

GAHC010193682018



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

Case No. : MACApp./439/2019

KALPANA SINHA AND 4 ORS
W/O LATE KRISHNAKANTA SINHA, R/O VILL. BBHAKATPUR, P.O.
BHAKATPUR, P.S. SILCHAR, DIST. CACHAR, ASSAM, PIN 788001

2: SRIKANTA SINHA
S/O LATE KRISHNAKANTA SINHA
R/O VILL. BHAKATPUR
P.O. BHAKATPUR
P.S.SILCHAR
DIST. CACHAR
ASSAM
PIN 788001

3: SURAJIT SINHA
S/O LATE KRISHNAKANTA SINHA
R/O VILL. BHAKATPUR
P.O. BHAKATPUR
P.S.SILCHAR
DIST. CACHAR
ASSAM
PIN 788001

4: PROSONJIT SINHA
S/O LATE KRISHNAKANTA SINHA
R/O VILL. BHAKATPUR
P.O. BHAKATPUR
P.S.SILCHAR
DIST. CACHAR
ASSAM
PIN 788001

5: SMTI KRIPA SHREE SINHA
D/O LATE KRISHNAKANTA SINHA
R/O VILL. BHAKATPUR

P.O. BHAKATPUR
P.S.SILCHAR
DIST. CACHAR
ASSAM
PIN 78800

VERSUS

M/S R.K. ROADWAYS PVT LTD AND 5 ORS
S/D/W OF N.A. KALITA COMPLEX 2ND FLOOR, BASISTHA CHARIALI,
WARD NO. 58, PHONE NO. 94350471029 OWNER OF THE TRUCK, PIN
781038

3:THE DIVISIONAL MANAGER
REPRESENTED BY DIVISIONAL MANAGER
THE UNITED INDIA INSURANCE CO. LTD. SHYAMAPRASAD ROAD
SHILLONGPATY
SILCHAR
CACHAR
ASSAM
INSURER OF THE TRUCK
PIN 788004

4:ABHIJIT CHAKRABORTY
S/O LATE NIKHIL CHAKRABORTY
VILL.NNOWARAJ
P.O. SINGARI
DIST. CAHCAR
ASSAM
OWNER OF THE BOLERO
PIN 788007

6:THE DIVISIONAL MANAGER
ORIENTAL INSURANCE CO. LTD.
TOWN CLUB BUILDING
P.W.D. ROAD
SILCHAR
CACHAR
ASSAM INSURER OF THE BOLERO
PIN 78800

Advocate for the Petitioner : MR. N UDDIN

Advocate for the Respondent : MD. A AHMED

Linked Case : I.A.(Civil)/4349/2018

KALPANA SINHA AND 4 ORS
W/O LATE KRISHNAKANTA SINHA
R/O VILL. BHAKATPUR
P.O. BHAKATPUR
P.S. SILCHAR
DIST. CACHAR
ASSAM
PIN 788001

2: SRIKANTA SINHA
S/O LATE KRISHNAKANTA SINHA
R/O VILL. BHAKATPUR
P.O. BHAKATPUR
P.S.SILCHAR
DIST. CACHAR
ASSAM
PIN 788001

3: SURAJIT SINHA
S/O LATE KRISHNAKANTA SINHA
R/O VILL. BHAKATPUR
P.O. BHAKATPUR
P.S.SILCHAR
DIST. CACHAR
ASSAM
PIN 788001

4: PROSONJIT SINHA
S/O LATE KRISHNAKANTA SINHA
R/O VILL. BHAKATPUR
P.O. BHAKATPUR
P.S.SILCHAR
DIST. CACHAR
ASSAM
PIN 788001

5: SMTI KRIPA SHREE SINHA
D/O LATE KRISHNAKANTA SINHA
R/O VILL. BHAKATPUR
P.O. BHAKATPUR
P.S.SILCHAR
DIST. CACHAR
ASSAM
PIN 788001

VERSUS

M/S R.K. ROADWAYS PVT LTD AND 5 ORS
S/D/W OF N.A. KALITA COMPLEX 2ND FLOOR
BASISTHA CHARIALI
WARD NO. 58
PHONE NO. 94350471029 OWNER OF THE TRUCK
PIN 781038

2:MOINUL HOQUE
S/O ABDUL KADIR SEK
VILL. CHENGAMARI
BIDAPUR
DIST. BONGAIGAON
ASSAM DRIVER OF THE TRUCK PIN 783380
3:THE DIVISIONAL MANAGER
REPRESENTED BY DIVISIONAL MANAGER
THE UNITED INDIA INSURANCE CO. LTD. SHYAMAPRASAD ROAD
SHILLONGPATTY
SILCHAR
CACHAR
ASSAM
INSURER OF THE TRUCK
PIN 788004
4:ABHIJIT CHAKRABORTY
S/O LATE NIKHIL CHAKRABORTY
VILL.NNOWARAJ
P.O. SINGARI
DIST. CAHCAR
ASSAM
OWNER OF THE BOLERO
PIN 788007
5:SUNA SINHA
S/O BIMAL SINHA
VILL. AND P.O. BOROBAKARA
DIST. JIRIBAM
MANIPUR
DRIVER OF THE BOLERO
PIN 788099
6:THE DIVISIONAL MANAGER
ORIENTAL INSURANCE CO. LTD.
TOWN CLUB BUILDING
P.W.D. ROAD
SILCHAR
CACHAR
ASSAM INSURER OF THE BOLERO
PIN 788001

Advocate for : MR. N UDDIN
Advocate for : MD. A AHMED (R3) appearing for M/S R.K. ROADWAYS
PVT LTD AND 5 ORS

BEFORE
HONOURABLE MR. JUSTICE BUDI HABUNG

ORDER

Date : 20-03-2024

Heard Mr. M. Sarma learned counsel for the appellants/claimants. I have also heard Ms. S. Khanikar learned counsel for respondent No. 4; Mr. S. learned counsel for respondent Nos. 1 and 2 and Mr. R.K. Bhatra, learned counsel for respondent No. 3.

2. This is an application under section 173 of the Provision of M.V Act 1988 filed against the judgment and order dated 09.02.2018 passed by the learned Member MACT, Cachar, Silchar in MAC Case No. 51/2013.

3. The brief fact leading to the filing of this appeal is that on 02.12.2012, while the deceased was proceeding by a bolero bearing registration No. AS 11A-9743, at the same time, a truck bearing registration No. AS 01 CC/2373 being loaded with cement was also proceeding towards Badarpur and on reaching, Lakhipur on NH-44 under Kalain P.P, it collided with the bolero vehicle. As a result, the deceased sustained grievous injuries on his person for which, he was shifted to Silchar Medical College and Hospital where he succumbed to his injuries. At the time of the death of the deceased, the deceased was working as Deputy Manager in Kalpataru Power Transmission Limited and earning a monthly Salary of Rs.58,385/-.

4. The appellants/claimants then filed claim petition before the learned Tribunal claiming a compensation of Rs. 1, 34, 59, 434/- for death of the deceased Late Krishnakanta Sinha due to the said motor accident.

5. The case was contested by filing a written statement.

6. Based on the pleadings of the parties and the learned Tribunal framed 4 issues, which are as follows:

(i) Whether deceased died due to motor accident took place on 02-12-2012 at about 2:30 PM due to rash and negligent driving of the driver of the truck bearing No. AS-01-CC-9783? Whether the driver of the Bolero bearing No. AS-11-A-9783 contributed towards the accident?

(ii) Whether the claimants are entitled to compensation? If so what amount is just and reasonable?

(iii) To what other relief/reliefs the claimants are entitled?

(iv) Who is liable to pay compensation to the claimant?

6. During trial the claimants/appellants adduce evidence of only 1(one) witness and exhibited documents. On completion of the trial the learned Tribunal passed the impugned judgment and award holding the Insurance Company liable and directed to deposit the awarded compensation of Rs.10,24,291/-(Ten lakhs twenty four thousand two hundred and ninety one) only with 9% interest p.a from the date of filing of the claim application till realization of the full amount.

7. Being aggrieved the appellant has filed this appeal challenging the said impugned order.

8. It is submitted by Mr. R.K. Bhatra, the learned counsel for the

respondents that during the trial, the claimant has produced the salary certificate of the deceased and exhibited as exhibit 6. However, the same was not considered being not proved as the employer who had issued the said certificate did not turned up to prove the same before the Tribunal.

9. By filing additional affidavit, the claimants has annexed certain additional documents to support her case and to substantiate her claim with a view to show that the deceased was capable of earning and was working as a Deputy Manager in Kalapataru Power Transmission Limited.

10. The learned counsel for the appellants/claimants submits that at this stage, he has a limited prayer to allow the appellants/claimants to produce those documents as evidence and exhibited the same before the learned Tribunal to substantiate the claimant's case and prays for remanding back the case to the learned Tribunal for trial afresh by giving an opportunity to produce those documents.

11. Per contra, the learned counsel for the respondents submits that after appreciation of the evidence, the learned Tribunal has already passed a judgment and granted just and reasonable compensation in favour of the claimants and hence, the same evidence which has already been produced before the learned Tribunal cannot be allowed to be produced again for re-appreciation over and again.

12. I have heard and considered the rival submissions of the learned counsel for the parties.

13. Upon perusal of the records and on consideration of the documents produce before this Court by filing additional affidavit, it appears that

some of the relevant documents which were in favour of the claimants were not considered by the learned Tribunal as it was not proved by producing the witnesses to prove the relevancy of the said documents due to which it adversely affected the case of the claimant in terms of quantum of award.

14. In view of the above observations, this Court is of the view that the appellants/claimants can be given an opportunity to produce those relevant documents and to prove it before the learned Tribunal.

15. On the other hand, the learned counsel for the respondent, Mr. R.K. Bhatra, submits that Insurance Company has already deposited the entire awarded amount before the Tribunal and for the mistake on the part of the claimants/appellants for not producing the evidence, the Insurance Company should not be made to suffer and therefore, prays that the claimants/appellants would not be entitled to any interest from the date of passing of the judgment and award dated 09.02.2018 to till today i.e on 20.03.2024.

16. The prayer of the learned counsel for the respondent Insurance Company has also been agreed to and accepted by the learned counsel for the appellants/claimants.

17. In view of the above, the **Judgment and Award dated 09.02.2018 is hereby set aside.** The case is remanded back to the learned Tribunal for trial afresh by giving the claimants an opportunity to produce the relevant document and adduce fresh evidences so far as the so far as the document to be produced are concerned and the opposite

party shall also be given an opportunity to cross-examine on those evidences.

18. The parties are directed to appear before the learned Tribunal on 03.05.2024 for further necessary order and on such appearance, the learned Tribunal shall try to dispose of the matter as early as possible preferably within a 6(six) months from the date of appearance of the parties before the learned Tribunal.

19. With the above observations, the appeal stands allowed and disposed of.

Return the LCR immediately.

JUDGE

Comparing Assistant