

GAHC010092082019



2024:GAU-AS:10001

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

Case No. : MACApp./696/2022

THE NATIONAL INSURANCE COMPANY LIMITED
REGISTERED HEAD OFFICE AT 3, MIDDLETON STREET, CALCUTTA-
700071, REP. BY THE MANAGER, GAUHATI REGIONAL OFFICE,
BHANGAGARH, GUWAHATI- 781005.

VERSUS

SMTI. TUNU DAS AND 3 ORS
W/O- LATE MINARAM DAS, R/O- VILL. AND P.O. RUPAHIMUKH GAON, P.S.
AND DIST.- SIVASAGAR, ASSAM, PIN- 785664.

2:SRI SURUJ DAS

S/O- LATE MINARAM DAS
R/O- VILL. AND P.O. RUPAHIMUKH GAON
P.S. AND DIST.- SIVASAGAR
ASSAM
PIN- 785664.

3:M/S. R D AUTOMOBILES
NATUN GAON
N.H.-37
P.O. MOHANGHAT
DIST.- DIBRUGARH
ASSAM
PIN- 786008

Advocate for the Petitioner : MS. R D MOZUMDAR, MR. S P SHARMA,MS. C MOZUMDAR

Advocate for the Respondent : MR. A BHATTACHARYYA (R-1, 2), MR. P GOHAIN (r-1,2),MR. A K GUPTA (r-1,2),MR B KALITA (r-1,2),MR. S SINGH (R-1, 2)

**BEFORE
HON'BLE MRS. JUSTICE MARLI VANKUNG**

JUDGMENT AND ORDER (CAV)

Date of hearing : 10.09.2024.

Date of judgment : 30.09.2024

Heard Ms. R. D. Mozumdar, learned counsel for the appellant along with Mr. A.K. Gupta, learned counsel for the respondent Nos. 1 and 2.

2. This is an appeal filed under Section 173(1) of the Motor Vehicle Act, 1988, against the Judgment & Award dated 29.12.2018 passed by the learned Member, Motor Accident Claim Tribunal No. 1, Kamrup (M), Guwahati in M.A.C. Case No. 37/2016.

3. Brief facts of the case is that on 25.07.15 at about 6.15 PM, the deceased Minaram Das, was proceeding on foot on the extreme left side of the road and when he reached Rupahimukh, all of a sudden a vehicle bearing no. AS-06/TC-32 B which was coming from Guwahati side in a high speed knocked him from his backside, as a result of which he sustained grievous injuries on his person and died on 18.08.15 in the hospital. Sivasagar PS registered a case vide PS Case no. 699/15 u/s 279/338/304-A IPC regarding the accident.

4. The claimants who are the wife and the son of the deceased Minaram Das has claimed compensation to the tune of Rs. 30,00,000/- under Section 166 r/w

Section 140 of the MV Act. OP No. 3, driver of the offending vehicle, did not contest the case and the case proceeded ex-parte against him. However, OP No. 1 & OP No. 2 contested the case by filing written statements.

5. OP No. 2, owner of the offending vehicle, in its written statement denied all the averments made by the claimant in the claim-petition and wanted strict proof thereof. It was further stated that all the vehicular documents were valid at the material time of the alleged accident. The vehicle was duly insured with the National Insurance Co Ltd, and the driver had valid driving licence at the time of accident and hence, the insurer is liable to indemnify them in the event of any award passed against them. OP No. 1, National Insurance Co Ltd, in its written statement denied the factual aspects of the case as narrated in the claim-petition and wanted strict proof. The insurer also declined to accept the liability if there was any violation of terms and conditions of insurance policy or if the driver did not have valid and effective driving licence.

6. From the pleadings of the parties, the learned tribunal framed the following issued :-

1. Whether the victim, Minaram Das, died in the alleged road accident dated 25.07.15 involving vehicle no. AS-06/TC-32 B and whether the accident took place due to rash and negligent driving of the driver of the offending vehicle ?
2. Whether the claimants are entitled to get any compensation and if yes, to what extent and by whom amongst the opposite parties, the said compensation amount will be payable ?

7. During trial, the claimant no. 1 examined herself as PW-1 and also examined one eye-witness as PW-2 to prove the income of the deceased. She produced a number of documents in support of her claim. The contesting opposite parties have also examined one witness on their behalf. Both sides filed written argument.

8. The learned Tribunal decided both the issues in favour of the claimants and held that the claimant proved Ex-1 as Police Report; Ex-2 as PM Report; Ex-3(1 to 305) as-cash-memos amounting to Rs 4,65,336/-; & Ex-4 as certificate from Sanjivani Hospital.

9. The learned Tribunal held that the occupation and income of the deceased was not proved and held that the deceased used to earn Rs 6,000/- per month at the relevant time and annual income comes to Rs 72,000/-. Thus, taking the annual income of the deceased at Rs.72,000/-, the annual loss of dependency after deducting one-third of the income, i.e. Rs 24,000/-, on account of personal expenses of the deceased, comes to Rs 48,000/-.

10. Regarding the age of the deceased according to the claimant no. 2, PW-1, the deceased was 54 years but the claimant has not filed any documentary evidence regarding age of the deceased. That Ex-2/PM Report, shows that age of the deceased has been mentioned as 55 years, so, the learned Tribunal held that it can be safely placed in the age group of 56-60 years and hence, the appropriate multiplier is '9' as per Sarla Verma -Vs- Delhi Transport Corporation & Anr, (2009 (6) SCC 121).'

11. The conventional heads, namely, loss of estate, loss of consortium and funeral expenses incurred some expenses for funeral expenses were taken as Rs 15,000/-, Rs 40,000/- and Rs 15,000/- respectively (National Ins Co Ltd -Vs- Pranay Sethi and Ors). Claimant had filed Ex-3(1 to 205) as medical cash-memos and the learned Tribunal held that Rs 4,61,126/, say Rs 4,61,000/- has been spent towards medical treatment of the deceased prior to his death. As per Judgment (Magma General Insurance Co Ltd -Vs- *Nanu* Ram @ Chahru Ram & Ors) [2018 Legal Eagle 786], the learned Tribunal also held that the claimants are entitled for loss of love and affection 1,00,000/- (Rs 50,000/- each) and hence held that the just and reasonable compensation to which the claimants are entitled in the instant case is as under :

Loss of dependency 48,000x 9	..	Rs 4,32,000.00
Funeral expenses	..	Rs. 15,000.00
Medical expenditures	..	Rs. 4,61,000.00
Loss of love & affection	..	Rs. 1,00,000.00
Loss of consortium	..	Rs. 40,000.00
Total	..	Rs. 10,48,000.00

12. The learned Tribunal awarded Rs 10,48,000/- (Rupees ten lakh forty-eight thousand only) inclusive of NFL with interest @ 7% p.a. from the date of claim-petition, i.e. 05.01.16 till payment. The learned Tribunal held that the offending

vehicle bearing no. AS-06/TC-32 B was validly insured with National Insurance Co Ltd and the opposite party no. 1, National Insurance Co Ltd, was directed to pay the award within one month from the date of order.

13. Mrs. R.D. Mozumder, the learned counsel for the appellant submits that the learned Member failed to consider that it is for the owner of the vehicle to prove that the vehicle was being driven with a valid driving license. The Appellant Company can only adduce negative evidence. That no valid driving license was exhibited and no evidence was adduced by the owner of the vehicle or the driver, to prove the same. When the owner failed to prove that the vehicle was driven with a valid driving license, the Learned Member could not have directed the Appellant Company to pay the compensation in the case. Thus the judgment deserves to be quashed and set aside.

14. The learned counsel for the appellant also submits that the Learned Member erred in granting compensation of Rs. 1,00,000/- (Rupees one lakh) only for love and affection, when there is no provision in the M.V. Act, 1988 for such compensation. And as such, the judgment is liable to be set aside.

15. The learned counsel further submits that the Learned Member erred in law as well as in facts in not considering the fact that, even in cases where an order of pay and recovery against the owner is given, in such situations, the court has to take security for the payment from the owner of the vehicle, before the amount is released to the claimant and that once payment is made to the claimants without any security being provided, it is not possible to recover the amount by the appellant company.

16. The learned counsel for the appellant Insurance Company has relied on the Judgment of the Apex Court in ***Oriental Insurance Co. Ltd Vs. Shri***

Nanjappan & Ors., reported in **(2004) 13 SCC 224, Parminder Singh Vs. New India Assurance Co. Ltd & Ors.**, reported in **AIR 2019 SC 3128** and on the Judgment of a Coordinate Bench of this Court (Principal Seat) in **Oriental Insurance Co. Ltd. Vs. Smti. Sonali Kalita & 3 Ors** in Case No. I.A.(Civil) No. 3149/2017 in MAC App. No. 467/2017 dated 22.09.2017.

17. Mr. A.K. Gupta, learned counsel for respondent Nos. 1 & 2, on the other hand submits that though the driving license of the driver of the accident vehicle No. AS 06/TC-32 B is not proved by the driver of the vehicle or the owner of the vehicle, however, the claimant has clearly stated that the driver of the said accident vehicle was having a valid driving license. He further submitted that the compensation awarded by the learned Tribunal under loss of love and affection amounting to Rs. 1 lakh is in accordance with the Judgment & Award of the Apex Court in **Magma General Insurance Co.Ltd. Vs. Nanu Ram Alias Chuhru Ram & Ors.**, reported in **2018 STPL 10856 SC**. He therefore submits that there were no grounds to interfere with the Judgment & Award of the learned Tribunal dated 29.12.2018.

18. Having heard the submissions made by the learned counsels for both the parties and on perusal of the documents on record, this Court finds that there is no dispute with regards to the accident that occurred on 25.07.2015, wherein the deceased Meena Ram Das was knocked by the accident vehicle bearing Registration No. AS 06/TC-32 B, due to rash and negligent driving of the said vehicle, wherein he succumbed to his injuries on 18.08.2015 due to the accident. The age of the deceased Mr. Meena Ram Das and the income of the deceased as taken by the learned Tribunal are also not disputed.

19. The points to be considered in this appeal are:-

(i) Whether the learned Tribunal had erred in awarding Rs. 1 lakh for loss of love and affection to the claimant.

(ii) Whether the driver of the offending vehicle arrayed as respondent No. 3 had a driving license or not at the time of the accident and if so, whether the appellant's Company can be absolved of the liability to bear the compensation awarded to the claimants.

20. With regards to whether the learned Tribunal had erred in awarding Rs. 1 lakh for loss of love and affection, it is seen that the learned Tribunal has relied on the judgment of the Apex Court in ***Magma General Insurance Co.Ltd. (Supra)***. On perusal of the judgment of the learned Apex Court in ***Magma General Insurance Co.Ltd. (Supra)***, it is however noted that the learned Apex Court had upheld the award under loss of love and affection in the case, on the grounds *that the deceased in the accident was only of 24 years and the Court found it fit not to interfere with the award made under the heading "loss of love and affection", by observing that an accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. The children are valued for their love, affection, companionship and their role in the family unit.* With this observation, the Apex Court had awarded Rs. 1 lakh (Rs. 50,000/- each) to the parents of the deceased for loss of love and affection.

In the instant case, it is seen that the claimants are the wife and son of the deceased. The learned Tribunal had awarded Rs. 40,000/- under the head

"loss of consortium and Rs. 1,00,000/- under the head "loss of love and affection" for the death of the deceased Mr. Meena Ram Das to the claimants are the wife of the deceased and the son of the deceased.

However, in view of the judgment of the Apex Court (Constitutional Bench) in National Insurane Co. Lts. Vs. Prayan Sethi, reported in 2017 16 SCC 680, this Court find it appropriate if the claimants (wife) is awarded Rs. 40,000/- towards spousal consortium and Rs. 40,000/- to the son for parental consortium. Thus, on awarding both the respondents for spousal consortium and parental consortium, this Court does not find it appropriate to award any amount under "loss of love and affection."

21. In view of the above, this Court find it fit that the claimant is entitled to be awarded compensation as under:-

Loss of dependency 48,000x 9	..	Rs. 4,32,000.00
Funeral expenses	..	Rs. 15,000.00
Medical expenditures	..	Rs. 4,61,000.00
Loss of spousal and consortium	..	Rs. 40,000.00
Loss of parental consortium	..	Rs. 40,000.00
Total	..	Rs. 9,88,000.00

22. Accordingly, this Court find it fit to interfere with the quantum of awarded amount passed by the learned Member, Motor Accident Claim Tribunal 1,

Kamrup (M), Guwahati in MAC Case No. 37/2016 as noted above. The awarded amount of Rs. 9,88,000.00 (Rupees Nine lakhs, eighty eight thousand) only, with interest @ 7% p.a. from the date of claim-petition, is to be paid to the claimant

23. On perusal of the evidence on record and the documents exhibited by the claimant, it is seen that though the owner of the vehicle/opposite party No. 2 in his written statement had stated that the driver of the offending vehicle had a valid driving license at the time of the accident. However, it is seen that the driving license is not exhibited in the Court nor had the owner of the vehicle or the driver appear and deposed in the Court. This Court, therefore finds that it cannot simply be presumed that the driver of the offending vehicle at the time of the accident had a valid driving license without the same being proved before the learned Tribunal. It is seen that the Apex court in ***Parminder Singh Vs. New India Assurance Co. Ltd & Ors.***, (supra) has held as under:

“7. On the issue of liability to pay the compensation awarded, we affirm the view taken by the High Court that the respondent Insurance Company is absolved of the liability to bear the compensation, as evidence has been produced from the office of the Regional Transport Office to prove that the drivers of the two offending trucks were driving on the basis of invalid driving licences. It is also relevant to note that the owners and drivers of the offending trucks have not appeared at any stage of the proceedings, including this Court.

7.1. This Court in Shamanna v. Oriental Insurance Co. Ltd. [Shamanna v. Oriental Insurance Co. Ltd., (2018) 9 SCC 650 : (2018) 4 SCC (Civ) 561 : (2019) 1 SCC (Cri) 863] , held that if the driver of the offending

vehicle does not possess a valid driving licence, the principle of "pay and recover" can be ordered to direct the insurance company to pay the victim, and then recover the amount from the owner of the offending vehicle."

24. In view of the above, on the failure to prove that the driver was having a valid driving license at the time of the accident, this court deemed it appropriate that the principle of "*pay and recover*", should be applied in the instant case by directing the appellant's Insurance Company to pay the claimant the compensation amount of Rs. 9,88,000/-, by depositing the same before the , Motor Accident Claim Tribunal No. 1, Kamrup (M), Guwahati which, the Insurance Company is entitled to recover from the owner and driver of the offending vehicle No. AS 06/TC-32 B, thereby, absolving the appellant company of the liability to bear the compensation amount.

25. It is noted that the Apex Court in **Oriental Insurance Co. Ltd. v. Nanjappan** (supra) has held that;

" 8. Therefore, while setting aside the judgment of the High Court we direct in terms of what has been stated in Baljit Kaur case [(2004) 2 SCC 1 : (2004) 1 Scale 124] that the insurer shall pay the quantum of compensation fixed by the Tribunal, about which there was no dispute raised, to the respondent claimants within three months from today. For the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the executing court concerned as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the claimants,

owner of the vehicle shall be issued a notice and he shall be required to furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the executing court shall take assistance of the Regional Transport Authority concerned. The executing court shall pass appropriate orders in accordance with law as to the manner in which the insured, owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the executing court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured. The appeal is disposed of in the aforesaid terms, with no order as to costs."

It is also seen that a Coordinate Bench of this Court in ***Oriental Insurance Co. Ltd. Vs. Smt. Sonali Kalita & 3 Ors (Supra)*** in the Principal Seat by referring to the case of ***National Insurance Co. Ltd. Vs. Challa Bharthamma & Ors.***, reported in ***(2004) 8 SCC 517***, has also held that "*the learned Tribunal is required to obtain adequate security from the owner and to cause attachment of the offending vehicle as a part of the security to its satisfaction then it would be open for the learned MAC Tribunal to release the said 50% of the awarded amount and also initiate steps for recovery of the said amount from the owner.*"

26. In view of the above cited judgments, this Court finds that for the recovery of the awarded amount from the owner of the accident vehicle, the learned Tribunal/Executing Court is required to obtain adequate security from the owner and may pass appropriate orders in accordance with law as to the manner in which the insured owner of the vehicle shall make payment to the

insurer/insurance company, by obtaining adequate security from the owner and if required to cause attachment of the offending vehicle, as a part of the security, to the satisfaction of the learned MAC Tribunal/Executing Court for the release of the whole awarded amount to the claimant and also initiate steps for recovery of the said amount from the owner.

27. Accordingly, the Judgment & Award dated 29.12.2018 passed by the learned Member, MACT No. 1, Kamrup (M), Guwahati in MAC Case No. 37/2016 stands modified and interfered with as above.

MAC Appeal No. 696/2022 thus stands disposed of.

Statutory deposit, if any, to be released to the appellant.

No cost imposed.

JUDGE

Comparing Assistant