



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

Case No. : MACApp./11/2020

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 DIVISIONAL OFFICE AT GUWAHATI, ASSAM, AND A
DIVISIONAL OFFICE AT DIMAPUR, IN THE STATE OF NAGALAND

VERSUS

SILINA DHAN AND 4 ORS
AGED ABOUT 43 YEARS,
W/O LATE JUNA DHAN,
PERMANENT R/O VILLAGE JAPARJAN I.B, BOKAJAN,
KARBI ANGLONG AND TEMPORARY R/O GOLAGHAT ROAD,
DIMAPUR

2:MAUNA DHAN
D/O LATE JUNA DHAN PERMANENT R/O VILLAGE JAPARJAN
I.B BOKAJAN KARBI ANGLONG
AND TEMPORARY R/O GOLAGHAT ROAD
DIMAPUR
NAGALAND

3:ARUN DHAN AGED ABOUT 16 YEARS
D/O LATE JUNA DHAN PERMANENT
R/O VILLAGE JAPARJAN I.B BOKAJAN
2/2 KARBI ANGLONG AND TEMPORARY R/O GOLAGHAT ROAD
DIMAPUR
NAGALAND

4:BIJOY CHETRI S/O SHRI SURESH CHETRI
ADDRESS VILL/P.S KANGKOPI SENAPATI MANIPUR

(DRIVER OF THE VEHICLE B/R NO. NL-07/A-4677 TATA 2017 DIE)

5:S. SAMARJIT SINGHA S/O S. KAMALJIT SINGHA
GOLAGHAT ROAD DIMAPUR NAGALAND
(OWNER OF THE VEHICLE B/R NO. NL-07/A- 4677 TATA 207 DIE)

Advocate for the Petitioner : B. DEVNATH

Advocate for the Respondent : TAYONGCHUBA

BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY

JUDGMENT & ORDER (ORAL)

Date : 02-05-2023

Heard Mr. V. Devnath, learned counsel for the appellant, Mr. Tayongchuba, learned counsel for respondent nos. 1 to 3 and Ms. Moajungla, learned counsel for respondent no. 5.

2. By Order dated 08.08.2022, the service of notice upon respondent no. 4 is deemed to be served. But despite service of notice, none has entered appearance on behalf of the respondent no. 4.

3. This appeal under Section 173 of the Motor Vehicles Act, 1988 is directed against a judgment and award dated 30.01.2020 passed by the learned Member, Motor Accident Claims Tribunal, Dimapur, Nagaland ("the Tribunal" in short) in MAC Case no. 54/2014. By the judgment and award dated 30.01.2020, the learned Tribunal has awarded an amount of Rs. 7,70,000/ (Rupees seven lakh seventy thousand) including Rs. 50,000/- (Rupees fifty thousand) towards No-Fault Liability, as compensation to the three claimants, who are the respondent nos. 1, 2 & 3 in the instant appeal, with interest @9% per annum from the date of filing of the claim application till realization.

4. The claimants-respondent nos. 1, 2 & 3 are the legal representatives of one Juna Dhan. In the claim application instituted under Section 166 of the Motor Vehicles Act, 1988, the claimants had projected that the deceased, Juna Dhan, on 23.08.2013, was proceeding as a pedestrian and

at that point of time, a vehicle bearing registration no. NL-01/A-4677, proceeding in a rash and negligent manner, knocked down Juna Dhan. As a result of the accident, Juna Dhan met instantaneous death on the spot. On receipt of the claim application, the same was registered and numbered as MAC Case no. 54/2014. Upon such registration, the learned Tribunal, by order dated 19.03.2014, issued notices to the owner, the driver and the insurer of the subject-vehicle bearing registration no. NL-01/A-4677. On receipt of notices, the owner and the driver of the subject-vehicle had submitted a joint written statement as opposite party no. 1 and opposite party no. 2. The insured as the opposite party no. 3 had also filed its written statement. Based on the pleadings of the parties, the learned Tribunal had framed the following issues:-

1. Whether the claim petition is maintainable?
2. Whether the deceased Juna Dhan died involving rash and negligent driving of the vehicle bearing registration no. NL-07/A-4677 (Tata 207 DIE) and accident dated 23.08.2013 covered by Bokajan Police Station Case no. 110/13?
3. Whether the deceased was the joint tortfeasor?
4. Whether the respondent driver of the offending vehicle was holding the relevant vehicle documents, driving license and Insurance Policy of the relevant time?
5. Whether the Claimants are entitled to compensation as prayed for and if so to what extent and payable to whom?

In the course of proceedings, the claimant's side examined two witnesses :- (i) PW-1 – Smti. Silina Dhan (Claimant no. 1/respondent no. 1); and (ii) PW-2 – Ranjit Orang.

While PW-1 was the wife of the deceased, who did not witness the accident, PW-2 deposed as an eye-witness to the accident. PW-1 inter-alia exhibited the following documents :- (i) Exhibit P1 – Claim Application; (ii) Exhibit P2 – Police Report in Form 54; (iii) Exhibit P4 – Registration Certificate; (iv) Exhibit P5 – Insurance Policy; (v) Exhibit P6 – Accident Report; (vi) Exhibit P7 – Requisition of Police Case no. 110/2013; and (vii) Exhibit P9 – Post-Mortem Examination Report. The opposite parties did not adduce any evidence.

5. After closure of evidence, the learned Tribunal after appreciation of the evidence on record, decided all the issues in favour of the respondents-claimants. The deceased was not found to be joint tortfeasor. The learned Tribunal reached a finding that the deceased died due to rash and negligent driving of the subject-vehicle, which caused the accident on 23.08.2013 resulting into his death. In so far as the issue no. 5 is concerned, the learned Tribunal accepted the age of the deceased as 45 (forty-five) years at the time of the accident, on the basis of the age recorded in the Post-Mortem Examination Report (Exhibit-P9) and in the absence of any other evidence on rebuttal. The claimants had deposed that the deceased was a daily wage earner earning Rs. 200/- (Rupees two hundred) daily. The learned Tribunal accepted the income of the deceased as Rs. 5,000 (Rupees five thousand), thus, the annual income as Rs. 60,000/- (Rupees sixty thousand). Adding 25% as future prospects, the learned Tribunal had arrived at a figure of Rs. 75,000/- (Rupees seventy-five thousand) and using multiplier 14, the learned Tribunal assessed the total pecuniary loss at Rs. 10,50,000/- (Rupees ten lakh fifty thousand). A deduction of one-third of Rs. 10,50,000/- (Rupees ten lakh fifty thousand) was made towards personal expenses taking into account the fact that the deceased had left his wife and two minor children as dependents. The learned Tribunal calculated the total compensation amount at Rs. 7,00,000/- (Rupees seven lakhs). By addition of Rs. 15,000/- (Rupees fifteen thousand) for funeral expenses; Rs. 15,000/- (Rupees fifteen thousand) towards loss of estate, and Rs. 40,000/- (Rupees forty thousand) towards loss of consortium, the learned Tribunal assessed the total compensation at Rs. 7,70,000/- (Rupees seven lakh twenty thousand). After deduction of Rs. 50,000/- (Rupees fifty thousand) already granted under no fault liability, the learned Tribunal directed the opposite party no.3/insurer i.e. appellant herein to pay an amount of Rs. 7,20,000/- (Rupees seven lakh twenty thousand) to the claimants with interest @9% per annum from the date of filing of the claim petition till full satisfaction of the award.

6. Being aggrieved thereby, the appellant-insurer has preferred this appeal.

7. Mr. V. Devnath, learned counsel for the appellant has submitted that

the subject-vehicle was a goods carrier vehicle and the accident occurred at a place on the National Highway 39 under Bokajan Police Station and in connection with the accident, a police case being Bokajan Police Station Case no. 110/2013 was registered under Sections 279/304(A)/427, Indian Penal Code. It is submitted that at the time of the accident i.e. at 12-30 AM, on 23.08.2013, the subject-vehicle did not have the necessary permit to proceed by the road where it met an accident and for that matter, in the State of Assam, and as such, the subject-vehicle was plied in contravention of the terms and conditions of the insurance policy. He has further contended that when an investigation was carried by the insurance investigator for the purpose of ascertaining the veracity of the accident, the father of the owner of the subject-vehicle revealed that the subject-vehicle was purchased by him, but it was registered in the name of his son i.e. opposite party no. 2. The father of the opposite party no. 2 had denied about involvement of the subject-vehicle in any accident at around 12-30 PM on 23.08.2013 near Japarajan on National Highway 39, Karbi Anglong, Assam. Submitting so, Mr. V. Devnath has submitted that the appellant-insurer is not liable to pay any compensation to the claimants for contravention of the terms and conditions of the Insurance Policy by the owner of the subject-vehicle who plied the subject-vehicle on a route without any permit and also for non-occurrence of accident in the manner alleged by the claimants.

8. Though it is contended on behalf of the appellant-insurer that the father of the opposite party no. 2 had denied involvement of the subject-vehicle in any kind of accident near Japarajan I.B. on National Highway 39 on 23.08.2013 causing instantaneous death of the deceased, the Accident Information Report issued by the Officer In-Charge, Bokajan Police Station, exhibited as Exhibit P3, has specifically reported about the involvement of the subject-vehicle in the accident occurring at 12-30 PM on 23.08.2013 and the registration of the case, Bokajan Police Station Case no. 110/2013 under Sections 279/304(A)/427, IPC. The Accident Information Report (Exhibit-3) issued under Section 158(6) of the Motor Vehicles Act, 1988 has also mentioned about the death of the deceased, Juna Dhan and involvement of the subject-vehicle in the accident. The father of the opposite party no. 2,

who had denied involvement of the accident, did not enter the witness-box to depose. The fact that the subject-vehicle was involved in the accident in question resulting in the death of the deceased, is further fortified by the fact that the Investigation Officer, after completion of investigation of Bokajan Police Station Case no. 110/2013, had submitted a charge-sheet under Section 173(2), Code of Criminal Procedure, 1973 vide Charge-Sheet no. 5/2014 dated 28.02.2014, finding a prima facie case of rash and negligent driving and causing death by negligence against the opposite party no. 1 i.e. the driver of the subject-vehicle. As such, the contention that the subject-vehicle was not involved in the accident resulting in the death of the deceased cannot be countenanced in view of such overwhelming evidence to the contrary.

9. In so far as the issue of permit is concerned, it is true that Section 66 of the Motor Vehicles Act, 1988 has prescribed about the necessity of a permit. As per Section 66 of the Motor Vehicles Act, 1988, no owner of a motor vehicle shall use or permit the use of a vehicle as a transport vehicle in any public place whether or not such vehicle is carrying any passengers or goods save in accordance with the conditions of the terms granted or counter signed by Regional or State Transport Authority or any prescribed authority authorizing him the use of a vehicle in the place and manner in which the vehicle is used. Evidently, the subject-vehicle is a transport vehicle which was used for the purpose of carrying goods. When a query is made to the learned counsel for the appellant as to whether the lack of permit in respect of the subject-vehicle was a ground taken in the written statement, he, in response, has submitted that lack of permit in respect of subject-vehicle was not specifically taken as a ground in the written statement filed on behalf of the appellant/insurer on 28.05.2014. It is noticed that the owner had also filed his written statement stating that the subject-vehicle was plying with all relevant vehicle documents, driving licence and insurance policy at the relevant time of accident. When the depositions of the claimants/witnesses are perused, it is noticed that the claimants' sides witnesses i.e. PW-1 & PW-2 were cross-examined by the owner and the insurer of the subject-vehicle in the proceedings before the Tribunal. But neither the claimant no.1 (PW-1) nor the eye-witness (PW-2) was cross-

examined on the point of lack of permit in respect of the subject-vehicle to ply on the route where the accident took place. Had the issue of lack of permit on the part of the owner of the subject-vehicle been taken by the appellant-insurer in its written statement, it would have been possible for the owner of the subject-vehicle to traverse the point and to adduce evidence as regards the availability of permit for the subject-vehicle or otherwise. It was urged on behalf of the appellant-insurer before the learned Tribunal that the subject-vehicle had route permit only for Nagaland and did not have route permit to ply in the State of Assam. The learned Tribunal discarded such contention on the ground that the insurer did not prove the same by producing the route permit. It is not open for the appellant-insurer to raise a ground for which foundation has not been laid in the proceedings before the learned Tribunal. Had the issue of lack of permit been taken by the insurer by laying proper foundation before the learned Tribunal by taking such a ground in the pleadings and thereafter, by adducing evidence and the point was decided against it, then it might have been possible for the appellant-insurance to take such point in appeal. With nothing such done, it is not open for the appellant-insurer to agitate the issue of lack of permit at the stage of appeal. With no tangible material available in support of such claim, this court does not find it acceptable.

10. Other than the issue of lack of permit, the learned counsel for the appellant-insurer has not raised any other issue. As such, there is no other issue for the appellate court to deliberate.

11. In view of the above discussion and for the reasons mentioned, this Court finds that the appeal lacks merit and the same is liable to be dismissed. It is accordingly dismissed. No cost.

Sd/-
JUDGE

Comparing Assistant