

GAHC010117252018



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

Case No. : MACApp./502/2018

SRI BAPPI CHAKRABORTY
SRI JANARDHAN CHAKRABORTY, R/O LANKA PATTY, LANKA TOWN,
WARD NO. 1, P.O. and P.S. LANKA, DIST. NAGAON, ASSAM

VERSUS

NATIONAL INSURANCE CO. LTD. and ANR
HOJAI BRANCH, P.O. and P.S. HOJAI, DIST. NAGAON, ASSAM, POLICY NO.
200203/31/11/630003604 VALID UPTO 14.11.2012 (INSURER OF THE VEHICLE
NO. AS-02-E-3448)

2:SMTI. SOBITA BHATT

W/O LATE TAPASH KANTI BHATT
R/O VILL. 2 NO. LAMBA PATHAR
P.O. and P.S. KHERONI
DIST KARBI ANGLONG
ASSAM

Advocate for the Petitioner : MR. M BISWAS

Advocate for the Respondent : MS. R D MOZUMDAR

::: PRESENT:::

THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Appellant : Mr. M. Biswas,
Advocate.

For the Respondents : Mrs. R.D. Mozumdar,
Advocate.

Date of Hearing : 18.07.2024.

Date of Judgment : 22.07.2024.

JUDGMENT AND ORDER (CAV)

Heard Mr. M. Biswas, learned counsel representing the appellant as well as Mrs. R.D. Mozumdar, learned counsel appearing for the respondent Insurance Company.

2. This is an appeal under Section 173 of the Motor Vehicles Act, 1988 against the judgment dated 13.02.2014 passed by the learned Member, Motor Accident Claims Tribunal, Hojai in MAC Case No.198/2012.

3. On 18.12.2011, late Tapash Kanti Bhatt was travelling with his bakery items to Dayangmukh weekly market in a TATA Mobile vehicle bearing Registration No.AS-02-E-3448. The said vehicle met with an accident and Tapash Kanti Bhatt died due to the accident.

4. The family members of the deceased filed an application before the Tribunal seeking compensation.

5. The Tribunal held that the deceased was a gratuitous passenger in a goods carrying vehicle. Therefore, directed the owner of the said vehicle to pay an amount of ₹4,000,00/- (Rupees Four lakhs) to the claimant along with interest at the rate of 6% per annum.

6. Mr. Biswas has contended that the deceased late Tapash Kanti Bhatt was travelling inside the cabin of the said vehicle and therefore, in view of Section 147 of the Motor Vehicles Act, he cannot be termed as a gratuitous passenger.

7. Mr. Biswas has relied upon a judgment of the Supreme Court that was rendered in *National Insurance Co. Ltd. v. Baljit Kaur*, (2004) 2 SCC 1. Paragraph 20 of the said judgment is quoted as under:

“20. It is, therefore, manifest that in spite of the amendment of 1994, the effect of the provision contained in Section 147 with respect to persons other than the owner of the goods or his authorized representative remains the same. Although the owner of the goods or his authorized representative would now be covered by the policy of insurance in respect of a goods vehicle, it was not the intention of the legislature to provide for the liability of the insurer with respect to passengers, especially gratuitous passengers, who were neither contemplated at the time the contract of insurance was entered into, nor was any premium paid to the extent of the benefit of insurance to such category of people.”

8. Supporting the judgment of the Tribunal, Mrs. R.D. Mozumdar has submitted that there is no evidence in this case to prove that the deceased Tapash Kanti Bhatt was travelling inside the cabin of the said vehicle.

9. Mrs. Mozumdar has relied upon the judgment of the Supreme Court that was delivered in *National Insurance Co. Ltd. v. Cholleti Bharatamma*, (2008) 1 SCC 423 . Paragraph 19 of the said judgment is quoted as under:

“19. It is now well settled that the owner of the goods means only the person who travels in the cabin of the vehicle.”

10. Mrs. Mozumdar has further submitted that in the said accident, the deceased fell from the truck and the truck ran over him after crushing his head. According to the learned counsel, such an accident would not have occurred if the deceased was sitting inside the cabin which remains closed while vehicle was running. According to Mrs. Mozumdar, the deceased was sitting on the back side of the vehicle and he has fallen leading to his death.

11. I have considered the submissions made by the learned counsel of both sides.

12. I agree with the learned counsel for the Insurance Company that there is no evidence in this case to prove as to where the deceased was sitting. There is no evidence to prove that the deceased was sitting on the back side of the vehicle.

13. Here, at this stage I shall rely upon a judgment of the Hon’ble Supreme Court that was delivered in *Union of India v. Prabhakaran Vijaya Kumar*, (2008) 9 SCC 527. Paragraphs 11 and 12 are quoted as under:

“11. No doubt, it is possible that two interpretations can be given to the expression “accidental falling of a passenger from a train carrying passengers”, the first being that it only applies when a person has actually got inside the train and thereafter falls down from the train, while the second being that it includes a situation where a person is trying to board the train and falls down while trying to do so. Since the provision for compensation in the Railways Act is a beneficial piece of legislation, in our opinion, it should receive a liberal and wider interpretation and not a narrow and technical one. Hence, in our opinion the latter of the abovementioned two interpretations i.e. the one which advances the object of the statute and serves its purpose should be preferred vide *Kunal Singh v. Union of India* [(2003) 4 SCC 524 : 2003 SCC (L&S) 482] (SCC para 9), *B.D. Shetty v. Ceat Ltd.* [(2002) 1 SCC 193 : 2002 SCC (L&S) 131] (SCC para 12) and *Transport Corpn. of India v. ESI Corpn.* [(2000) 1 SCC 332 : 2000 SCC (L&S) 121].

12. It is well settled that if the words used in a beneficial or welfare statute are capable of two constructions, the one which is more in consonance with the object of the Act and for the benefit of the person for whom the Act was made should be preferred. In other words, beneficial or welfare statutes should be given a liberal and not literal or strict interpretation vide *Alembic Chemical Works Co. Ltd. v. Workmen* [AIR 1961 SC 647] (AIR para 7), *Jeewanlal Ltd. v. Appellate Authority* [(1984) 4 SCC 356 : 1984 SCC (L&S) 753 : AIR 1984 SC 1842] (AIR para 11), *Lalappa Lingappa v. Laxmi Vishnu Textile Mills Ltd.* [(1981) 2 SCC 238 : 1981 SCC (L&S) 316 : AIR 1981 SC 852] (AIR para 13), *S.M. Nilajkar v. Telecom District Manager* [(2003) 4 SCC 27 : 2003 SCC (L&S)

380] (SCC para 12).”

14. In the case in hand, there is no denial that on 18.12.2011, late Tapash Kanti Bhatt was travelling in the vehicle bearing Registration No.AS-02-E-3448 and was carrying his bakery products to a market. There is also no denial that on the said day, he lost his life after falling from the said vehicle.

15. The only ground taken by the Insurance Company is that the deceased was not sitting inside the cabin of the driver and therefore, he was a gratuitous passenger.

16. I am of the considered opinion that since the provisions relating to payment of compensation to the victims of motor vehicles accident are beneficial legislations and therefore we should have a positive approach while dealing with such matters. With the materials on the record, we can have two interpretations. In that case, we should go for liberal interpretations rather than having a literal interpretation. In my opinion, out of the aforesaid two interpretations, the one which advances the object of the statute and serves its purpose should be preferred.

17. For the aforesaid reasons, I have decided to agree with the appellant.

18. The appeal is allowed. The impugned judgment stands modified. The compensation of ₹4,000,00/- (Rupees Four Lakh) along with interest at the rate of 6% per annum from the date of filing of the case before the Tribunal shall be paid by National Insurance Company Limited.

The instant appeal is disposed of

Send back the LCR.

JUDGE

Comparing Assistant