

GAHC030001632022



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

Case No. : MACApp./3/2022

Smt. Parmawii and 3 Ors.
Lawngtlai, District, Mizoram 2: Chatuanramengmawia

3: Sh. Lallungawia

4: Smt. Rualthang

VERSUS

Sh. C. Lalthangmuana and Anr.
Chanmari, Lawngtlai

Advocate for the Petitioner : Mr. Johny L Tochhawng

Advocate for the Respondent : Mr L H Lianhrima, Sr. Adv for R1

::: B E F O R E :::

THE HON'BLE MR. JUSTICE NELSON SAILO

JUDGEMENT & ORDER (Oral)

30.10.2024

Heard Mr. Johny L. Tochhawng, learned counsel for the appellants and Mr. L.H. Lianhrima, learned Senior Counsel assisted by Ms. Ruth Lalruatfeli, learned counsel for the respondents.

[2.] This is an appeal preferred by the appellants against the Judgment & Award dated 02.12.2021 rendered by the Motor Accident Claims Tribunal (the Tribunal), Aizawl in MACT Case No. 6/2018 dismissing the claim of the appellants filed under Section 166 of the Motor Vehicles Act, 1988 (M.V Act).

[3.] Brief facts of the case essential for disposal of the instant appeal is that the appellant No. 1 is the mother of the deceased and the appellant Nos. 2, 3 & 4 are the children of the deceased person. The deceased person late Lalnunhlhma, who was aged about 26 years is said to have died due to a motor vehicular accident which occurred on 17.02.2013. Late Lalnunhlhma on 17.02.2013 was heating up bitumen by burning firewood. At that moment, a truck bearing registration number MZ07 - 0349 driven by the respondent No. 2 and owned by the respondent No. 1 in the instant appeal ran over the firewood, which was used to heat up the bitumen. As a result, the bitumen got spilled upon late Lalnunhlhma's body and he was seriously burnt. While he was being taken to Lawngtlai Civil Hospital, he succumbed to his injury. As a result, a claim for compensation was filed before the Tribunal under Section 166 of the MV Act by the appellants.

[4.] During the claim proceeding, the appellants examined three (3) claimant witnesses, who were the appellant No. 1 and two (2) police personnel/officer. As

for the opposite parties/appellants, they examined two (2) witnesses, who are the son of the owner of the truck involved and the driver of the truck respectively. After the rival parties led their respective evidence, the learned Tribunal upon hearing the parties passed the impugned Judgment & Award dismissing the claim of the appellants by holding that the appellants failed to prove the rash and negligent driving on the part of the driver who drove the vehicle involved in the accident and the owner of the vehicle as well.

[5.] Referring to the grounds taken in the Memorandum of Appeal, Mr. Johnny L. Tochhawng, learned counsel submits that as per the investigation done by the police and also the cross-examination of the respondent No. 2 (driver), wherein, he admitted that the vehicle/truck ran over the firewood which in turn toppled the boiling bitumen causing serious injury and ultimately leading to the death of the deceased person, the appellants have established the negligence on the part of the respondents and therefore, the learned Tribunal could not have dismissed the claim of the appellants. He submits that the accident occurred due to the rash and negligent driving of the truck concerned and that a complaint was registered by the police vide Lawngtlai P.S Case No. 12/2013 dated 18.02.2013 under Section 279/325/427. In order to prove the rash and negligent driving on the part of the driver of the accident vehicle, the appellants produced two (2) police personnel including the Enquiry Officer and that both of them had visited

the place of occurrence and there was rash & negligent on the part of the driver in driving the accident vehicle. That not only did the vehicle run over the firewood but also did not stop the vehicle after causing the spilling of the bitumen. Although the case Investigating Officer was not examined before the Tribunal but the Enquiry Officer S.I. Lalkhumsanga appeared before the Tribunal and deposed that the accident occurred due to rash and negligent driving of the driver of the vehicle concerned and under the circumstance, the learned Tribunal ought to have awarded appropriate compensation to the appellants and not dismiss the appeal in the manner it did. The learned counsel also submits that the respondents as opposite parties before the Tribunal did not lead or have any rebuttal evidence. Therefore, in absence of any such denial that the accident happened due to the rash and negligent driving of the driver of the vehicle concerned, the respondents are only liable to pay adequate compensation to the appellants. The learned counsel also submits that when the factum of the accident having happened is not disputed, the filing of Police complaint and the same not being brought to its logical conclusion cannot be fatal to the claim made by the appellants in view of the fact that the MV Act is a beneficial legislation and negligence can be established by way of preponderance of probabilities. In other word, unlike a criminal case, the strict rules of proof is not necessary in a claim for compensation under the MV Act. He

submits that although the criminal case filed against the driver of the vehicle involved in the accident ended in his acquittal but the same cannot affect the claim of the appellants under the MV Act, since the criteria and the yardstick for establishing the claim is not similar to a criminal case. He therefore submits that under the given facts and circumstances, the Judgment & Award impugned cannot be sustained and the same should be set aside and this Court may be pleased to remand the matter back to the Tribunal for consideration afresh.

[6.] In support of his submissions, Mr. Johny L. Tochwawng has relied upon the following authorities:-

(1) Parmeshwari -Vs- Amir Chand & Ors. (2011) 11 SCC 635

(2) Kishan Gopal & Anr. -Vs- Lala & Ors. (2014) 1 SCC 244

(3) Vimla Devi & Ors. -Vs- National Insurance Company Limited & Anr. (2019) 2 SCC 186

(4) Sunita & Ors. -Vs- Rajasthan State Road Transport Corporation & Ors. (2020) 13 SCC 486.

(5) Anita Sharma & Ors. -Vs- New India Assurance Company Limited & Anr. (2021) 1 SCC 171

(6) Oriental Insurance Company Ltd. -Vs- Raj Rani & Ors. 2022 SCC OnLine P&H 3673 and

(7) Mathew Alexander -Vs- Mohammed Shafi & Anr. 2023 INSC 621.

[7.] Mr. L.H. Lianhrima, learned Senior Counsel for the respondents on the other hand submits that the alleged date of accident is 17.02.2013 and which in fact is a Sunday. There is no dispute to the fact that the deceased person was engaged as a daily paid laborer by the BRTF and that Sundays are observed as holidays. It is therefore surprising that the deceased person was working on a holiday. He further submits that although the alleged accident was said to have happened on 17.02.2013, the police report was only prepared on 12.05.2015 after almost two (2) years. This apart, the police report does not contain any finding to the effect that there was negligence on the part of the driver of the truck involved in the said accident. The learned Senior Counsel also submits that the appellants initially filed a claim for compensation under Section 163A of the MV Act and the same was registered as MACT Case No. 9/2017. However, for reasons best known to them and despite strong objection made by the respondents as opposite parties in the claim, the said claim application was withdrawn with liberty. Thereafter, the appellants filed MACT No. 6/2018 under Section 166 of the MV Act claiming compensation against the respondents on fault basis. The appellants had all the opportunities and liberty to adduce the evidence of their choice and after the same was done, the learned Tribunal upon due consideration of the case projected by the appellants dismissed the claim application for want of proof of rash and negligent act on the part of the

opposite parties/respondents. The learned counsel submits that unlike a claim under Section 163A of the MV Act, in a claim under Section 166 of the same Act it is the burden upon the claimants to establish the negligence of the driver or the owner of the vehicle concerned involved in the accident. The appellants therefore having failed to discharge the burden of establishing the rash and negligent act on the part of the driver of the vehicle concerned, the learned Tribunal rightly dismissed the claim of the appellants. Therefore, the impugned Judgment & Award may not be disturbed by this Court. In support of this submission, the learned Senior Counsel relies upon the following authorities:-

(1) Oriental Insurance Co. Ltd. -Vs- Meena Variyal & Ors. (2007) 5 SCC 428 and

(2) Surender Kumar Arora & Anr. -Vs- Manoj Bisla & Ors. (2012) 4 SCC 552.

[8.] I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record including the authorities relied upon by the parties. There is no dispute to the fact that the claim made by the appellants is one under Section 166 of the MV Act. The admitted position in law is that a claim under Section 166 of the MV Act is a claim for compensation on fault basis and the requirement or burden on the part of the claimant concerned is to establish that the accident occurred on

account of the rash and negligent driving or act on the part of the opposite party while driving the motor vehicle concerned. The appellants as already stated led their evidence by examining three (3) witnesses. CW-1 is the appellant No. 1 and mother of the deceased person. In her examination-in-chief, she stated that her son was aged 26 years at the time of his death and he was earning a monthly wage of Rs. 5,100/-. That on 17.02.2013, her son met with an accident while he was preparing bitumen by using fire. One vehicle (truck) bearing registration No. MZ01-0349 driven by the respondent No. 2 and owned by the respondent No. 1 ran over the firewood which was burning and causing the spilling of the bitumen over the body of her son. As a result, her son sustained First Degree burn injury on 90% of his body and he succumbed to his injury. She and the three children of her deceased son were solely dependent upon the monthly wage of her late son and therefore, the Tribunal should award appropriate compensation to them. She also stated that she lodged a complaint on the same night of the accident at Bungtlang 'S' Police Outpost for taking necessary legal action and accordingly, Lawngtlai Police Station Case No. 12/2013 dated 18.02.2013 was registered. She exhibited the documents annexed to the claim petition such as, the police report, Death Certificate, Birth Certificates of the children of the deceased and the documents of the truck involved in the accident.

[9.] In her cross-examination, the appellant No. 1 reiterated what she had stated in her examination-in-chief and besides that she stated that it was a fact that the accident happened at about 4 PM at Bungtlang 'S' while her son along with one Sh. Laldusanga were on duty heating up the bitumen. She also stated that she was informed by Sh. Laldusanga that the truck ran over the firewood used for boiling the bitumen which caused the bitumen to spill over the body of her late son. On being further cross-examined by the counsel for the respondent No. 2, the appellant No. 1 stated that she did not agree to the suggestion that the cause of the vehicular accident which resulted in the death of her son was not due to the negligence of the driver of the truck.

[10.] The appellants examined one Sh. L.P. Zohmangaiha, who issued the police report dated 12.05.2015 as the Officer in Charge of Lawngtlai Police Station. It may be seen that he was in the rank of Inspector of police at the time of preparing the police report. In his examination-in-chief, he stated that he was aware about the case since the chargesheet was submitted through him. He prepared the police report dated 12.05.2015 based on the investigation report and that he believed that the investigation report prepared by S.I Zauva was genuine. He stated that based on the investigation report submitted by S.I. George L.H. Zauva, the cause of accident was purely negligence on the part of

the driver. He visited the place of occurrence after the said incident and he found that the deceased had prepared the bitumen at the corner of the road and as such, he can safely say that there was negligence on the part of the driver who drove the accident vehicle. It may be noted at this stage that CW-2 apparently had visited the place of occurrence after more than a year of the accident which happened on 17.02.2013.

[11.] In his cross-examination, CW-2 stated that he was posted at Lunglei as 2nd O/C at the time of the accident i.e., in the year 2013 and thereafter, came to be posted as the O/C, Lawngtlai sometime in the month of October, 2014. He also stated that it was fact that he visited the place of occurrence after his posting at Lawngtlai i.e., after more than one and a half year of the accident. Further, when he went to the place of occurrence, he could not see any reminiscent of the accident. He further submitted that the police report that he prepare and which was exhibited as Ext. C-5 was solely on the basis of the investigation report and its documents which were otherwise was not annexed to the case record. He also stated that the investigation report and the case record was with him even he has been transferred from Lawngtlai. As per the investigation report, the truck had hit the boiling bitumen which overturn and burn the deceased in the process. He admitted that he was neither the Enquiry Officer nor the Investigating Officer in the accident and that he was only the

person who received the investigation report for onward action. On being re-examined by the counsel for the appellants, he stated that he visited the place of occurrence and at that time there was no geographical changes on the location of the spot of the accident.

[12.] The appellants examined Sh. Lalkhumsanga as CW-3. In his examination-in-chief, CW-3 stated that at the time of the accident, he was posted as Officer-in-Charge at Bungtlang Outpost and he is well acquainted with the facts and circumstances of the case. He visited the place of occurrence soon after the incidents and during enquiry he found that the deceased along with his friend had prepared bitumen using fire at the extreme corner of the road. From his investigation, the driver of the Truck had ran over the firewood, which was being burnt and used to heat up the bitumen and as a result, the deceased was burnt by the bitumen causing his death. In his cross-examination, CW-3 stated that it was a fact that the accident took place at 8:30 PM at he was sure that as it was at night. The accident report was verbally made to Bungtlang 'S' Outpost and G.D entry was made and thereafter, the place of occurrence was visited. However, at the time of visiting the place of occurrence, both the victim as well as the vehicle were not on the spot of the accident. He further stated that although S.I George L.H. Zauva was the Investigating Officer to investigate into the accident, he was in-charge of Bungtlang 'S' Outpost and as such he visited

the place of occurrence and made entries in the Case Diary, which was forwarded to Lawngtlai Police Station. He also agreed to the fact that the only Police report that was available on the record was the Police report dated 12.06.2016 prepared by Inspector L.P Zohmangaiha.

[13.] Sh. Lalramchhana Chinzah was examined as the O.P witness No. 1. He is the son of the owner of the truck involved in the said accident. In his examination-in-chief, he stated that as he was not present on the spot of the accident, he does not know as to how the accident took place. The vehicle was sent to deliver rice at Vaseikai go-down and it came back safely.

[14.] Sh. Lalchungnunga was examined as O.P Witness No. 2 and he is the driver of the Truck which was involved in the said accident. He stated that on the night 17.02.2013, he was apprehended by the police personnel due to the accident allegedly caused by the truck which he drove that day from Lawngtlai to Vaseikai carrying rice to be delivered to Vaseikai go-down. While he was running through Bungtlang 'S', some laborers had done construction work on the road by burning bitumen on the roadside. On his return journey, the laborers had deposited a number of logs (timber) to be used as fuel for burning the bitumen, which caused the road to be very narrow. He did not hit any person including the deceased person. Criminal case was filed against him but he was acquitted from the charge. In his cross-examination, he admitted that he

ran over the firewood which was used to boil bitumen in the roadside without his knowledge. He did not know whether he had ran over the deceased person, he did not stop the vehicle as he did not know whether he had ran over the deceased person or not. He also stated that it was not a fact that the accident was due to his negligence.

[15.] From the evidence led by the rival parties during the claim proceeding, it can be seen that the only police report that was relied upon and exhibited as Ext. C-5 was the police report dated 12.05.2015 prepared by Inspector L.P Zohmangaiha, Officer-in-Charge, Lawngtlai Police Station. The evidence on record shows that the said Inspector was not the Officer-in-Charge of Lawngtlai Police Station at the relevant time of the accident but was posted there after about one and a half years from the date of the accident. In his deposition before the Tribunal, he stated that the information that was gathered by him was based on the Investigation Report submitted by the S.I George L.H Zauva. However, neither the Investigation Report nor the author of the Investigation Report were produced and examined during the claim proceedings. As already stated in the preceding paragraphs that a claim under Section 166 has to be established by the claimant concerned by showing that there was rash and negligent act on the part of the person driving the vehicle concerned. The driver of the Truck was examined as O.P Witness No. 2. During

cross-examination, he admitted that he ran over the firewood which was used to boil bitumen in the roadside but the same was without his knowledge. He also stated that he did not whether he had ran over the deceased person or not and for which he did not stop the vehicle. He also stated that it was not a fact that the accident occurred due to his negligence. The deposition of the O.P Witness No. 2, according to the appellants, only shows that the accident had happened due to the rash and negligence of the said witness but as already stated, although the police case was registered and subsequently Criminal Trial No. 15/2013 registered and proceeded against the driver but however, the said witness came to be acquitted the charge leveled against him vide Judgment & Order dated 13.02.2014 rendered by the learned Trial Court i.e., Chief Judicial Magistrate, Lawngtlai District, Lawngtlai.

[16.] Reliance has been placed on the case of *Mathew Alexander* (supra) by the learned counsel for the appellants to contend that negligence can be proved even on the basis of preponderance of probabilities and not on the basis of proof beyond reasonable doubt. The said decision is in respect of the standard of prove to be applied by the Tribunal considering a petition for compensation for death or injury in a road accident. The fact however remains that the alleged negligence on the part of the driver of the vehicle has to be proved and if proof of negligence is not discernable, the Tribunal will have the liberty to consider

and dispose of the claim petition under the given facts and circumstances of the case. In the present case, although there is no denial on the part of the rival parties that the deceased had expired because of spilling of bitumen on his body and he having sustained grievous injury but the fact remains that there is no investigation report apart from the lone police report prepared by an Inspector who otherwise was not posted in the concerned police station at the relevant time and that he had based the investigation report which again was not exhibited or produced during the claim proceedings. The standard of proof may be of preponderance of probabilities as to the cause of the death but in so far as the negligence of the driver is concerned, the same cannot be in the considered view of this Court said to be established even by adopting a liberal view and degree of proof. Reliance has also been placed on the case of *Oriental Insurance Company Ltd. -Vs- Raj Rani & Ors.* (supra) by the learned counsel for the appellants to contend that MV Act being a welfare legislation enacted by the Parliament to provide relief to person suffering from an injury in a motor vehicle accident, strict rules of evidence and procedure are not applicable. The fact however remains that whenever an accident happened and a claim petition is filed before the Tribunal, the party concerned has the liberty to avail for a claim under no fault basis which is under Section 163A and a claim under Section 166, which is on fault basis. The difference between the two (2) claims is that the

fact of there being an accident being shown and established would be ordinarily sufficient to get some benefit of compensation under Section 163A. However, when a claim is made under Section 166 of the MV Act, party concerned has to show that there was negligence on the part of the offending vehicle in driving the vehicle concerned. In the process of establishing such negligence, the strict prove as may be required in a criminal case will not be required but nevertheless, the party has to show by cogent and reliable evidence that there has been negligence on the part of the offending vehicle through the driver or the owner.

[17.] Proceeding further to the other authorities relied upon by the learned counsel for the appellants, we may see that in the case of *Vimla Devi & Ors.* (supra), the Apex Court while observing that the MV Act is a beneficial legislation and the object of the Act is to prevent or reduce the period of pendency of the claim and quicken the process of determination of compensation amount came to the conclusion in the given facts of that case that the Tribunal and the High Court were not justified in dismissing the claim petition. However, it was also observed that such dismissal was not warranted since the appellants had adduced sufficient evidence to prove the accident and the rash and negligent driving of the driver of the offending vehicle which resulted in the death of the deceased. What would amount to sufficient

evidence for proving that the accident happened due to the rash and negligent driving of the driver concerned would depend upon the facts and circumstances of each case. In the present case, the evidence led by the claimants/appellants in the absence of any investigation report being produced during the claim proceeding and also the I/O concerned who authored such report after visiting the accident spot soon after the accident would only be deficient to establish that there was rash and negligent driving on the part of the driver, who drove the truck concerned.

[18.] The materials on record goes to show that the deceased person at the relevant time was engaged in heating up the bitumen along with a fellow co-worker namely, Sh. Lalduhsanga. He was examined as PW-7 in Criminal Trial No. 15/2013. He was however not examined before the Tribunal and the learned Tribunal in coming to its finding that there was failure on the part of the appellants to establish the case of rash and negligent driving of the driver concerned at paragraph Nos. 22 & 23 of the Judgment & Award held as follows:-

“22. However, the present case is a direct departure from the above case. In this case, there were only 3 witnesses examined for the claimant. Curiously enough, the only eye witness (as per the evidence), Lalduhsanga who was boiling the bitumen with the victim/deceased was not examined for the claimant. No reason was assigned for his non examination. It is an

admitted fact that the O.P. No. 2 had ran over the firewood which was used to boil the bitumen. This admission was made by OP. No. 2 himself, however, he stated that he was unaware of the same. From his admitted position, that the O.P. No. 2 had ran over the firewood causing the bitumen to spill on the deceased ultimately causing his death. However, we must ascertain the negligence of the O.P. No. 2 on the basis of preponderance of probabilities. It can be seen from the evidence that the only police report exhibited in the case was prepared one and half year after the accident and it was prepared by the claimant witness O.C. Lawngtlai P/S who was not even posted at Lawngtlai at the time of the accident. The Police report itself did not contain any findings but it stated that a case has been registered on the basis of written FIR submitted by the claimant. As per the evidence, L.P. Zohmangaiha stated that he has prepared his report on the basis of investigation report prepared by the case I.O. S.I. George L.H. Zauva. However, this case I.O. is not examined and there is no investigation report produced or exhibited. Here again, no reason was assigned for his non-examination. The evidence that the truck had hit the bitumen is in contrast to other evidence which stated that the OP. No. 2 had ran over the firewood used to boil the bitumen. The other witness S.I. Lalkhumsanga was the O.C. of Bungtlang Out Post. He stated that he visited the place of occurrence soon after the said accident and he testified as to the admitted position stated above and his conclusion that the cause of accident was due to negligent driving on the part of the truck. He stated that as per his investigation, the bitumen was boiled by the firewood. There was a single firewood which was horizontally placed in the fire place which was ran over by the truck B/R. No. MZ 07/0349 (Truck) resulting to overturning the bitumen plate barrel and thereby causing burn injury to the deceased Lalnunhlima. He also stated that the accident occurred at 8:30 PM at night, this is in contrast to the claimant's

evidence that the accident took place at about 4 PM.

23. It is very difficult to point out the negligence of the driver of the truck on the basis of the evidence produced. Apart from certain discrepancies, the evidence of the police officer only stated that they found the driver to have been negligent. They did not specify how the driver was negligent, which is an essential ingredient for a claim u/s 166 of MV Act."

[19.] From the above abstract, it may be seen that the learned Tribunal had taken into consideration the evidence led by the parties in coming to its conclusion that claim under Section 166 of the MV Act could not be established by the appellants/claimants. The Apex Court in *Oriental Insurance Co. Ltd. -Vs- Meena Variyal & Ors.* (supra) in the given facts of that case held that once a party approaches a Tribunal under Section 166 of the Act, they have necessary to take upon themselves the burden of establishing the negligence of the driver or owner of the vehicle concerned. However, if one proceeds under Section 163A of the MV Act, compensation will be awarded in terms of the schedule without calling upon the victim or his dependants to establish any negligence or default on the part of the owner of the vehicle or the driver of the vehicle. The claim in the instant case as already stated being under Section 166 of the MV Act, the appellants on the basis of materials available on record cannot be said to have establish or discharge the burden required under Section 166 of the MV Act. The

learned counsel for the appellants has prayed for a remand and for a chance to produce the eyewitness but however, the appellants were never debarred from producing such evidence at the relevant time. Therefore, upon overall consideration of the case in its entirety, this Court is of the considered view that the appeal has no merit and accordingly the same is dismissed.

JUDGE

Comparing Assistant