

GAHC010233902019



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

Case No. : MACApp./240/2021

UNITED INDIA INSURANCE COMPANY LIMITED
HAVING ITS REGD. OFFICE AT 24, WHITES ROAD, CHENNAI-600014 REP.
BY ITS REGIONAL OFFICE, G.S. ROAD, GUWAHATI-05

VERSUS

SMTI. ANITA MEDHI AND 5 ORS
W/O. LT. NITUL MEDHI, R/O. VILL. AND P.O. BHUTANTA MAHITARA, P.S.
PATACHARKUCHI, DIST. BARPETA, ASSAM, PIN-781325.

2:PRATIMA MEDHI
W/O. LT. KSHITISH MEDHI
R/O. VILL. AND P.O. BHUTANTA MAHITARA
P.S. PATACHARKUCHI
DIST. BARPETA
ASSAM
PIN-781325.

3:JUBLEE MEDHI
D/O. LT. NITUL MEDHI
R/O. VILL. AND P.O. BHUTANTA MAHITARA
P.S. PATACHARKUCHI
DIST. BARPETA
ASSAM
PIN-781325. BEING MINOR REP. BY HER MOTHER
RESPONDENT NO. 1.

4:MASTER AKASH MECHE
S/O. LT. NITUL MEDHI
R/O. VILL. AND P.O. BHUTANTA MAHITARA
P.S. PATACHARKUCHI
DIST. BARPETA

ASSAM
PIN-781325.BEING MINOR REP. BY HIS MOTHER
RESPONDENT NO. 1

Advocate for the Petitioner : MR. H. BURAGOHAIN

Advocate for the Respondent : MR. S. DUTTA
: MR. A. UPAMANYU

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (CAV)

Date : 30-06-2023

Heard Mr. H. Buragohain, the learned counsel appearing on behalf of the Appellant and Mr. S. Dutta, the learned Senior counsel assisted by Mr. A. Upamanyu, the learned counsel appearing on behalf of the Respondents.

2. The instant appeal is directed against the judgment and award dated 15.05.2019 passed in MAC Case No.168/2017.

3. The primary grounds of objection on which the instant appeal has been based is on two grounds.

(I) The learned Tribunal erred in law as well as on facts in coming to a finding that the death of Late Nitul Medhi was on account of the rash and negligent manner of riding of the motor cycle bearing Registration No.AS-15/E-4251 inasmuch as the learned Trial Court did not appreciate the Exhibit-B to Exhibit-F which would show that the deceased met with an accident while riding his own motor cycle.

(II) The learned Tribunal while computing the just and reasonable

compensation had failed to take into account that the income of the deceased was an income derived from a partnership business which continued after the death of the deceased and as such, the Claimants continued to earn benefits from the said business which was not taken into consideration by the learned Tribunal.

4. In the backdrop of the above grounds of objections, let this Court take note of the relevant facts of the case. It was the case of the Claimants that on the evening of 16.02.2017, the deceased Late Nitul Medhi was proceeding on foot towards his residence from Pathsala through the N.H. No.152 and when the deceased reached a place called Halgirighat, a motor cycle bearing Registration No.AS-15/E-4251 hit/struck the deceased which led to critical/serious injuries being suffered by Late Nitul Medhi who ultimately succumbed to his injuries after 5 (five) days of treatment i.e. on 21.02.2017 at the GNRC Hospital, Guwahati. In view of the said accident followed by the death of Late Nitul Medhi the said claim proceedings being MAC Case No.168/2017 was filed.

5. The Opposite Party No.1 in the said proceedings who was the owner of the registered motor cycle bearing Registration No.AS-15/E-4251 filed a written statement. In the said written statement, there was no denial that the motor cycle bearing Registration No.AS-15/E-4251 had not caused the accident. It was stated that the O.P. No.2 who had a valid driving license was riding the offending motor cycle in question. It was however denied that there was any rash and negligent driving by the driver/owner of the offending motor cycle in question. In the said written statement, it was stated that the offending motor cycle was duly insured with United India

Insurance Company Ltd. vide Policy No. 1306833116P107835491 for the period from 15.09.2016 to 14.09.2017 and the accident occurred on 16.02.2017.

6. The O.P. No.2 had also filed a written statement. It was denied that there was rash and negligent driving of the offending motor cycle by the O.P. No.2. There was no denial of the accident being caused by the offending motor cycle. It was however stated that the O.P. No.2 had a valid driving license and the vehicle in question was duly insured with United India Insurance Company Ltd.

7. The O.P. No.3 i.e. the United India Insurance Company Ltd. i.e. the Appellant herein filed a written statement denying that on 16.02.2017 at 6:05 PM, the deceased Late Nitul Medhi sustained injury in a vehicular accident near village Bhutanta Mahitara on 152 No. National Highway and he succumbed to his injuries on 21.02.2017 at 7 AM. A further perusal of the said written statement shows that the usual defences were taken to the effect thereby denying the age of the victim, the occupation of the victim, the expenditure incurred by the claimants for treating the victim. It is pertinent herein to mention that in the said written statement, there was no statement or allegation made that the alleged accident had occurred with the involvement of a motor cycle bearing Registration No.AS-15/J-8832 ridden by the deceased himself.

8. Be that as it may, the learned Tribunal on the basis of the pleadings framed as many as 4 (four) issues which are reproduced hereinunder:

“1. Whether the alleged motor accident had taken place on 16-02-2017 at about 06.05 p.m. at Halgirighat on 152 No. N.H. Way due to the rash and

negligent driving on the part of the Driver of the vehicle bearing Regn. No. AS-15/E-4251 (Motor Cycle) and in consequence of that Nitul Medhi had died ?

2. Whether the vehicle bearing Regn. No. AS-15/E-4251 (Motor Cycle) was duly insured with the opposite party No. 3 i.e. M/S United India Ins. Co Ltd. under a valid insurance policy at the relevant time of accident?

3. Whether the claimant is entitled to get compensation, if so, to what extent and by whom payable?

4. To what other relief/reliefs the claimant is entitled to in law and equity?"

9. The record further reveals that on behalf of the claimant, there were 3 (three) witnesses who adduced evidence and various documents were exhibited. On behalf of the Opposite Party No.3, the Investigator so appointed by the Divisional Manager, United India Insurance Company Ltd. had adduced evidence. This Court finds it relevant at this stage to refer to the evidence adduced by the parties. The Claimant Witness No.1 was the wife of the deceased. Apart from stating about the accident, it was further mentioned that her husband was a joint proprietor of M/S Santi Drug Distributors with another partner Shri. Arup Patgiri under License No.BPT/13607 dated 12.07.2010. It was mentioned that her husband had passed D. Pharma course from DR. H. L. Thimme Gowda College of Pharmacy, Bangalore in the year 2005. She exhibited the Accident Information Report in Form 54 – Exhibit-1, the certified copy of the F.I.R. – Exhibit-2; Certified copy of the Post-mortem report – Exhibit-3; Voter ID Card of the deceased – Exhibit-4, PAN Card of the deceased – Exhibit-5, License of Santi Drug Distributors – Exhibit-10, D. Pharma Course pass certificate of the deceased – Exhibit-11, Medical certification of death issued

by GNRC – Exhibit-13, medical prescription and reference to GNRC from Satish Sarma Memorial Hospital, Pathsala – Exhibit-14; medical prescriptions, medical examination reports, cash memos as Exhibit- 15 to 17; Income Tax Return for the Assessment year 2017-2018 and Financial year 2016-2017 as Exhibit-18; Tax Audit Report – Exhibit-19 as well as PAN Card of Santi Drug Distributors as Exhibit-20.

10. During her cross-examination, a specific question was put to her to the effect that her husband was not returning home on foot but he was returning by riding his Bullet Royal Enfield Bike bearing Registration No.AS-15/J-8832 which was specifically denied.

11. The Claimant Witness No.2 was Shri. Arup Patgiri, the Joint Proprietor of M/S Santi Drug Distributors. There was no question put to him relating to the joint proprietorship firm Santi Drug Distributors after the death of Late Nitul Medhi by the O.P. No.3. However, the Tribunal had put a question to him during the time of cross-examination as regards the validity of the license which he stated that the license was valid till 11.07.2015 and at the time of the death of his partner Late Nitul Medhi, the process of renewal of license was going on. He further stated that after the death of his partner, he had applied for fresh license and the same is yet to be issued. Further to that, he also stated that he entered into a fresh deed of partnership with the deceased partner's wife Smti. Anita Medhi. It is relevant to take note of that the cross-examination of the CW-2 was on 15.11.2018 but there was no evidence on record that a license was obtained pursuant to its expiry on 11.07.2015.

12. The CW-3 was a partner of Manish K. Sethi & Co. Chartered

Accountants who gave evidence pertaining to the balance sheet, audit report, and the net profit of M/S Santi Drug Distributors. Nothing substantial could be culled out by the Opposite Party No.3 during the said cross examination.

13. The Opposite Party No.3 adduced evidence through the Defence Witness No.1 who has already stated hereinabove was the Investigator. A totally new case was made out in the evidence of the Investigator which was not a part of the written statement filed by the Opposite Party No.3. The said Defence Witness stated that on 16.02.2017 at about 6 PM Late Nitul Medhi while coming from Pathsala towards his home by riding his Royal Enfield motor cycle bearing Registration No.AS-15/J-8832, suddenly the motor cycle dashed against a cow at Halgirighat in front of the house of Dhiraj Kalita. As a result of the accident, the claimant's husband sustained grievous injury and he was immediately taken to Satish Sarma Memorial Nursing Home wherefrom he was shifted to GNRCH, Guwahati on 21.02.2017 at about 7 AM where Late Nitul Medhi succumbed to his injuries. The said Investigator – Defence Witness No.1 had based his information from a Facebook update of Dhiraj Kalita who had posted on 19.02.2017 at 9:55 PM as "My best friend Nitul Medhi very critical condition in GNRCH ICU for his Bike accident on 16.02.2017 at evening. Please pray for his recovery". It was further stated in his evidence that after the said update, one woman namely Anamika Dutta had put a question to the said Facebook post to know as to how the accident happened and in reply the said Dhiraj Kalita stated as "Gharalai gai thakote tar nijar bike t garu agot paricil". To his evidence, he had exhibited screenshot of the profile picture of Dhiraj Kalita as Exhibit-B, Screenshot of update dated 19.02.2017 of Dhiraj Kalita as Exhibit-C,

Screenshot of reply of Dhiraj Kalita as Exhibit- D(1) and D(2), Screenshot of profile picture of Anamika Dutta as Exhibit-E, Screenshot of update dated 21.02.2017 of Dhiraj Kalita as Exhibit-F and other documents. It is pertinent herein to mention that neither Dhiraj Kalita was examined as a witness nor there is any certificate in terms with Section 65(B) of the Indian Evidence Act, 1872 in support of Exhibits- B, C, D, E and F on the basis of which the DW-1 had adduced evidence.

14. During his cross-examination, the DW-1 had stated that the registration number of the motor cycle ridden by the deceased on the day of the accident has not been mentioned in the conversation/chat/comments in the Facebook account of Dhiraj Kalita, the screenshot of which have been exhibited by him. He stated that he collected the motor cycle number of the deceased from his wife i.e. the Claimant Witness No.1 subsequently. He further admitted that when he examined the owner of the motor cycle bearing Registration No.AS-15/E-4251, the owner of the said motor cycle had stated that the alleged accident has been caused by his motorcycle. He further admitted that while conducting the investigation, he did not find any entry in the General Diary regarding the alleged accident with the involvement of the motor cycle bearing Registration No.AS-15/J-8832 at Baghmara Out Post. He also admitted that he came to learn during investigation that the police had filed Charge sheet against the rider of the motor cycle bearing Registration No.AS-15/E-4251.

15. On the basis of the above materials and evidence, the learned Tribunal vide a judgment and award dated 15.05.2019 held that the accident occurred due to the rash and negligent manner of riding of the offending

motor cycle bearing Registration No.AS-15/E-4251 by the O.P. No.2. On the question of just and reasonable compensation, the learned Tribunal came to a finding that the amount of Rs.67,65,448/- (Rupees sixty seven lakh sixty five thousand four hundred forty eight) would be just and reasonable compensation payable to the Claimants and further directed that the said amount shall carry interest @9% per annum with effect from the date of filing of the claim petition till its realization. The learned Tribunal further held that out of the total amount of compensation, an amount of Rs.15,00,000/- (Rupees Fifteen Lakh) each shall remain invested in the fixed deposit in favour of the wife (Claimant No.1) and mother (Claimant No.2) and an amount of Rs.18,00,000/- (Rupees Eighteen Lakh) each shall remain invested in favour of the minor daughter (Claimant No.3) and minor son (Claimant No.4) respectively. It was further mentioned that the said fixed deposits shall be initially made for a period of 5 years and then reinvested for another 5 years in favour of the claimants in a Nationalized Bank and in respect of the minor son and minor daughter, the same shall remain invested until they attain the age of majority or maturity of the period of investment whichever is later. Further to that, it was mentioned that the accrued interest on the fixed deposit shall be paid to the Claimant Nos. 1, 2, 3 and 4 in their respective savings bank account maintained in the Bank. It was further provided that in case of extreme necessity, the claimants shall be entitled to en cash the fixed deposits on obtaining necessary permission from the Tribunal.

16. As already stated hereinabove, the grounds of objections were two folds. Let this Court therefore take into account on the basis of the materials available on record and the pleadings as regards the sustainability of the two

grounds of objection. The first ground of objection pertains as to whether the learned Tribunal was justified in coming to a finding that the accident occurred due to rash and negligent driving of the O.P. No.2 through the offending vehicle bearing Registration No.AS-15/E-4251. From the written statement, so filed by the O.P. Nos. 1 and 2, they have duly admitted the factum of the accident being caused by the motor cycle bearing Registration No.AS-15/E-4251. The Accident Information Report – Exhibit-1, FIR dated 20.03.2017 – Exhibit-2 and the admission of the Investigator during his cross-examination that the police had filed charge sheet against the rider of the motor cycle bearing Registration No.AS-15/E-4251 clearly shows that the accident occurred with the offending motor cycle bearing Registration No.AS-15/E-4251. On the other hand, there was nothing in the written statement filed by the Appellant/O.P. No.3 that the accident occurred on account of the deceased riding his motor cycle. However, in his evidence on affidavit, the DW-1 had made out a case on the basis of certain Facebook posts given by one Dhiraj Kalita. In the opinion of this Court those Facebook posts being Exhibit-B to Exhibit-F were not at all admissible in evidence as the same were alleged printouts and was not supported by a certificate required under Section 65(B) of the Indian Evidence Act, 1872. Further to that, the said Dhiraj Kalita on the basis of whose Facebook post, the evidence was given by the Investigator was also not examined as witness before the Tribunal. Under such circumstances, the case sought to be projected by the O.P. No.3/Appellant herein that the accident did not occur on account of motor cycle bearing Registration No.AS-15/E-4251 is misconceived and could not be proved. Under such circumstances, this Court is of the opinion that the learned Tribunal had rightly decided the said issue that the accident occurred

due to the rash and negligent riding of the offending motor cycle bearing Registration No.AS-15/E-4251.

17. Now, coming to the second ground of objection which pertains to that the award passed by the learned Tribunal to the effect that the award passed was not a just and reasonable compensation inasmuch as the income which the claimants derived from the business of M/S Santi Drug Distributors was not taken into consideration. It is relevant to take note of that the basis of the said ground of objection is on account of the statement made by the partner of the deceased i.e. CW-2 that pursuant to the death of the deceased, he had entered into a fresh deed of partnership with the deceased partner's wife. But the fact remains that the license upon which the pharmacy business was carried out was only valid upto 11.07.2015 and at the time when Late Nitul Medhi expired, the process of renewal of the said license was going on. The said cross-examination was done on 15.11.2018 but there was nothing brought on record or even asked as to whether a fresh license was obtained or renewed pursuant thereto. It is further relevant to take note of that Late Nitul Medhi was a D. Pharma, the qualification of which is necessary for the purpose of having a valid license. The Claimants however do not have that qualification and as such, the question of proceeding with the pharmacy business by the Claimants after the death of Late Nitul Medhi would not be possible. This Court therefore is of the opinion that the learned Tribunal had therefore rightly computed the just and reasonable compensation on the basis of the materials available on record as well as by taking into account the principles of law as well settled by various judgments of the Supreme Court. Accordingly, this Court is of the opinion that there arises no question of interference with the impugned

judgment and award dated 15.05.2019. Hence the Appeal fails for which the same is dismissed.

18. Before parting with the records, this Court further finds it relevant to take note of that at the time of admission of the instant appeal, this Court had stayed the impugned judgment and award dated 15.05.2019 subject to deposit of 50% of the awarded amount by the Appellant Insurance Company. Pursuant to the said order, an amount of Rs.33,82,724/- was deposited on 11.03.2022 and the said have also been released to the Respondent Claimants in equal proportions as could be seen from the order dated 24.05.2022 passed by the Registrar General of this Court. This Court further during the course of hearing had also heard on the issue pertaining to the remaining amount to be paid and as to how the interest of the Claimants could be protected more particularly the minor children. This Court further asked both the counsels appearing for the Appellant as well as the Respondent - Claimants to submit a detail calculation as to how much amount would now be further payable to the Claimants if the appeal is dismissed. The counsels for the Appellant and the Respondent Claimants had jointly placed a calculation sheet signed by the counsels. The said calculation sheet is kept on record and marked with the letter "X". From the said calculation sheet, it appears that the Claimants would be further entitled to an amount of Rs.65,66,172/- (Rupees sixty five lakh sixty six thousand one hundred and seventy two only). This Court therefore taking into account that the claimants have already received an amount of Rs.33,82,724/- (Rupees thirty three lakh eighty two thousand seven hundred and twenty four only) in the year 2022 and the future of the Claimants are required to be protected more particularly to the minor children, directs the Appellant

Insurance Company to deposit the amount of Rs.65,66,172/- (Rupees sixty five lakh sixty six thousand one hundred and seventy two only) before the learned Tribunal within 6 (six) weeks from today.

19. Upon deposit of the said amount, the learned Tribunal i.e. the Court of the Member, MACT, Barpeta shall invest an amount of Rs.14,83,068/- (Rupees fourteen lakh eighty three thousand sixty eight only) each in the fixed deposits in favour of the Claimant No. 1 and Claimant No.2. Further to that, an amount of Rs.18,00,000/- (Rupees eighteen lakh only) each shall be invested in favour of the minor daughter i.e. the Claimant No.3 and the minor son i.e. the Claimant No.4 in fixed deposit. The said fixed deposits shall made in Nationalised Bank for initial period of 5 years in respect to the Claimant Nos. 1, 2 and 3. As regards the Claimant No.4, the fixed deposit shall remain invested till he attains majority. The interest so accrued on the said fixed deposits shall be paid to the Claimant Nos. 1, 2, 3 and 4 every month in their respective savings bank account maintained in the bank. It is also provided that in case of extreme necessity, the Claimants shall be entitled to en cash the fixed deposit on obtaining the necessary permission from the learned Tribunal.

JUDGE

Comparing Assistant