

GAHC020005912021



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

Case No. : MACApp./12/2021

THE ORIENTAL INSURANCE CO. LTD
DIMAPUR, NAGALAND

VERSUS

ACHAJA@ASMA KHATUN AND 6 ORS
R/O TULI TOWN, A.M. ROAD, MOKOKCHUNG, NAGALAND

2:AZBAHARUL HAQUE
R/O VILL-NO.2
BORCHALA
P.O- BORCHALA
P.S. NORTH
LAKHIMPUR DIST-
LAKHIMPUR ASSAM

3:MISS ASBINA BEGUM
R/O VILL-NO.2
BORCHALA
P.O- BORCHALA
P.S. NORTH
LAKHIMPUR DIST-
LAKHIMPUR ASSAM

4:MD. MEHFUL ALAM
R/O VILL-NO.2
BORCHALA
P.O- BORCHALA
P.S. NORTH
LAKHIMPUR DIST-
LAKHIMPUR ASSAM

5:MD. ABDUL KHALEK
R/O VILL-NO.2

BORCHALA
P.O- BORCHALA
P.S. NORTH LAKHIMPUR
DIST- LAKHIMPUR
ASSAM

6:MRS. JAHURA KHATUN
R/O VILL-NO.2
BORCHALA
P.O- BORCHALA
P.S. NORTH LAKHIMPUR
DIST- LAKHIMPUR
ASSAM

7:MD. ANARUL ISLAM R/O
VILL-NO.4 DHARMAPUR
P.O- LALUK
DIST- LAKHIMPUR
ASSAM

For the Petitioner(s) : Mr. V. Devnath, Advocate

For the Respondent(s) : Mr. B. N. Sarmah, Advocate

**BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

Date : 08-12-2023

1. The instant appeal arises out of an award dated 11.11.2019 passed by the learned Member Accident Claims Tribunal, Mokokchung in MAC Case No.3/2019.

2. The facts involved in the instant case is that the claimant's husband while returning from Garchiga market by riding on his bicycle and while reaching Borchala connecting road junction at 8 pm on 12.07.2018 was knocked down by a Pulsar Bike bearing Engine No.DHYRJM 05351. Thereupon, due to grievous injuries suffered by the claimant's husband, he succumbed to his injuries on his way to the Guwahati Medical College and Hospital. On the basis of the above, the claim petition was filed by the claimants who are the Respondent Nos. 1 to 6 in the instant appeal before the learned Member Accident Claims Tribunal, Mokokchung. The said claim proceedings was registered and numbered as MAC Case No.3/2019. The rider of the Pulsar Bike was arrayed as the Opposite Party No.1 whereas the Appellants herein were arrayed as the Opposite Party Nos. 2 and 3. The rider of the Pulsar Bike i.e. the Opposite Party No.1 did not participate in the said proceedings for which the claim proceedings proceeded ex-parte. As regards the Opposite Party Nos. 2 and 3 i.e. the Appellants, they filed the written statement.

3. From a perusal of the said written statement, it transpires that the usual grounds of defence were taken and it was the specific case that

the accident happened on 12.07.2018 whereas the insurance policy was valid only from 19.07.2018 and as such the Opposite Party Nos. 2 and 3 i.e. the Appellants herein cannot be burdened with the liability in respect to the said incident. On the basis of the pleadings, as many as 4 (four) issues were framed which are enumerated hereinunder:

“Issue No.1. Whether the accident dated 12.7.18 was the result of sole negligence driving of the Pulsar motor bike 150 BS IV (New) engine No.DHYRJM 05351, chassis No. MD 2A 11CY 5JRM 32535 and thereby the deceased died out of the accident?

Issue No.2. Whether at the material time of accident the offending vehicle was possessing all valid and effective documents including driving license as per law?

Issue No. 3. Whether the claimant able to proof the age, income and avocation of the deceased?

Issue No. 4. Whether the claimants are entitled to any compensation? If yes, what amount and payable by whom?”

4. The Issue No.1 was decided by the Motor Accident Claims Tribunal holding inter alia that the evidence of PW-1 and PW-2 clearly proved that the accident occurred on 12.07.2018 was due to a result of rash and negligent driving of the rider-cum-owner of the new motor bike and due to high speed and going towards wrong side had knocked down the claimant’s husband. It was also observed by the learned Tribunal that no contrary evidence was produced by the Opposite Parties despite opportunities. On the basis thereof, it was held that the accident occurred due to rash and negligent driving which led to the death of the

claimant's husband.

5. As regards the Issue No.2, the learned Tribunal duly took note of that on 10.07.2018, the motor bike was purchased from one A.H. Auto World, North Lakhimpur and in respect to the said bike bearing Engine No.DHYRJM 05351, Chassis No. MD 2A 11CY 5JRM 32535, the Oriental Insurance Company had issued a cover note No.477365 with commencement of risk from 10.07.2018 to 09.07.2019 and as the accident occurred on 12.07.2018 i.e. after the issuance of the cover note, the Opposite Party Nos. 2 and 3 would be liable. This Court further finds it relevant to take note of that the cover note was exhibited as Exhibit-P3.

6. As regards the Issue No.3, the learned Tribunal opined that the age of the victim was 40 years and came to a finding that an amount of Rs.10,000/- can be taken as the monthly income of the said victim.

7. As regards the Issue No.4 which pertains to what would be the compensation, the learned Tribunal came to a finding that the amount of Rs.14,20,000/- shall be the just and reasonable compensation. In addition to that, an interest @9% per annum was given from the date of filing of the claim i.e. 05.02.2019 till the amount was paid.

8. Being aggrieved by the said award, the instant appeal was filed by the Appellant Insurance Company.

9. I have heard Mr. V. Devnath, the learned counsel appearing on behalf of the Appellant Insurance Company and Mr. B. N. Sarmah, the learned counsel appearing on behalf of the Respondent Nos. 1 to 6.

10. Upon hearing the learned counsels for the parties, 3 (three) points for determination arises which are :-

(i) Whether the learned Tribunal had decided the Issue No.1 that there was rash and negligent driving by the rider and the owner of the new Pulsar bearing Engine No.DHYRJM 05351, Chassis No. MD 2A 11CY 5JRM 32535 ?

(ii) Whether the learned Tribunal had decided the Issue No.2 in the proper perspective or for that matter, as to whether the Appellant Insurance Company could have been saddled with the liability in respect to the award ?

(iii) Whether the compensation so awarded was just and reasonable?

11. Let this Court first take up the first point for determination as to whether the accident occurred on account of the rash and negligent driving of the rider of the Pulsar Bike. This Court had duly perused the pleadings as well as the evidence on record. From the evidence on affidavit of the PW-1 and PW-2, it was clear that the rider of the Pulsar bike in a rash and negligent manner was riding the motor bike knocked down the husband of the claimant. During the cross-examination of the PW-1, she reiterated her very stand that her husband died in the accident due to rash and negligent riding of the new Pulsar bike by the rider. The PW-2 who was an eye witness to the accident stated that the offending motor bike in order to avoid some potholes on the road was going towards the wrong side and knocked down the deceased. The PW-2 further stated that from what he has seen, the motor bike was solely

responsible for rash and negligent driving whereas the deceased was cycling near from left side of the road. There was no evidence adduced by the Opposite Party Nos. 2 and 3 i.e. the Appellants to the contrary. Under such circumstances, it is the opinion of this Court that the question of interfering with the decision as regards the Issue No.1 does not arise.

12. Let this Court take up the 2nd point for determination as to whether the vehicle in question had the insurance cover. The records reveals that on 10.07.2018, the motor bike in question was purchased from one A.H. Auto World, North Lakhimpur and on the very date, the cover note was issued by the Oriental Insurance Company Ltd. with the signature of the authorized insurer and seal of the Appellant Company. This document has been exhibited as Exhibit-P3 and it reveals therefrom that the cover note was valid from 10.07.2018 to 09.07.2019. This Court also perused the written statement filed by the Appellant wherein there is no denial to the issuance of the said cover note. The only stand which has been taken is that the insurance cover was valid only from 19.07.2018 to 18.07.2019 and as such, the Appellant Insurance Company could not be saddled with the liability. This Court having perused the said cover note i.e. Exhibit-P3 and there being no challenge to the same is of the opinion that the learned Tribunal were justified in opining that the Appellant Insurance Company would be liable to be pay compensation.

13. This leaves this Court to the 3rd point for determination as to whether the compensation which have been awarded was just and reasonable. This Court had duly taken note of the evidence on affidavit

filed by the PW-1 wherein an amount of Rs.10,000/- have been claimed on the ground that the husband of the claimant was earning Rs.10,000/- per month. It has also been mentioned that the claimants had three fishery ponds and whatever fish produced there from, the husband of the claimant sold in the market as retail as well as wholesale. Further to that, the husband of the claimant was also dealing with selling and purchase of veterinary products such as chicken, goats, ducks etc.

14. During her cross-examination, she stood to the stand in her evidence on affidavit and nothing contrary could be brought out by the Appellants who are the Opposite Party Nos. 2 and 3. Under such circumstances, taking into account the judgment of the Supreme Court in the case of ***Sarla Verma Vs. Delhi Transport Corporation reported in (2009) 6 SCC 121*** and ***National Insurance Company Ltd. Vs. Pranay Sethi and Others reported in (2017) 16 SCC 680***, this Court is of the opinion that there is no infirmity in the compensation so awarded by the learned Tribunal.

15. Under such circumstances, this Court finds no reason to interfere with the impugned award. The Appellant is directed to deposit the remaining amount after deducting the amount which have already been paid within 31.01.2024 before the learned Member Accident Claims Tribunal, Mokokchung. Upon deposit of the said amount and producing the acknowledgment, the Appellant shall be entitled to the refund of the statutory deposit. The learned Member of the Motor Accident Claims Tribunal shall upon an application filed by the claimants release the amount so deposited after proper identification and verification.

16. With above observations and directions, the instant appeal stands dismissed. No costs.

JUDGE

Comparing Assistant