards loss of filial consortium to the father and sister of the deceased. In view of the judgment of Hon'ble Supreme Court, in this case also the mother is entitled for filial consortium.

28. Regarding interest, since interest @9% per annum was awarded by the Apex Court in *Municipal Corporation of Delhi –vs- Association of Victims of Uphaar Tragedy, 2012 ACJ48(SC)*, it is held that the claimants shall be entitled to the interest at the rate of 9% per annum.

29. In view of the above discussion, the computation of compensation is awarded as follows-

(a) Annual income of the deceased=Rs.10,080/-X12=Rs.1,20,960/-

(b) After deducting 50% of the income of the deceased, the amount comes to
=Rs.60,480/-

(c) After multiplying with multiplier, the amount

comes to =Rs.60,480/-X18=Rs.10,88,640/-

(d) Funeral expenses=Rs.16,500/-

(e) Filial Consortium= Rs.40,000/-

(f) Loss of Estate= Rs.16,500/-

Total = Rs.11,61,640/- (Rupees Eleven Lakh Sixty One Thousand Six Hundred and Forty) only.

30. In the result, the appeal is allowed. The compensation and award is modified as described above. The owner of the offending vehicle Zahangir Alom S/o Lt. Tozammel Hoque is directed to pay Rs. 11,61,640/- to the respondents/claimants. The compensation so awarded shall carry an interest @9% per annum from the date of filing of the case till full and final realization.

31. The insurance company is at liberty to recover the amount if paid earlier in due process of law.

32. Statutory amount in deposit be refunded to the Insurance Company.

JUDGE

Comparing Assistant