

GAHC010244552017



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

Case No. : MACApp./618/2017

SMTI PRAMILA RAJBONGSHI
W/O SIR DHANO RAM RAJBONGSHI, R/O VILL. and P.O. KAKAYA, P.S.
BELSOR, DIST. NALBARI, ASSAM.

VERSUS

MD UNISOR RAHMAN and ANR
S/O LT. INHIL ALI, VILL. KENDUKONA, P.S. KAMALPUR, DIST. KAMRUP,
ASSAM, PIN 781354 OWNER OF VEHICLE NO. AS-01/Y-5559 TATA TIPPER

3:THE REGIONAL MANAGER G.R.O.
THE NEW INDIA ASSURANCE CO. LTD.
G.S. ROAD
BHANGAGARH
GUWAHATI-5
MALIGAON BRANCH
POLICY NO. 53090131100100003034 VALID UP TO 27.01.201

Advocate for the Petitioner : MR.B SINHA, MR S C PANDIT,MR AJIT DAS,MR.U K
THAKURIA,MR.D SARMAH

Advocate for the Respondent : MR. S DUTTA,

**BEFORE
HONOURABLE MRS. JUSTICE MARLI VANKUNG**

JUDGMENT

Date : 11-09-2024

Heard Mr. S.C. Pandit, learned counsel for the appellant. Also heard Ms. M. Choudhury, learned counsel for the respondent/Insurance Company.

[2.] The instant appeal is challenging the Judgment dated 12.08.2016 delivered by the learned Member, Motor Accident Claims Tribunal No.2, Kamrup (M), Guwahati in MAC Case No. 419 of 2012, wherein, the learned Tribunal had dismissed the claimed made by the claimant for compensation on account of the death of her son in a motor vehicle accident. The learned Tribunal held that the claimed petition is not maintainable under Section 166 M.V. Act since the claimant has failed to established that the accident occurred due to rash and negligent driving of the offending vehicle.

[3.] Brief facts of the cases as projected by the claimant was that on 21.12.2011, at about 5:20 P.M, at Maranjana Industrial Area, while the Tipper vehicle bearing registration No.AS-01-Y-5559 was filling earth and her deceased son Jogen Rajbongshi was keeping accounts of the same, suddenly the vehicle started moving backwards and the deceased fell down beneath of wheel of the said vehicle and died on spot.

[4] The claimant file her claim application and stated that at the time of the death of her deceased son, who was doing private service, his salary was Rs.6,000/- p.m. and he was survived by the claimant and the father of the deceased. The claimant claimed compensation amounting to Rs.7,00,000/- (*Rupees seven lakhs*)only.

[5] The opposite party contested the claimed and filed their written statement. The O.P. No.1 is the owner of the Tipper vehicle bearing Registration No.AS-01-Y-5559 which was involved in the alleged accident. In the written statement he had stated that the accident did not occurred due to rush and negligent driving of the said vehicle by his driver and further stated that at the time of the alleged accident the vehicle was duly insured with the O.P. No.3 vide insurance policy No.53090131100100003024 and therefore, if any compensation is to be awarded the same has to be relied from the O.P. No.3/Insurance Company. The O.P. No.2 Sh. Samsheer Ali, the driver of the Tipper vehicle has averred at the time of the accident, he was not driving the said vehicle negligently. That he was driving the said vehicle with a valid driving license, and therefore he was not liable to pay any compensation to the claimant. The O.P. No.3 contested the case and had taken all the routine please denial the case of the claimant and prayed for dismissal of the claimed petition. From the pleadings, the following issues were framed :-

- (i) *Whether victim it. Jogen Rajbongshi died as a result of the injuries sustained by him in the alleged road accident dated 21.12.2011 involving vehicle No.AS-01-Y-5559, Tata Tipper and whether the*

said accident took place due to rash and negligent driving of the driver of the offending vehicle:

- (ii) *Whether the claimant is 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?*

During the course of hearing the claimant examined only herself as PW No.1 while the opposite parties did not examine any witness.

[6] PW No.1 narrated the facts of the case wherein at about 5:20 P.M, at Maranjana Industrial Area, while the Tipper vehicle bearing registration No.AS-01-Y-5559 was filling earth and her deceased son Jogen Rajbongshi was keeping accounts of the same, suddenly due to the rash and negligent driving of the Tipper started moving backwards and the deceased fell down beneath of wheel of the said vehicle and died on spot. After the Rangia Police registered the case No.515 of 2011 for the commission of offences punishable under section 279, 304(A) IPC against the driver of the said vehicle, the case was investigated and accordingly, chargesheet was filed against the driver of the offending vehicle under section 279, 304(A) IPC. Her deceased son, was aged 36 years and was doing private service, his salary was Rs.6,000/- p.m. He was survived by his parents. The claimant had exhibited Ext-1 which is the accident information report, Ext-2 Post Mortem Report, Ext-3-age certificate, Ext-4-paper cutting, Ext-5 (1-5) vouchers and cash memos and the Ext-6-certified true copy of the charge-sheet of the aforesaid Rangia P.S. Case No. 515 of

2011.

During her cross examination she stated that she did not see the said accident. She admitted that she had not submitted the income certificate of the deceased and also stated that she has 3 (three) other sons.

[7] The learned Tribunal thereafter, came to a finding that at the time of the accident the offending Tipper vehicle bearing registration No.AS-01-Y-5559 was not driven by anybody. That it seems, during unloading, something happened to the vehicle, may be the wedge slipped and the vehicle started moving backwards. Perhaps, the deceased was standing behind the vehicle and the vehicle hit him, as a result of which, he fell down beneath the wheel and the wheel crushed him. Therefore, the accident did not occur due to the rash and negligent driving of the said vehicle by anybody. The accident occurred due to the use of the said motor vehicle, but the claimant has filed the instant claim petition under section 166 of the Motor Vehicles Act, 1988 *and not under section 168 of the Motor Vehicles Act, 1988*. The learned tribunal opined that the claimant is not an eye-witness of the alleged accident and she did not examine any eye-witness to prove that the said accident occurred due to the rash and negligent driving of the tipper vehicle bearing registration No.AS-01-Y-5559 on the part of its driver. Therefore, as the tipper vehicle bearing registration No.AS-01-Y-5559 allegedly started moving backward while it was offloading earth, the accident did not occur due to the rash and negligent driving of the tipper vehicle

bearing registration No.AS-01-Y-5559 on the part of its driver as nobody was driving the said vehicle at the time of the said accident. There is no evidence to hold that at the time of the said accident, the driver was sitting in the driver's seat. Therefore, the alleged accident did not occur due to the negligence of the Motor Vehicle in question. Therefore, the claim petition is not maintainable and the claimant is not entitled to any compensation in this case. Thereafter, the learned Tribunal had dismissed the claimed petition. Aggrieved the instant appeal is filed.

[8] Mr. S.C. Pandit, learned counsel for the appellant submits that learned Tribunal had failed to appreciate the evidence on record and had erroneously dismissed the claimed petition. He submits that the fact that the accident had occurred and that the Tipper bearing registration No.AS-01-Y-5559 was driven in a rash and negligent driver by the driver of the said offending vehicle, is proved by the fact that the offending vehicle while off-loading had started moving backward, wherein, the deceased fell down beneath the wheel and was crushed by the wheel causing his death. That there is no evidence to suggest that at the time of the incident nobody was driving the said vehicle. He submits that on the registration of the FIR, the charge sheet has been duly filed wherein, the driver of the vehicle is charged under Section 279/304(A) IPC. This clearly proves that the driver was negligent in driving the vehicle which caused the accident vehicle/Tipper to move backwards and caused the untimely death of the deceased victim. He further submitted that it was not denied or stated by the opposite parties that the offending vehicle/tipper was not

driven by the driver or that there was nobody on the driver seat. And thus, even though there is no eye-witness to the incident and there is no denial that the offending vehicle/tipper had caused the death of the deceased victim.

[9] The learned counsel further submitted that the age of the deceased is proved by the exhibit, Ext – 3 which is the School Leaving Certificate of the deceased, where he was age 36 years at the time of the accident. He further admitted in all fairness, that since no income certificate is submitted, the income of the deceased can be calculated as per the notification issued by the Govt. of Assam and submitted that his notional income may be taken to be Rs.3,500/- per month. It was also submitted that since the age of the deceased is 36 years the multiplier may be taken as 15.

The learned counsel for the appellant has relied on the Judgment of the Apex Court in **Bimla Devi and Ors. Vs. Himachal Board Transport Corporation and Ors.** reported in **(2009) 13 SCC 530** and the Judgment of the Co-ordinate Bench of this court in **Oriental Insurance Company Ltd. Vs. Miss Sona Das and 2 Ors. in Case No. MAC. App.260/2021 dated 24.08.2022**, wherein it was held that the Tribunal should take a holistic view of such matters and that the claimants were merely to establish their case on the touchstone of preponderance of probability.

[10] Ms. M. Choudhury, learned counsel for the respondent/Insurance Company on the other hand submitted that since there is no eye witness to the incident, the claimant have failed to prove that the offending vehicle, Tipper bearing registration No.AS-01-Y-5559 was driven in a rash and negligent manner. She submitted that if the accident had occurred due to the use of the vehicle the claimant should have filed the claimed petition under Section 168 of the M.V. Act. There is no evidence to prove that the vehicle was in a rash and negligent manner and therefore the learned Tribunal had rightly dismissed the claimed petition.

[11] I have considered the submissions made by the learned counsels for both the parties, I have also perused the documents on record. It is an admitted fact that on 21.12.2011, at about 5:20 PM, at Maranjana Industrial Area, while the Tipper vehicle bearing registration No.AS-01-Y-5559 was filling earth and the deceased Jogen Rajbongshi was keeping accounts of the same, Tripper vehicle had moved backwards and caused the deceased to fall down beneath the wheel of the said vehicle and died on spot. The opposite parties did not adduce any evidence before the tribunal. In the written statements of Opp. Party no.1 / owner of the vehicle and Opp. Party no.2 /driver of the vehicle, they have only stated that the driver did not drive the tipper vehicle bearing registration No.AS-01-Y-5559 in a rash and negligent manner, thus, there is no evidence to substantiate the findings of the learned tribunal that there was no driver in the driver's seat at the time of the accident. There is also no evidence

to substantiate the findings of the learned tribunal that during unloading, something happened to the vehicle, may be the wedge slipped which caused the tripper vehicle to move backwards.

[12] On the issue whether the Tipper vehicle bearing registration No.AS-01-Y-5559 was driven in a rash and negligent manner, this court finds that no eye witnesses was produced by the claimant, however, the Police had registered the case No.515 of 2011 for the commission of offences punishable under section 279, 304(A) IPC against the driver of the said vehicle and on investigation of the case, a charge sheet was filed on finding prima facie case against the driver of the accident vehicle under section 279, 304(A) IPC. Ext-1 being the accident information report and Ext-6 being the certified true copy of the charge-sheet of the aforesaid Rangia P.S. Case No. 515 of 2011.

[13] In the case of **Bimla Devi v. Himachal Road Transport Corporation (supra)**, it was observed that in a claim petition filed under Section 166 of the Motor Vehicles Act, 1988, the Tribunal has to determine the amount of fair compensation to be granted in the event an accident has taken place by reason of negligence of a driver of a motor vehicle. A holistic view of the evidence has to be taken into consideration by the Tribunal and strict proof of an accident caused by a particular vehicle in a particular manner need not be established by the claimants. The claimants have to establish their case on the touchstone of preponderance of probabilities. The

standard of proof beyond reasonable doubt cannot be applied while considering the petition seeking compensation on account of death or injury in a road traffic accident. To the same effect is the observation made by the Apex court in **Dulcina Fernandes v. Joaquim Xavier Cruz, (2013) 10 SCC 646**, which has referred to the aforesaid judgment in Bimla Devi. This is reiterated by the Apex court in **Janabai vs M/S I.C.I.C.I. Lambord Insurance Vs. I.C.I.C.I. Lambord Insurance reported in 2022 SCC Online SC 994**, wherein, the Apex Court had held that, the rule of evidence to prove charges in a criminal trial cannot be used while deciding an application under Section 166 of the M.V. Act which is summary in nature. That the application is to be decided on the basis of the evidence led before it and not on the basis of evidence which should have been or could have been led in a criminal trial.

[14] Thus on consideration of the above decisions of the Hon'ble Apex Court and the facts of the case, this court finds that the death of the deceased Jogen Rajbongshi on 21.12.2011, was due to the rash and negligent driving of the Tipper vehicle bearing registration No.AS-01-Y-5559 by the driver, which caused it to move backwards, causing the deceased to fall down beneath the wheel of the said vehicle where he died on spot. It is also seen that there is no challenge to the fact that the accident vehicle was duly insured with the Opposite Party No.3/Insurance company, at the time of the alleged accident the vehicle vide insurance policy No.53090131100100003024.

[15] In view of the above findings and discussions, thereof, this court find it fit

that the claimant is entitled to be compensated for the death of her son Jogen Rajbongshi in the vehicular accident which occurred on 21.12.2011 as follows :

[16] The deceased was a private worker and his age was about 36 years, which is proved by the school leaving certificate, duly exhibited. With no income certificate produced, the notional monthly income is taken as Rs.3500/-.

Add 40% for his future prospect = Rs.3500 + 40% of Rs. 3500/- = Rs.4900

After deduction 50% of the monthly income for personal living expenses of the deceased= Rs.2450/-

So, yearly loss of income will be Rs.2450/- x 12 = Rs.29,400/-

Total loss of income will be = Rs.29,400/- x 15 = 4,41,000/- (15 multiplier, deceased is 36 years as per Apex Court Judgment in **Sarla Verma & Ors Vs. Delhi Transport Corporation & Ors.**)

[17] As per guidelines given in **National Insurance Company Limited Vs. Pranay Sethi**, the reasonable figures on the conventional heads will be loss of estate=Rs.15000/-, loss of consortium= Rs.40,000/- and funeral expense = Rs.15,000/- i.e. Total = Rs.70,000/-.

Total compensation = Rs. 4,41,000+ Rs.70,000= Rs.5,11,000/- (*Rupees five lakhs eleven thousand*) only

[18] Accordingly the awarded amount of Rs.5,11,000/-will carry 6% interest per annum from the date of filing of the claim petition till payment is made by the respondent Insurance Company, to be duly deposited into the registry of this court and there after released to the claimant, after due verification. However, in view of the decision of the Co-ordinate Bench of this Court in **Oriental Insurance Company Limited Vs. Smt. Champabati Ray and Ors.** in **MAC Appeal No.378/2017 dated 01.10.2019** and in **Reliance General Insurance Company Vs. Prem Devi Bothra** reported in **2024 0 Supreme (Gau) 493**, with regards to the future prospect there will not be any interest as the same relates to the income to be given in the future.

[19] For the above reasons, the impugned Judgment dated 12.08.2016 delivered by the learned Member, Motor Accident Claims Tribunal No.2, Kamrup (M), Guwahati in MAC Case No. 419 of 2012 is set aside and the instant MAC. Appeal No. 618 of 2017 is allowed and disposed of.

JUDGE

Comparing Assistant