

GAHC010194002013



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

Case No. : MACApp./340/2013

ON THE DEATH OF HEMAPROVA GOGOI HER LEGAL HEIRS
W/O LATE NANDESWAR GOGOI, R/O LACHIT NAGAR, NEAR LACHIT
NAGAR SISU KALYAN, P.O. CHOWKIDINGA, DIST. DIBRUGARH

1.1: DULUMA GOGOI @ DULUMA CHAMUAH
W/O. LATE BALIN CHAMUAH
R/O. H/NO.11
INCOME TAX COLONY ROAD
BONGAON
BELTOLA
GHY-28
P.O. LAKHI MANDIR
P.S. BASISTHA
DIST. KAMRUP(M)
ASSAM

1.2: JAMUNA GOGOI PHUKAN
W/O. SRI DIPAK KUMAR PHUKAN
R/O. H/NO.9
D. TAROO PATH (BISHNU PATH)
SAURAV NAGAR
A.G. OFFICE MAIN ROAD
BELTOLA
GHY-28
P.O. LAKHI MANDIR
P.S. BASISTHA
DIST. KAMRUP(M)
ASSAM

1.3: SATYAJIT GOGOI
S/O. LATE NANDESWAR GOGOI
R/O. HEMASHREE BUILDING
SISHU KALYAN PATH
LACHIT NAGAR

EAST CHOWKIDINGEE
DIBRUGARH- 786001
P.O. CHOWKIDINGEE
P.S. MILAN NAGAR
DIST. DIBRUGARH (ASSAM)

VERSUS

THE NEW INDIA ASSURANCE CO. LTD and 2 ORS.
(INSURER OF TRUCK BEARING NO. ASU 6047), GOLAGHAT BRANCH, DIST.
GOLAGHAT, ASSAM.

2:THE ORIENTAL INSURANCE CO. LTD.

(INSURER OF AMBASSADOR CAR BEARING NO. ASE 6044) COMMERCE
HOUSE
2ND FLOOR
H.S. ROAD
DIBRUGARH
DIST. DIBRUGARH
ASSAM.

3:NRIPATI BALLAV BASAK

S/O LT. NAGENDRA KR. BASAK
(OWNER OF TRUCK NO. ASU-6047)
NAYA BENGAL ROAD
MOUZA and P.S. GOLAGHAT
DIST. GOLAGHAT
ASSAM

Advocate for the Petitioner : MR. M P CHOUDHURY

Advocate for the Respondent : MS P HUJURI

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

JUDGMENT & ORDER (CAV)

Date : 04-04-2024

Heard Mr. M.P. Choudhury, learned counsel for the appellants. Also heard Mr. R.K. Bhatra and Mr. R.C. Paul, learned counsel for the respondents.

2. This appeal is directed against the judgment and order dated 16.07.2013 passed by the learned Member MACT, No. 2, Kamrup, Guwahati in MAC Case No. 552/06, whereby the Tribunal has dismissed the claim petition filed by the appellant/claimant.

3. It is pertinent to say here that the original appellant Smti. Hemaprova Gogoi who is the mother of the deceased Biswajit Gogoi has expired during the pendency of the appeal. Subsequently, her legal heirs has been substituted as per order of this Court vide dated 19.02.2021.

4. The brief facts of the case is that the mother of the deceased has filed a claim petition before the Member, MACT No.2, Kamrup claiming compensation amounting to Rs.39,25,000/- on account of death of her son. According to the claimant, on 02.06.1991 in the morning hour, when the deceased was proceeding from Dibrugarh to Guwahati in his vehicle bearing Regd. No. ASE-6044 and when he reached near Dharmtul bridge, one truck bearing Regd. No. ASQ-6047 coming from opposite direction in rash and negligent manner, knocked down the vehicle in which the deceased was travelling and pushed his vehicle about 7 mtrs. as a result of which the son of the claimant sustained grievous injuries on his person. Thereafter, he was shifted to the hospital for his treatment wherein he succumbed to his injuries. The other persons accompanying her son in his vehicle namely, Lt. Dinesh Goswami, Ex-Union Law Minister, Lt. S.K. Sen, Advocate and Lt. D. Bhattacharjee died on the spot. After the accident, a case was registered vide Dharmtul P.S. Case No. 26/1991 under section 279/338/304(A)/427 IPC.

5. According to the appellant/claimant, the son of the claimant was about 25 years of age at the relevant time of accident and he used to earn Rs.10,000/- per month.

6. On contesting the case, the opposite party Nos. 3 and 4, i.e. insurance company of both the vehicles, filed their written statements and denied all the averments made in the claim petition. The deceased was the owner of the vehicle bearing Regd. No. ASE-6044. On the pleadings of the parties, the learned Tribunal has framed the following issues-

(i) Whether the victim Biswajit Gogoi died as a result of injuries sustained by him in the alleged road accident dated 02.06.1991 involving vehicle No. ASU-6047(truck) and ASE-6044(Ambassador), and whether the said accident took place due to rash and negligent driving of the drivers of the offending vehicle?

(ii) Whether the claimants are entitled to receive any compensation and if yes, to what extent and by whom amongst the opposite parties, the said compensation amount will be payable?

7. During the course of trial, the claimant has examined three witnesses as C.W.1, C.W.2 and C.W.3, mother, brother and sister of the deceased. The insurance companies did not adduce any evidence in support of their case.

8. It appears from the judgment of the tribunal that after discussing the evidence of the witnesses and documents available in the record, the learned tribunal held that the deceased Biswajit Gogoi was travelling in a vehicle bearing Regd. No. ASE-6044 and he died due to motor vehicle accident but the learned Tribunal also had noted that the police has enquired the matter after the accident and during inquiry, it came to light that the deceased was travelling in the vehicle towards Guwahati side and dashed against one truck bearing Regd. No. ASU-6047. So it is very clear that the deceased died due to the accident. The alleged accident occurred due to fault of the driver of the vehicle bearing Regd. No. ASE-6044. The Tribunal though held that the issue No. 1 was decided in favour of the claimants side but subsequently also stated that as the accident occurred due to negligence of the deceased himself, hence, the claimants are not entitled to get any compensation. Hence, this appeal challenging the order of the learned Tribunal dated 16.07.2013.

9. The learned counsel for the appellant has submitted that the learned Member, MACT erred in law rejecting the claim petition with the finding that as per the FIR, accident occurred due to fault of the deceased only. On consideration of the FIR, it is expressly clear that the driver of both the vehicles drove in excessive speed and also in rash and negligent

manner as a result of which, the accident occurred. Therefore, the learned Tribunal ought to have allowed the claim petition.

10. It is also submitted by the learned counsel for the appellant that the learned Member, MACT, has failed to consider the aspect of contributory negligence. From the contents of the FIR, it reveals that the accident occurred due to negligent driving of the driver of both the vehicles. Even in this circumstance, the learned Member, MACT ought not to have dismissed the claim petition but ought to have granted compensation of 80% against the heavy vehicle i.e. Truck and 20% against light vehicle i.e. Ambassador car in which the deceased was travelling. Therefore, finding of learned Member, MACT, in the instant case is perverted and not based on record and is liable to be set aside.

In support of his submission, the learned counsel for the appellant has placed reliance on the following case laws-

(i) Vimla Devi & Ors. v. National Insurance Com. Ltd. & Anr. reported in (2019) 2 SCC 186.

(ii) Mangla Ram vs. Oriental Insurance Com. Ltd. reported in (2018) 5 SCC 656.

11. In response, the learned counsel for the insurance companies has submitted that all the documents submitted by the appellant are Xerox copies and no original documents are available in the record. The copy of charge-sheet is also not filed along with the claim petition as such, it cannot be ascertained against which driver of the vehicle, the charge-sheet has been filed. Under such backdrop, the insurer of the truck is not responsible to pay 50% of the compensation amount being contributory negligence on the part of the driver of the said truck.

12. The learned counsel for the respondent No.2 supported the fact that the learned counsel for the appellant by stating that though the FIR was lodged by the police but it

appears that the driver of the Ambassador car died due to the alleged accident. Considering the background of the case, it cannot be said that the driver of the Ambassador car was responsible for the alleged accident. As per claim petition and the evidence of the witnesses, it is clear that the accident occurred due to rash and negligent driving of the driver of the alleged truck. Hence, the insurer of the said truck is not liable to pay any compensation to the claimant/appellant.

In support of his submission, the learned counsel for the respondent has placed reliance on a case law- Bijoy Kumar Dugar vs. Bidya Dhar Dutta & Ors. reported in (2006) 3 SCC 242.

13. Admittedly, three witnesses were examined from the side of the appellant/claimant and they were not present at the time of the accident. On the basis of an inquiry made by the informant one S.I. of police that the driver of the Ambassador car coming in a rash and negligent manner and dashed against the truck as a result of which the accident occurred. Except the FIR, there is no any document available in the record.

14. In this case, while deciding issue No. 1, learned Member, MACT has held that the accident in question had taken place due to negligence of the driver of the Ambassador car but the learned Member, MACT, has decided the issue in favour of the claimant/appellant and concluded that as the accident occurred due to rash and negligent driving by the driver of the Ambassador car, the claimants being the mother, brother and sister of the deceased driver, they are not entitled to get any compensation. It appears that the FIR was lodged by one S.I. of police. On the basis of his enquiry, the Tribunal has come to the conclusion that the driver of the Ambassador car was responsible for causing the accident.

15. The proceedings under the M.V. Act are summary in nature, where liability of a tortfeasor is to be fixed on the basis of preponderance of probabilities. On the other hand, it does not also mean that whatever stated by the informant is to be taken as a gospel truth. The claimants side examined three witnesses and admittedly they were not present when the

accident occurred. According to C.W.1, C.W.2 and C.W.3, the accident occurred due to negligent driving by the driver of the truck but no witness was examined to prove the fact that the accident occurred due to rash and negligent driving by the driver of both the vehicles and the driver of Ambassador car was solely responsible for causing the accident. The informant who had made an inquiry regarding the accident, was not examined in the case to prove the contents of FIR on what basis he lodged the FIR by stating that the driver of the Ambassador car dashed against the alleged truck. It is also not reflected in the FIR or any other documents available in the record, whether the truck was on the standing position or it was then moving. But admitted position of the fact that the accident occurred on 02.06.1999 by involving two vehicles i.e. ASE-6044 and ASU-6047 and it is also not in dispute that the occupants of Ambassador car were four in numbers, died due to the alleged accident. The Member, MACT has given much importance to the enquiry report of the informant who lodged the FIR but the informant was not examined. Hence, the contents of the FIR alleging the driver of the Ambassador car to be responsible for causing accident, is not proved. Except the bald statement of the informant in the FIR, there is nothing on record to probabalise the allegation of rash and negligent driving against the driver of Ambassador Car.

16. Considering all these facts, this Court is of the view that the learned Member, MACT has fallen in error while holding that the accident in question had taken place due to rash and negligent driving by the driver of the Ambassador car and as such, the claimants who are the heirs of the deceased/driver are not entitled to get any compensation.

17. It appears from the record that during pendency of this appeal, the original claimant i.e. mother of the deceased Biswajit Gogoi had expired and her daughters Duluma Gogoi, Jamuna Gogoi and son Satyajit Gogoi who are sisters and brother of the deceased have been substituted as per order of this Court on 19.02.2021. Now the question comes whether the married sisters and brother are entitled for any compensation on the death of their brother.

18. In **Vimla Devi and Ors. vs. Himachal Road Transport Corporation and Ors.** reported in **2009 (13) SC 530**, in **Kaushnumma Begum and Ors. vs. New India**

Assurance Company Ltd. reported in **2001 (ACJ) 421 SC**, in **National Insurance Company Ltd. vs. Pushpa Rana** reported in **2009 (ACJ) 287**, it has been held that the negligence has to be decided on the touchstone of preponderance of probabilities and a holistic view is to be taken. It has been further held that the proceedings under the Motor Vehicles Act are not akin to the proceeding in a civil suit and hence, strict rules of evidence are not applicable.

19. In view of the aforesaid legal mandate, it can be said that the case of the claimant regarding the accident involving two vehicles are not in dispute and the mother who is Class I legal heir of the deceased is entitled for compensation. As the mother is not alive, now the question comes whether the brother and sisters of the deceased are entitled for compensation.

20. Regarding loss of dependency, the assessment of compensation under this head is for the benefit of the dependents left behind by the deceased. The relevant principle in this regard have been evolved by Judicial dicta and observation made by Hon'ble Supreme Court in **Sarla Verma and others vs. Delhi Transport Corporation and Anr.** reported in **(2009) 6 SCC 121**, are the law governing the field. The dictum of Sarla Verma (Supra) has been followed since long and the same have been reaffirmed in a latest judgment titled **United India Insurance Company Ltd vs. Satinder Kaur @ Satvinder Kaur and Ors.** reported in **Manu/SC/0500/2020** wherein at para 8(a) certain general principles have been set out regarding the entitlements of dependants towards loss of dependency and it has been observed inter alia that in the absence of any evidence to the contrary, brothers and sisters of the deceased bachelor would not be considered to be dependants, because they would usually either be independent and earning or married or dependant on the father. It has been further observed that even if the deceased was survived by parents and siblings, only the mother would be considered to be a dependant. An exception has been carved out to the general principles mentioned above for the cases where the family of the bachelor was large and dependent on the income of the deceased, as in a case where he had a widowed mother and a large number of younger non-earning sisters or brothers, but the said exception is not

applicable in the present case and hence we have to go only by the general principles referred to above.

21. Admittedly, in the present case the claimant No.1 who is the mother of the deceased had already been expired. The other claimants are married sisters and brother of the deceased. It is apparent that none of the petitioners are Class I legal heir of the deceased. From the evidence of PW 2 and 3, who are brother and sister of the deceased, it cannot be ascertained that they are dependent on the income of the deceased brother. Therefore, none of them could be treated as dependent of the deceased.

22. In the case of **New India Assurance Company Ltd. Vs Anand Pal and Ors.** reported in **SLP (Civil) No. 7805 of 2022**, it was held that the brothers of the deceased victim could not be said to be dependent on the earnings of the victim. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents as because they will be either be independent and earning, or married, or be dependent on the father. And hence the compensation awarded to the married siblings is therefore found to be unmerited.

23. In view of the aforesaid proposition of law, the heirs of the original claimant i.e. brother and married sisters of the deceased are not entitled to get any compensation. Under the peculiar facts and circumstance of the case, the judgment of the trial court dated 16.07.2013 is set aside.

24. The appeal is disposed of accordingly.

25. Trial court record be returned back.

JUDGE

Comparing Assistant