

GAHC020007042021



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

Case No. : MACApp./18/2021

THE UNITED INDIA INSURANCE CO. LTD.
REPRESENTED BY ITS BRANCH MANAGER, DIMAPUR, NAGALAND

VERSUS

SHRI AJIT SUREN @ AJIT MAZI SOREN AND 3 ORS
S/O SOMAI MAZI SOREN, PERMANENT ADDRESS - VILLAGE
NAKOTA, P.O BOKAJAN, KARBI ANGLONG, ASSAM, PRESENT
ADDRESS - MINISTER COLONY, C/O SHRI. DEEPAK DAS, DIMAPUR,
NAGALAND

2: SHRI. A . RISHIKESH SHARMA
S/O NIDHIBON
R/O LAMSANG
IMPHAL WEST
MANIPUR
(OWNER OF OIL TANKER B/REGD. NO.MN-01/6159)

3: YAMNAM ANIL SINGH
S/O Y DHABALO SINGH
R/O NANGKHEI KHUMAN OLD CHEEKON
P.S IMPHAL EAST
MANIPUR
(DRIVER OF OIL TANKER B/REGD. NO.MN-01/6159)

4: SHRI. SUKHA RANJAN PAUL
S/O SURESH CHANDRA PAUL
R/O GHARIALDUBI
P.O. BOKAJAN
KARBI ANGLONG
ASSAM (OWNER OF PICK-UP VAN B/REGD. NO.AS-09/C-6169)

**BEFORE
HON'BLE MR JUSTICE MRIDUL KUMAR KALITA**

For the Appellant	: Mr. Tayongchuba, Advocate
For the Respondents	: Mr. P. B. Chhetry, Advocate
Date of Hearing	: 25.05.2023
Date of Judgment	: 02.06.2023

JUDGMENT & ORDER

(Mridul Kumar Kalita, J)

- 1.** Heard Mr. Tayongchuba, learned counsel for the appellant. Also heard Mr. P. B. Chhetry, learned counsel for the Respondent No. 1.
- 2.** This MAC Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 by the appellant, namely, United India Insurance Company Limited against the judgment and award dated 09.07.2020 passed by the learned Member, Motor Accident Claims Tribunal, Dimapur in MAC Case No. 104/2014, whereby the present appellant was directed to pay a compensation amount of Rs.4,62,673/- to the claimants (*Respondent No. 1 in this appeal*), with an interest @ 9% per annum from the date of filing of the claim petition, till the full satisfaction of the award.
- 3.** The facts relevant for adjudication of this appeal, in brief, are as follows:-
 - (i)** That on 31.10.2013 at about 8.30 PM, the Respondent No. 1 (*the claimant*) was driving a pick-up van bearing Registration No. AS 09 C 6169 from Bokajan to Golaghat with goods. He was accompanied by the hirer of the van, namely, Sri Subol Paul.

When the said pick-up van reached Garampani Reserve at National Highway No. 39, it was knocked down by an Oil Tanker, bearing Registration No. MN 01 6159, which was coming from the opposite direction and was driven in a rash and negligent manner.

(ii) The claimant sustained grievous injury, on his person, in the said accident and was shifted to K.K. Civil Hospital, Golaghat and was admitted there and, thereafter, he was taken to Assam Medical College, Dibrugarh for further treatment. It also transpires from the material on record that in the said accident, the Respondent No. 1 (*the claimant*) sustained multiple fractures as well as head injuries.

(iii) Thereafter, the Respondent No. 1 (*the claimant*) approached the Motor Accident Claims Tribunal, Dimapur, Nagaland by filing an application under Section 166 of the Motor Vehicles Act praying for grant of compensation for the injuries sustained by him in the said motor vehicular accident.

(iv) The present appellant contested the said claim of the Respondent No. 1 (*the claimant*), before learned Member, Motor Accident Claims Tribunal, Dimapur, by filing written statement in the said proceeding. During enquiry, the learned Member, Motor Accident Claims Tribunal, Dimapur framed following issues for determination on the basis of material on record:-

“(a) Whether oil Tanker bearing Registration No. MN-01/6159 knocked down a pick-up Van bearing Registration No. AS-09/C-6169 on 31.10.2013 at about

8:30 a.m. at Garampani Reserve on NH-39? If so, whether Shri. Ajit Suren @ Ajit Mazi Soren (driver of Pick-up Van) sustained grievous injuries in the said accident?

(b) Whether the accident occurred due to the rash and negligent driving of the Truck bearing Registration No. MN-01-6159?

(c) Whether the claimant namely, Shri. Ajit Suren @ Ajit Mazi Soren was aged about 29 years and was earning Rs. 3500/- per month at the time of accident?

(d) Whether the vehicles involved in the accident were possessing valid vehicular documents including insurance coverage and were driven by Drivers having valid and effective driving licenses?

(e) Whether the accident was the result of composite negligence?

(f) Whether the claimant has suffered permanent disability and entitled to any compensation? If so, what extent and payable by whom?"

(v) After completion of the enquiry, the learned Member, Motor Accident Claims Tribunal, Dimapur by judgment and award dated 09.07.2020 awarded a compensation of Rs.4,62,673/- to the claimant with an interest @ 9% per annum from the date of filing of the claim petition, till the full satisfaction of the award. The United India Insurance Company Limited (*the present appellant*) was directed to pay the awarded sum to the claimant within a period of one month from the said award.

4. Being aggrieved and dissatisfied with the aforesaid Judgment dated 09.07.2020 passed by the learned Member, Motor Accident Claims

Tribunal, Dimapur, the present appellant has preferred this instant appeal on following grounds:-

(a) That learned Member, Motor Accident Claims Tribunal, Dimapur has failed to take into consideration that in the instant case, the claimant has failed to prove the negligence of the driver of the Oil Tanker bearing Registration No. MN 01 6159 which was involved in the accident. It is also contended that the claimant has failed to examine the Investigating Officer to prove the veracity of the documents relied upon by the claimant to show the negligence of the driver of the Oil Tanker.

(b) That the learned Member, Motor Accident Claims Tribunal, Dimapur failed to take into consideration that the claimant had failed to examine the doctor who issued disability certificate to prove the stand that the claimant received grievous injuries in the accident, it is contended that by failing to examine the doctor, the present appellant was deprived of a fair chance to cross-examine to dispute the veracity of the disability certificate which were relied upon by the claimant.

(c) That the learned Member, Motor Accident Claims Tribunal, Dimapur had failed to take into consideration that the claimant has not examined his employer to prove his stand as regards his income.

5. Mr. Tayongchuba, learned counsel for the appellant has submitted that the appeal is filed on three main grounds i.e. as there is evidence to show that the accident occurred due to collision between the Pick-up van

and the Oil Tanker, hence, driver of the Pick-up van was also negligent and the accident occurred due to composite negligence of the driver of both the vehicle and this fact was not considered by the learned Member, Motor Accident Claims Tribunal, Dimapur while awarding compensation in favour of the Respondent No. 1 (*Claimant*). The learned counsel for the appellant has also submitted that in a claim case under Section 166 of the Motor Vehicles Act, it is incumbent on the part of the claimant to prove the negligence of the driver of the offending vehicle in order to get the compensation. In support of his contention, he has relied upon a ruling of Hon'ble Supreme Court of India in "***Surender Kumar Arora and Another –Vs- Manoj Bisla and Others***" reported in "**(2012) 4 SCC 552**", wherein it was observed as follows:-

"9. Admittedly, the petition filed by the claimants was under Section 166 of the Act and not under Section 163-A of the Act. This is not in dispute. Therefore, it was the entire responsibility of the parents of the deceased to have established that Respondent 1 drew the vehicle in a rash and negligent manner which resulted in the fatal accident. Maybe, in order to help Respondent 1, the claimants had not taken up that plea before the Tribunal. Therefore, the High Court was justified in sustaining the judgment and order passed by the Tribunal. We make it clear that if for any reason, the claimants had filed the petition under Section 163-A of the Act, then the dicta of this Court in Kaushnuma Begum [(2001) 2 SCC 9 : 2001 SCC (Cri) 268] would have come to the assistance of the claimants."

6. Learned counsel for the appellant has submitted that the disability certificate was not properly proved by the claimant as it was not exhibited by the doctor who issued the same. It is submitted by the learned counsel for the appellant that it was incumbent upon the claimant to examine the doctor who issued the disability certificate so as to afford an opportunity to cross-examine its author to discredit the veracity of the document

exhibited by the claimant. The learned counsel for the appellant has also submitted that the employer of the Respondent No. 1 (*Claimant*), who issued the salary certificate, which was exhibited as Ext.8, was also not examined, hence, the learned Member, Motor Accident Claims Tribunal, Dimapur erred on relying on the said document to come to a finding as regards income of the claimant (*Respondent No. 1*).

7. On the other hand, Mr. P. B. Chhetry, learned counsel for the Respondent No. 1 has submitted that mere fact that the accident occurred due to head on collision between two vehicles is not the conclusive prove of the fact that the driver of both the vehicles were at fault. He has submitted that though the driver of pick-up van, who is the claimant himself has categorically stated about regarding the rash and negligent driving by the driver of the Oil Tanker bearing Registration No. MN 01 6159, however, the claimants side did not adduce any such evidence to show that there was contributory negligence on the part of the driver of the pick-up van or that the accident occurred due to composite negligence of both the driver.

8. As regards, failure to examine the doctor who issued the disability certificate to the claimant, Mr. P. B. Chhetry, learned counsel for the Respondent No. 1 by cited a judgment delivered by this Court (*by Hon'ble Mr. Justice N. Kotiswar Singh*) on 21.02.2019 in MAC Appeal No. 21(K)/2018 wherein it was observed as follows:-

“12 Coming to the issue of disability certificate, which the Tribunal did not accept on the ground that the doctor who had issued the disability certificate was not examined, this Court is of the view that mere non-examination of the doctor who issued the disability certificate is not fatal.

In fact, it has been held by the Hon'ble Supreme Court in Raj

Kumar –Vs- Ajay Kumar and Another, (2011) 1 SCC 343, how to deal with the issues relating to disability certificate.

It has been held, inter-alia, that where the certificates are not contested by the respondent, they may be marked by consent, thereby dispensing with the oral evidence of the doctor.

In Para 23 of the aforesaid decision in Rajkumar (supra), it was held as follows:-

“23. The Tribunals should realise that a busy surgeon may be able to save ten lives or perform twenty surgeries in the time he spends to attend the Tribunal to give evidence in one accident case. Many busy surgeons refuse to treat medico-legal cases out of apprehension that their practice and their current patients will suffer, if they have to spend their days in Tribunals giving evidence about past patients. The solution does not lie in coercing the doctors to attend the Tribunal to give evidence. The solution lies in recognizing the valuable time of doctors and accommodating them. Firstly, efforts should be made to record the evidence of the treating doctors on commission, after ascertaining their convenient timings. Secondly, if the doctors attend the Tribunal for giving evidence, their evidence may be recorded without delay, ensuring that they are not required to wait. Thirdly, the doctors may be given specific time for attending the Tribunal for giving evidence instead of requiring them to come at 10.30 a.m. or 11.00 a.m. and wait in the court hall. Fourthly, in cases where the certificates are not contested by the respondents, they may be marked by consent, thereby dispensing with the oral evidence. These small measures as also any other suitable steps taken to ensure the availability of expert evidence, will ensure assessment of just compensation and will go a long way in demonstrating that courts/Tribunals show concern for litigants and witnesses.”

- 9.** As regards, salary certificate also, Mr. P. B. Chhetry, learned counsel for the respondent No. 1 has submitted that the claimant, while deposing as PW-1, had exhibited the salary certificate as Ext. P/8 and he was cross-examined by the learned counsel for the Insurance Company, however, no question as regards the salary certificate was put to the claimant (PW-1) to contradict the said salary certificate, during the enquiry before Motor Accident Claims Tribunal, Dimapur, hence, the

appellant is estopped from taking the plea in this appeal.

10. I have considered the rival submissions made by learned counsel for both sides. I have also perused the material available on case record thoroughly.

11. As regards plea of failure of the claimant's side to prove negligence of the driver of offending vehicle i.e. the Oil Tanker is concerned, if we peruse the testimony of the claimant (PW-1) which he deposed before the learned Member, Motor Accident Claims Tribunal, Dimapur, it appears that he has categorically stated that in his evidence on affidavit that the Oil Tanker bearing Registration No. MN 01 6159, coming from the opposite side and driven in rash and negligent manner, knocked down the Pick-up van which was driven by the claimant. He has also exhibited the Accident Information Report as Ext.P/2. On perusing the same, it appears that a Police Case i.e. Borpathar P.S. Case No. 91/13 under Sections 279/338/427 of IPC was also registered in connection with the said accident against driver of the offending vehicle. During cross-examination, he has stated that both the vehicle head on collision. During re-examination he has again stated that the accident occurred as the vehicle bearing Registration No. MN 01 6159 which came from the opposite side was at a high speed and as a result of which the driver of the said vehicle could not cut the steering and knocked down the vehicle which the claimant was driving. This testimony of the claimant remained uncontroverted by the present appellant when the PW-1 (claimant) was cross-examined. Merely, because of the fact that there was a head on collision, it may not be automatically concluded that both the vehicle involved in this accident were at fault. When the evidence available on

record specifically points out to the fault of the driver of the Oil Tanker and if the plea of the composite negligence or contributory negligence was taken by the present appellant it was incumbent on their part to adduce evidence in the enquiry before the learned Member, Motor Accident Claims Tribunal, Dimapur to show that the claimant was also at fault. In absence of any evidence to that effect on record, this Court is of considered opinion that learned Member, Motor Accident Claims Tribunal, Dimapur decided the issue No. 2 rightly that it was the driver of the vehicle bearing Registration No. MN-01/6159 was at fault for the accident and the said finding does not require any interference by this Court.

12. As regards the plea of the appellant that the doctors who issued the disability certificate was not brought as a witness and for the said reason, the appellant were prejudiced as they could not test veracity of the disability certificate which was produced, however, when we are again go to the testimony of the claimant which deposed on affidavit before learned Member, Motor Accident Claims Tribunal, Dimapur, it appears that the disability certificate was exhibited as Ext. 22 by the claimant which was issued by a board of doctors. During his cross-examination, no question was put to him by the Insurance Company as regards the said discharge certificate and thus it remained uncontroverted. Similarly, the salary certificate, which was exhibited by the claimant PW-1 as Ext. P/8 also remained uncontroverted. As such, in the considered opinion of this Court, learned Member, Motor Accident Claims Tribunal was not at fault in relying on the said exhibit.

13. It is to be remembered that a Motor Accident Claims case has to be conducted as an enquiry and not as a regular civil suit as an

adversarial litigation. Hon'ble Supreme Court of India in "**United India Insurance Co. Ltd. v. Shila Datta**" reported in "**(2011) 10 SCC 509**" has observed as follows:-

"Nature of a claim petition under the Motor Vehicles Act, 1988

10. A claim petition for compensation in regard to a motor accident (filed by the injured or in case of death, by the dependent family members) before the Motor Accidents Claims Tribunal constituted under Section 165 of the Act is neither a suit nor an adversarial lis in the traditional sense. It is a proceedings in terms of and regulated by the provisions of Chapter XII of the Act which is a complete code in itself. We may in this context refer to the following significant aspects in regard to the Tribunals and determination of compensation by the Tribunals:

(i) Proceedings for award of compensation in regard to a motor accident before the Tribunal can be initiated either on an application for compensation made by the persons aggrieved (the claimants) under Section 166(1) or Section 163-A of the Act or suo motu by the Tribunal, by treating any report of accident (forwarded to the Tribunal under Section 158(6) of the Act as an application for compensation under Section 166(4) of the Act).

(ii) The rules of pleadings do not strictly apply as the claimant is required to make an application in a form prescribed under the Act. In fact, there is no pleading where the proceedings are suo motu initiated by the Tribunal.

(iii) In a proceedings initiated suo motu by the Tribunal, the owner and driver are the respondents. The insurer is not a respondent, but a noticee under Section 149(2) of the Act. Where a claim petition is filed by the injured or by the legal representatives of a person dying in a motor accident, the driver and owner have to be impleaded as respondents. The claimants need not implead the insurer as a party. But they have the choice of impleading the insurer also as a party-respondent. When it is not impleaded as a party, the Tribunal is required to issue a notice under Section 149(2) of the Act. If the insurer is impleaded as a party, it is issued as a regular notice of the proceedings.

(iv) The words "receipt of an application for

compensation" in Section 168 refer not only to an application filed by the claimants claiming compensation but also to a suo motu registration of an application for compensation under Section 166(4) of the Act on the basis of a report of an accident under Section 158(6) of the Act.

(v) Though the Tribunal adjudicates on a claim and determines the compensation, it does not do so as in an adversarial litigation. On receipt of an application (either from the applicant or suo motu registration), the Tribunal gives notice to the insurer under Section 149(2) of the Act, gives an opportunity of being heard to the parties to the claim petition as also the insurer, holds an inquiry into the claim and makes an award determining the amount of compensation which appears to it to be just. (Vide Section 168 of the Act.)

(vi) The Tribunal is required to follow such summary procedure as it thinks fit. It may choose one or more persons possessing special knowledge of and matters relevant to inquiry, to assist it in holding the enquiry. (Vide Section 169 of the Act.)

(vii) The award of the Tribunal should specify the person(s) to whom compensation should be paid. It should also specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them. (Vide Section 168 of the Act.)

(viii) The Tribunal should deliver copies of the award to the parties concerned within 15 days from the date of the award. (Vide Section 168(2) of the Act.)

We have referred to the aforesaid provisions to show that an award by the Tribunal cannot be seen as an adversarial adjudication between the litigating parties to a dispute, but a statutory determination of compensation on the occurrence of an accident, after due enquiry, in accordance with the statute."

Strict rules of adversarial litigation may not be application to an enquiry under Section 166 of the Motor Vehicles Act, more so, when the contesting Insurance Company fails to controvert any evidence, oral or documentary at the stage of inquiry when such evidence was produced before the Motor Accident Claims Tribunal conducting the inquiry. In the instant case also as discussed herein before, the Insurance Company had

failed to contradict the evidence adduce by the claimant. It also failed to adduce any relevant evidence from its own side to counter the case of the claimant.

14. In view of what has been discussed above, this Court is of considered opinion that present appeal filed by the Insurance Company is devoid of any merit and does not justify any interference by this Court.

15. It appears from the record that the appellant has deposited an amount of Rs.25,000/- as statutory deposit in the Registry of this Court at the time of filing of this appeal and has also deposited 50% of the awarded amount in the Registry of this Court as per Court's direction. The said amount may be withdrawn by the respondent No. 1 from the Registry after proper verification by the Registry, if not already withdrawn. The appellant is directed to pay the remaining amount of the award after adjusting the amount which has already been deposited in the Registry, to the Motor Accident Claims Tribunal, Dimapur within a period of 1(one) month from today. Same shall be disbursed by the Member, Motor Accident Claims Tribunal, Dimapur to the present respondent Nos. 1 to 4 after proper verification.

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

17. This appeal is, accordingly, disposed of.

JUDGE

Comparing Assistant