

GAHC020003222020



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

MACApp./7/2020

The Oriental Insurance Co. Ltd having its registered and head office at Oriental House A-25/27, Asaf Ali Road, New Delhi - 110002 and regional and divisional offices in several places, including a regional office at Guwahati, Assam and a divisional office at Dimapur, in the state of Nagaland

Appellant

-Versus-

- 1) Shri Gourango Debnath,
S/O Late Hari Charan Debnath,
R/O Lhomithi Colony, Dimapur, Nagaland
- 2) Smti Manju Debnath
W/O Gourango Debnath
R/O Lhomithi Colony, Dimapur, Nagaland
- 3) Shri Bappan Debnath
S/O Gourango Debnath
R/O Lhomithi Colony, Dimapur, Nagaland
- 4) Shri Niren Mahanta
S/O Late Chakradhan Mahanta
R/O Rajgarh Road 1st Bylane. Guwahati - 3, Assam

(Owner of vehicle B/R No. AS 01/W 2145 (Bus)

5) Shri Subha Saikia

S/O Late P.R. Saikia @ Paniram Saikia,

R/O Hatigaon Huwarital, Nagaon, Assam

(Driver of vehicle B/R No. AS 01/W 2145(Bus)

6) The Divisional Manager,

New India Assurance Co. Ltd., Dimapur, Nagaland

Respondents

For Appellant : Mr. V. Devnath, Mr. M Wabang,
Mr. V. Sirie, Mr. Xepe, Advocates

For respondent(s) : Mr. P. B. Chhetry (R/1-3),
Mr. Imti Imsong (R-6), Advocates

With MACApp./8/2020

The Oriental Insurance Co. Ltd having its registered and head office at Oriental House A-25/27 Asaf Ali Road New Delhi - 110002 and Regional and Divisional Offices in several places including a regional office at Guwahati Assam and a divisional office at Dimapur in the State of Nagaland

-Versus-

1. Shri Sunil Mandal,
S/O Shri Ashwini Kumar Mandal,
R/O Dhobinala, Dimapur, Nagaland.

2. Shri Niren Mahanta,
S/O Late Chakradhan Mahanta,
R/O Rajgarh Road 1st Bylane, Guwahati - 3 Assam.

(Owner of vehicle B/R No. AS 01/W 2145 (Bus)

3. Shri Subha Saikia,
S/O Late P.R. Saikia @ Paniram Saikia,
R/O Hatigaon Kuwarital, Nagaon, Assam.
(Driver of vehicle B/R No. AS 01/W 2145(Bus)

For Appellant : Mr. V. Devnath, Mr. M Wabang,
Mr. V. Sirie, Mr. Xepe, Advocates
For respondent(s) : Mr. P. B. Chhetry (R/1),
Advocate

BEFORE
HON'BLE MR JUSTICE MRIDUL KUMAR KALITA

Date of hearing : 09.05.2023
Date of judgment : 22.05.2023

JUDGMENT AND ORDER (CAV)

(Mridul Kumar Kalita, J)

1. By this common judgment, this court proposes to dispose of two appeals, namely MAC Appeal no. 7/2020 and MAC Appeal no. 8/2020 for the reason that the claims cases to which these appeals are related to arise out of same accident and were disposed of by a common judgment dated 16.01.2020 delivered by learned Member, Motor Accident Claims Tribunal, Dimapur, Nagaland in MAC case no. 19/2011 and MAC case no. 40/2011.

2. I have heard Mr. V. Devnath, learned counsel for the appellant and Mr. P. B. Chhetry, learned counsel for the respondent nos. 1-3 as well as

Mr. Imti Imsong, learned counsel for the respondent no. 6 in MAC Appeal no. 7 of 2020. I have also heard Mr. V. Devnath, learned counsel for the appellant and Mr. P. B. Chhetry, learned counsel for the respondent no. 1 in MAC Appeal no. 8/2020.

3. The facts relevant for adjudication of both the above mentioned appeals, in brief, are as follows:

a) That, the respondent nos. 1, 2 and 3 in MAC Appeal no. 7/2020 are the father, mother and brother respectively of late Gautam Debnath, who died in a vehicular accident which occurred on 31.05.2010. They are also the claimants in MAC case no. 19/2011. The respondent no. 1 in MAC Appeal no. 8/2020 is the claimant of MAC case no. 40/2011 and he sustained injuries in the said vehicular accident which occurred on 31.05.2010.

b) That, it transpires from the materials available on record that on 31.05.2010, deceased Gautam Debnath was coming from Guwahati to Dimapur driving his own Maruti Van, bearing registration no. NL 07 0278 along with his two friends including Shri Sunil Mandal (respondent no.1 in MAC Appeal no. 8/2020). On the said date i.e., 31.05.2010, at about 3.40 am when the said Maruti Van reached Niz Dimow, Nagaon, it was knocked down by a bus bearing registration no. AS 01 W 2154 which was driven in rash and negligent manner from the wrong side. As a result of said accident, the driver of the Maruti Van, namely Gautam Debnath, died on the spot of the accident and other two passengers of the said van including Mr. Sunil Mandal sustained grievous injury on their person.

c) That, the father, mother and brother of the deceased Gautam

Debnath (who are the respondent nos. 1, 2 & 3 in MAC Appeal 7 of 2020) approached Motor Accident Claims Tribunal, Dimapur by filing a claim petition under section 166 of the Motor Vehicles Act, 1988 seeking compensation for the death of Gautam Debnath in the aforementioned motor vehicular accident. The said claim petition was registered as MAC Case no. 19/2011.

d) Similarly, Mr. Sunil Mandal (respondent no. 1 in MAC Appeal No. 8/2020) also filed a claim case before Motor Accident Claims Tribunal, Dimapur seeking compensation for the injuries suffered by him in the aforementioned vehicular accident. The said claim case was registered as MAC Case no. 40/2011.

e) That, the present appellant i.e., The Oriental Insurance Co. Ltd contested both the above mentioned claim cases before Motor Accident Claims Tribunal, Dimapur.

f) That, after completion of enquiry, learned Member Motor Accident Claims Tribunal, Dimapur disposed of both the claim cases, namely MAC Case no. 19/2011 and MAC Case no. 40/2011 by a common judgment dated 16.01.2020, whereby the claimants in MAC Case no. 19/2011 were awarded total compensation amount of Rs. 7,80,200/- only along with an interest @ 9% per annum from the date of filing of claim petition till full satisfaction of the award and the present appellant was directed to pay the awarded amount to the claimants within a month from the date of award. Similarly, the claimant in MAC Case no. 40/2011 was awarded a compensation amount of Rs.3,31,005/- only along with an interest @ 9% per annum from the date of filing of claim petition till full satisfaction of

the award and the present appellant was directed to pay the awarded amount to the claimants within a month from the date of award.

4. Being aggrieved by the aforementioned judgment and awards passed by learned Member, Motor Accident Claims Tribunal, Dimapur. The present appellants have preferred the present appeals namely MAC Appeal no. 7/2020 and MAC Appeal no. 8/2020, mainly on following grounds:-

a) That, learned Member, Motor Accident Claims Tribunal, Dimapur failed to take into consideration that the claimants, in both the claim cases, failed to prove negligence of the driver of the bus involved in the accident.

b) That, though the accident occurred on 31.05.2010, the FIR in the said case was registered on 8.06.2010 after an inordinate delay of 8 days without any explanation for the said delay.

c) That, learned Member, Motor Accident Claims Tribunal, Dimapur failed to take into consideration that the accident in question occurred due to head on collision of two vehicles and the driver of the Maruti Van also contributed to the said accident and therefore learned Member, Motor Accident Claims Tribunal, Dimapur ought to have apportioned the liability equally between driver and owners of both the vehicles involved in the accident.

d) That, the learned Member, Motor Accident Claims Tribunal, Dimapur also failed to take into consideration that the bus bearing registration no. AS 01 W 2145 was plying without a valid permit on the date of accident as such there was a contravention of section 66 of the Motor Vehicles Act, which amounts to breach of policy

conditions and under such circumstances, liability, if any, ought to have been borne by the owner of the offending vehicle only.

e) That, in MAC Appeal no. 8/2020 an additional ground was taken by the appellant, namely, learned Member, Motor Accident Claims Tribunal, Dimapur failed to appreciate the fact that the injury sustained by respondent no.1/claimant was only a simple injury and he suffered no permanent disability.

5. Mr. V. Debnath, learned counsel for the appellant has submitted that in both the claim cases, the claimants have failed to prove that the driver of the offending bus was at fault and the accident occurred due to his negligence. In support of his contention, Mr. V. Debnath has cited a ruling of Supreme Court of India in “**Surendra Kumar Arora and Another Vs. Manoj Bisla and Another**” reported in **(2012) 4 SCC 552**, wherein Hon’ble Supreme Court of India has observed that in a proceeding under section 166 of the Motor Vehicles Act, 1988 the burden of establishing the negligence of the driver or the owner of the offending vehicle is on the claimants. Countering this submission Mr. Imti Imsong as well as Mr. P. B. Chhetry, learned counsel for the respondents have submitted that in paragraph no. 10 of the impugned judgment, learned Member, Motor Accident Claims Tribunal, Dimapur has appropriately dealt with the issue as to who was at fault for the said accident and relying on the testimony of PW-3 as well as DW-1, learned Member, Motor Accident Claims Tribunal, Dimapur rightly came to the conclusion that the driver of the offending bus bearing registration no. AS 01 W 2145 was at fault. If we go through the testimony of PW-3, who was one of the occupant of the Maruti Van bearing registration no. NL 07 0278 at the time of the ill fated

accident, as well as testimony of DW-1, who was the investigating officer of the Nagaon P.S. Case No. 836/2010 under section 279/338/304 A/427 IPC which was registered in connection with the aforesaid accident, where he has categorically stated that the driver of the bus bearing registration no. AS 01 W 2145 was negligent and accordingly charge-sheet was also laid against him. The testimonies of PW-3 as well as DW-1 remain uncontroverted, hence, there is no reasons for discarding the same and in the considered opinion of this court learned Member, Motor Accident Claims Tribunal, Dimapur, rightly relied upon their testimony and came to the finding that the driver of the offending bus bearing registration no. AS 01 W 2145 was at fault for the accident involved in this case.

6. Mr. V. Debnath, learned counsel for the appellant has also submitted that as the evidence on record shows that the accident occurred due to head on collision between two vehicles hence, there was contributing negligence on the part of the driver of Maruti Van also. In support of his contention, learned counsel has cited a ruling of Hon'ble Supreme Court of India in "**Jiju Kuruvila and Others Vs. Kunju Jamma Mohan and Others**" reported in **(2013) 9 SCC 166**. However, on perusal of the said judgment, it appears that the ruling cited by learned counsel for the appellant does not help his case as in the said case Hon'ble Supreme Court of India has observed that in absence of any direct or corroborative evidence no inference can be drawn as regards contributory negligence on the part of the victim merely on the basis of "Scene Mahazar". In the instant case the evidence of DW-1 clearly shows that there was no contributory negligence of the driver of the Maruti Van for the said accident. Moreover, no other evidence was led by the appellant side in the

claims cases to show that there was any contributory negligence on the part of deceased Gautam Debnath, who was the driver of the Maruti Van bearing registration no. NL 07 0278, at the time of accident. This court, therefore, does not find any error in finding of learned Member, Motor Accident Claims Tribunal, Dimapur to the effect that there no evidence to show that there was any contributory negligence on the part of the driver of the Maruti Van bearing registration no. NL 07 0278.

7. Mr. V. Debnath, learned counsel for the appellant has also submitted that learned Member, Motor Accident Claims Tribunal, Dimapur failed to take into consideration that the offending bus bearing registration no. AS 01 W 2145 was plying without a valid permit on the date of the accident. However, Mr. P. B. Chettry, learned counsel for the respondents has submitted that there is no evidence on record that the offending bus was plying without permit on the date of the accident. During the course of the argument, Mr. Chhetry produced a copy of permit of the offending bus bearing registration no. AS 01 W 2145, which shows that it was having a valid permit on 31.05.2010, i.e., on the date on which the accident occurred. Mr. Chhetry also pointed out that during the inquiry before learned Member, Motor Accident Claims Tribunal, Dimapur, written argument was submitted on behalf of the present appellant in the claims case, wherein it was categorically stated at page-4 of the said written argument, that both the vehicles involved in the accident were having valid documents at the time of accident. Having stated so, during argument before learned Member, Motor Accident Claims Tribunal, Dimapur, the appellant are estopped from taking a contradictory plea in this appeal, more so, when there is no evidence on record to show that

the offending bus bearing registration no. AS 01 W 2145 was not having a valid permit, at the time of accident.

8. Mr. V. Debnath, learned counsel for the appellant, making his submission in MAC Appeal No. 8/2020 has stated that admittedly respondent no. 1 Mr. Sunil Mandal suffered no permanent disability and no total loss of income, hence, the learned Member, Motor Accident Claims Tribunal, Dimapur has erred in computing Rs.2,25,000/- against loss of income by applying multiplier method.

9. On perusal of the impugned judgment, it appears that learned Member, Motor Accident Claims Tribunal, Dimapur while deciding issue No. 5 in MAC Case No. 40/2011 came to a finding that the claimant Sunil Mandal suffered no permanent disablement in the said accident and he suffered simple injuries and there is no total loss of income. However, the findings of learned Member, Motor Accident Claims Tribunal, Dimapur on Issue No. 5 is not categorical as regards whether any partial loss of earning capacity of the claimant Sunil Mandal was there or not. If we go through the testimony of claimant Sunil Mandal and the documentary evidence produced by him in MAC Case No. 40/2011, it appears that he sustained head injuries with intra cerebral hemorrhage in right temporal region besides other injuries and that he has deposed that he was employed as Centre In-charge of Computer Academy, G.S. Road, Dimapur and was getting a monthly salary of Rs.12,000/- and he had to give up the said profession due to the said accident. Admittedly, there is no clear evidence on record to assess the percentage the loss of earning suffered by the claimant Sunil Mandal and under such circumstances, learned Member, Motor Accident Claims Tribunal, Dimapur appears to have applied

multiplier method in computing the compensation against loss of earning of the claimant taking a meager amount as notional income of the claimant. Though, in case of permanent disability where such disability has any adverse effect on earning capacity of the injured, normally the multiplier method should be adopted for grant of compensation, however, in the instant case even when there was no permanent disability such method was adopted by learned Member, Motor Accident Claims Tribunal, Dimapur. A question which may arise here is as to whether the learned Member, Motor Accident Claims Tribunal, Dimapur was wrong in doing so. It should be noted that though the claimant/respondent No. 1 in MAC Case No. 40/2011 (MAC Appeal No. 8/2020) has admitted that there was no total loss of income, this in itself should not mean that there was no loss of income at all considering his testimony that he left his earlier job where he was earning Rs.12,000/-. Learned Member, Motor Accident Claims Tribunal, Dimapur took the notional income of the claimant at Rs.15,000/- per annum, which comes to a meager amount of Rs.1,250/- per month only, which under the circumstances of the case, i.e. to say when there is evidence to show that there was some loss of income, however, percentage of such loss could not be assessed, appears to be just and the decision of the learned Member, Motor Accident Claims Tribunal, Dimapur to adopt the multiplier method in granting compensation in the instant case to the injured claimant does not appear to be wrong.

10. In view of what has been stated above, this Court does not find any infirmity in the impugned common judgment dated 16.01.2020 delivered by learned Member, Motor Claims Tribunal, Dimapur, Nagaland in MAC

case no. 19/2011 and MAC case no. 40/2011 justifying any interference by this appellate court and are accordingly dismissed.

11. The appellant is directed to pay the compensation amount of the award as per the impugned judgment after deducting any amount if already been withdrawn by the respondents, within a period of 2(two) months from today. The statutory amount of Rs.25,000/- each which was deposited by the appellants, in both the MAC Appeals, before the Registry of this Court at the time of filing of the aforementioned appeals shall also be adjusted against the award while making the final payment and claimants/respondents may be permitted to withdraw the said statutory amount after proper identification.

12. With the above observation, this appeal is, accordingly, disposed of.

13. No orders as to cost.

14. Send back the LCR along with a copy of this judgment to the Motor Accident Claims Tribunal, Dimapur.

JUDGE

Comparing Assistant