

GAHC030003912020



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

MAC.App. No. 6 of 2020

Appellant:

1. Shri. Beiphakhu
R/o Serkawr, Siaha District, Mizoram.

By Advocates :

Mr. A.R. Malhotra
Ms. Mary Lalawmpuii
Mr. C. Tlanthianghlina
Ms. Abigail Hmingthanpari

– ***Versus*** –

Respondents :

1. Shri. A.Z. Mosa
R/o Serkawr, Mizoram

2. Struck off

3. The New Assu. Co. Ltd

By Advocates :

Mr. Lalfakawma
Mr. T. Lalzekima
Ms. Annie Lalenkawli

:::B E F O R E:::

HON'BLE MR. JUSTICE NELSON SAILO

Date of Hearing : 26.09.2023

Date of Judgment : 03.10.2023

JUDGMENT & ORDER (CAV)

Heard Mr. C. Tlanthianghlina, learned counsel for the appellant and Mr. Lalfakawma, learned counsel for the respondent No. 3. None appears for the respondent No. 1. As for the respondent No. 2, his name was struck off as he was the driver of the accident vehicle, who died in the accident. By filing this appeal under Section 173 of the Motor Vehicles Act, 1988 (M.V. Act), the appellant who was also the claimant before the Tribunal has challenged the Judgment & Award dated 12.10.2020 passed by the learned Tribunal in MACT Case No. 66/2017, dismissing the claim of the appellant for compensation under Section 166 of the MV, Act.

[2.] Brief facts of the case is that on 28.10.2015 at 11 P.M, a Bolero Pick-Up bearing registration No. MZ 03-5166 owned by the

respondent No. 1 and driven by the respondent No. 2 met with an accident between Kawlchaw to Serkawr village. There were two (2) occupants in the vehicle i.e., the respondent No. 2 the driver and Sh. H. Khochhua, who is the paternal uncle of the instant appellant and because of the accident, they both died on the spot. The vehicle had rolled down from the main road into the gorge which was about 300 meters below the road. According to the appellant, the deceased Sh. Khochhua was a Carpenter by profession and was earning a monthly income of Rs. 18,200/-. The appellant being the nephew of the deceased was dependent upon the income of the deceased. As such, a claim was made under Section 166 of the MV Act. According to the appellant, all the documents of the accident vehicle were in order.

[3.] The appellant in support of his claim examined two (2) claimant witnesses before the learned Tribunal i.e., himself and the Police Officer who prepared the Police Verification Report. Against the claim, the respondent Nos. 1 and 3 as opposite parties before the Tribunal filed their written statement. The learned Tribunal upon considering the claim and hearing the parties dismissed the

claim vide Judgment & Award dated 12.10.2020. Aggrieved, the claimant has filed the instant appeal.

[4.] Mr. C. Tlanthianghlma, learned counsel for the appellant submits that the grounds of challenge of the impugned Judgment & Award are three (3) fold. Firstly, all the documents submitted by the appellant i.e., the Driving License of the driver who drove the accident vehicle, the Insurance Policy, the vehicle registration etc., are valid. The appellant had also exhibited the Police Verification Report which clearly stated that the cause of the accident was due to slippery road. He submits that since the road was slippery, the driver of the accident vehicle ought to have been careful in driving the said vehicle. It was only due to his negligence that the accident had occurred leading to the death of the occupants of the vehicle. Secondly, the learned counsel submits that the vehicle which met with an accident was a hired vehicle, hired by the deceased Sh. H. Khochhua. Therefore, the claim under Section 166 of the MV Act made by the appellant who is the dependent of the deceased person is maintainable. Thirdly, the learned counsel submits that from the Police Verification Report, it is clearly

established that the accident occurred on 28.10.2015 at 11 PM and the cause of the accident was due to slippery road. As such, the doctrine of *res ipsa loquitur* is applicable to the present case and the learned Tribunal committed an error in dismissing the claim of the appellant. The learned counsel therefore submits that the impugned Judgment & Award should be set aside and the matter remanded back to the Tribunal for fresh consideration. The learned counsel in support of his submission relies upon the following authorities:-

(1) *Bimla Devi & Ors. -Vs- Himachal Road Transport Corporation & Ors. (2009) 13 SCC 530.*

(2) *Special Secy. Govt. of Nagaland & Anr. -Vs- Ladsie & Ors. 2006 (2) GLT 555.*

[5.] Mr. Lalfakawma, learned counsel for the respondent No. 3 on the other hand submits that a similar claim although under Section 163A of the MV, Act for the same accident and for the death of Sh. Khochhua was made by his sister by filing MACT Case No. 73/2017. The learned Tribunal vide Judgment & Award dated 12.10.2020 awarded Rs. 5.5 lakhs to the claimant therein. Against

the said Judgment & Award, the instant appellant has not filed any appeal claiming that the Award should have been made in his favor instead or the Award ought should have been apportioned between him and the sister of the deceased. He submits that the same having not been done, the instant appeal is not maintainable. The learned counsel also submits that in view of Article 20 of the Constitution of India, only one (1) claim can be entertained on behalf of a person who met with an accident.

[6.] The learned counsel further submits that in support of his claim, the appellant examined two (2) claimant witnesses i.e., himself and the Police Officer, who submitted the Police Verification Report. He submits that nowhere in the Police Verification Report had the Police Officer concerned said that there was negligence on the part of the driver who drove the accident vehicle. Similarly, nowhere in his deposition before the Tribunal had he said that there was negligence on the part of the driver of the accident vehicle. As such, the negligence having not been proved or established by the appellant, the claim was rightly dismissed by the learned Tribunal. The learned counsel therefore

submits that under the facts and circumstances, there is no merit in the appeal and the same should be dismissed.

[7.] I have heard the submissions made by the rival parties and I have perused the materials available on record. Facts broadly not disputed is that on 28.10.2015 at 11 PM, a Bolero Pickup bearing registration No. MZ 03-5166 owned by the respondent No. 1 and driven by the respondent No. 2 met with an accident between Kawlchaw to Serkawr village and the two (2) occupants of the vehicle i.e., the driver and Sh. H. Khochhua died on the spot. As a result of the accident, the appellant claiming to be the nephew of the deceased filed MACT Case No. 66/2017 under Section 166 of the MV, Act. However, the Tribunal was of the view that the appellant failed to establish negligence or fault on the part of the driver or the owner of the vehicle and dismissed the claim. It is an admitted position of law that a claim for compensation under Section 166 of the MV, Act is on fault basis and that the claimant is required to establish that there was fault on the part of the driver of the accident vehicle or the owner of the vehicle and for which, they are liable to pay compensation to the person injured or to the

dependent of the deceased as the case may be.

[8.] In the present case, the appellant in order to establish fault on the part of the driver of the accident vehicle exhibited the Police Verification Report which states that the cause of the accident seems to be due to the slippery road. The author of the Police Verification Report was also examined by the appellant as claimant witness No. 2. From a perusal of the Police Verification Report as well as the deposition of the claimant witness No. 2, it has nowhere been mentioned that the accident was attributable to the rash and negligent driving on the part of the driver who drove the vehicle. In so far as the documents of the vehicle are concerned, there is no dispute that they are order. However, as already stated, there is no mention about there being negligence on the part of the driver of the accident vehicle. Yet, the learned counsel for the appellant submits that in view of the road being slippery, the driver ought to have been more careful in driving the vehicle. The same in the considered view of this Court cannot be the basis to draw a conclusion that the driver drove the vehicle in a rash and negligent manner. The Police Verification Report does

not say that from the tyre marks of the vehicle or from the spot verification, it could be gathered that the vehicle was driven recklessly.

[9.] The learned counsel for the appellant has relied upon the case of *Bimla Devi & Ors.* (supra) to contend that a claimant invoking Section 166 of the MV, Act for compensation has to merely establish his case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt cannot be applied. However, in the given facts of that case, it may be seen that the specific evidence of PW-3 was that the driver of the bus concerned while reversing the bus in backward direction did not blow horn or give instruction to the person standing nearby and therefore, in the process of reversing the bus, the deceased who was standing behind the bus was crushed. The Tribunal therefore accepting the statement of PW-3 found that both the driver and the conductor of the bus concerned were negligent and accordingly awarded compensation to the claimant. The finding was reversed by the High Court by opining that the postmortem report did not contain details of any such crush injuries of tyre

marks and in fact, the thorax and abdomen region were found to be by and large normal. On further appeal before the Supreme Court, the Supreme Court agreed with the Tribunal and observed that a holistic view of the matter has to be taken in a situation of such nature. In other words, the evidence of the witness concerned that the bus moved in a backward direction without blowing horn or giving indication to person standing nearby was sufficient to show negligence of the driver as was accepted by the Tribunal. It is in that context that the Supreme Court held that the standard of proof beyond reasonable doubt should not be applied. In the present case, there are no materials on record or suggest that there was negligence on the part of the driver of the accident vehicle. Therefore, the authority relied upon is found to be not applicable to the present case.

[10.] The learned counsel for the appellant has also relied upon the case of *Special Secy. Govt. of Nagaland & Anr.* (supra). Even in that case, it is seen that the claimant had made specific statement in the claim application to the effect that the accident had taken place due to rash and negligent driving of the vehicle by

its driver. That the accident occurred following bursting of one of the front tyre of the vehicle due to rash and negligent driving of the vehicle. The opposite party however failed to deny such assertion that there was negligence on the part of the driver of the vehicle concerned. The Court was therefore of the view that in absence of any denial, the assertion has to be deemed to be admitted. In the present case, the respondent No. 3 Insurance Company in their written statement had made a statement that since the claim was made under Section 166 of the MV, Act on fault basis, the appellant will have to establish negligence and therefore be put to strict proof of the claim. The statement so made was accepted by the Tribunal as denial on the part of Insurance Company about there being rash and negligent driving on the part of the driver of the accident vehicle. Having regard to the burden placed on the one who makes a claim on fault basis, the finding of the Tribunal in the considered view of this Court cannot be said to be unjustified.

[11.] The further contention of the learned counsel for the appellant that the doctrine of *res ipsa loquitur* should have been

applied by the Tribunal is also found to be misplaced inasmuch as, there is no evidence to the fact that the driver of the accident vehicle was not driving the vehicle carefully as the road was slippery. As already stated earlier, the contention of the appellant that had the driver been careful due to the road being slippery, the accident could have been avoided, cannot be the basis for arriving at a conclusion that the driver of the vehicle was negligent.

[12.] The learned counsel for the respondent No. 3 has drawn the attention of this Court to the fact that for the same accident and as a dependent of the deceased, MACT Case No. 73/2017 was filed by the sister of the deceased and the claim was on no fault basis. The claim was disposed of by the Tribunal by awarding a sum of Rs. 5.5 lakhs to the claimant as compensation. Since the present appellant has not challenged the Judgment & Award despite knowing the same, the present appeal claiming compensation again from the respondent No. 3 cannot be maintainable. In this regard, it may be seen that as per Section 166 of the MV, Act, it is provided that where all the legal representatives of the deceased have not joined in any such

application for compensation, the application shall be made on behalf or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application. It may be seen that the instant appellant had filed MACT Case No. 66/2017, which was prior to the filing of MACT Case o. 73/2017. From the Judgment & Award rendered by the Tribunal in MACT Case No. 73/2017, it is noticed that the Tribunal was aware about the pendency of MACT Case No. 66/2017 but decided to deal with the same separately. Although the claim made in the two (2) claim application may have been on the basis of fault and the other on no fault basis, the learned Tribunal in view of the provision under Section 166 of the MV, Act ought to have taken up the matters together for consideration. Be that as it may, since the same is not an issue to be decided in the present appeal, this Court is not inclined to go beyond the scope of the instant appeal.

[13.] Thus, in view of the findings arrived at that the appellant has not been able to establish that there was rash and negligence on the part of the driver or owner of the vehicle

concerned, the conclusion arrived at by the Tribunal through the impugned Judgment & Award requires not interference. Accordingly, the appeal is found to be without any merit and the same is dismissed. Registry to send back the LCR immediately.

JUDGE

Comparing Assistant