

GAHC020003062022



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

Case No. : MACApp./3/2022

THE DIVISIONAL MANAGER, NATIONAL INSURANCE CO.LTD
DIAMAPUR
DIMAPUR NAGALAND

VERSUS

SHRI. MONI SAIKIA AND 6 ORS
TUENSANG TOWN, NAGALAND

2:SHRI. DILIP SAIKIA
TUENSANG TOWN
NAGALAND

3:SMTI. MARAMI SAIKIA
TUENSANG TOWN
NAGALAND

4:SMTI. MANJU SAIKIA
TUENSANG TOWN
NAGALAND

5:SMTI. DIPTI SAIKIA
TUENSANG TOWN
NAGALAND

6:SHRI. SUBHAN BORAH
S/O SHRI. ANANDA BORAH
R/O GANAKDALANI VILLAGE
LAKHIMPUR ASSAM. P.O. RUPTALI
P.S BIHPURIA

7:SHRI. PAPU SAIKIA

S/O MONI SAIKIA
R/O BACHAPUKURI VILLAGE
LAKHIMPUR ASSAM. P.O. SIMALUGUR

For the Appellant : Ms. Moajungla, Advocate

For the Respondents : Mr. B. N. Sarmah, Adv.
(for respondent No. 1 to 5)

: Ms. Nuksungtila, Advocate
(for respondent No. 6)

: Mr. Z. Kulnu, Advocate
(for respondent No. 7)

Date of Judgment : 23.07.2024

:: BEFORE ::

HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA

JUDGMENT & ORDER (CAV)

1. Heard Ms. Moajungla, learned counsel for the appellant. Also heard Mr. B. N. Sarmah, learned counsel for the respondent Nos. 1 to 5, Ms. Nuksungtila, learned counsel for the respondent No. 6 and Mr. Z. Kulnu, learned counsel for the respondent No. 7.

2. This appeal under Section 173 of the Motor Vehicles Act, 1988 has been preferred by the Divisional Manager, National Insurance Company Ltd. against the judgment and award dated 25.03.2022 passed by the learned Member, Motor Accident Claims Tribunal, Tuensang in MAC Case No. 11/2019.

3. By the impugned judgment and award, a compensation amounting to Rs. 22,55,000/- was directed to be paid to the respondent Nos. 1 to 5 by the appellant-Insurance Company.

4. The facts relevant for consideration of the instant appeal, in brief, are as follows:-

(i) That on 22.01.2019 at about 4 p.m., the deceased, namely, Purnima Saikia, wife of the respondent No. 1, Shri Moni Saikia, was traveling as a pillion rider in a motorcycle bearing Registration No. AS-07-M-0159 and the said motorcycle met with an accident when one goat appeared before the motorcycle. As the motorbike was driven by the driver at a very high speed, due to sudden application of the brakes, the motorcycle met with an accident and as a result of which the pillion rider sustained grievous injuries and ultimately she succumbed to her injuries.

(ii) Shri Moni Saikia, who is the husband of the deceased along with the four children of the deceased, filed a claim case before the Motor Accident Claims Tribunal, Tuensang, which was registered as the MAC Case No. 11/2019. The learned Member, Motor Accident Claims Tribunal, Tuensang, had framed three issues in the MAC Case No. 11/2019.

(iii) The claimants side examined three witnesses in support of their case. No evidence was adduced by the Insurance Company in support of its defence. Ultimately, by the judgment and award which has been impugned in this appeal, the learned Member, Motor Accident Claims Tribunal, Tuensang, awarded an amount of Rs 22,55,000/- along with an interest of 9% per annum from the date of filing till realization to the claimants.

5. Ms. Moajungla, learned counsel for the appellant, has submitted that the impugned judgment and award of the Tribunal is erroneous and perverse as while ascertaining the monthly income of the deceased, it relied merely on the oral evidence of the witnesses without there being any documentary evidence to prove the monthly income of the deceased.

6. Learned counsel for the appellant has also submitted that the claimants have failed to prove the rash and negligence on the part of the driver of the vehicle involved in the accident. As apart from oral evidence, no other material was produced, neither the FIR, nor the charge-sheet, nor even the post-mortem report was exhibited and, therefore, the Tribunal was wrong in relying merely on the oral testimony of the witnesses to come to the conclusion that there was rash and negligent driving on the part of the driver of the ill-fated vehicle.

7. Learned counsel for the appellant has also submitted that the Tribunal was wrong in considering all the four children who were major as dependent of the deceased and deducting only one-fourth of the income of the deceased towards her personal expenses instead of one- third of the same.

8. Learned counsel for the appellant for the appellant has also submitted that as the learned Motor Accident Claims Tribunal, Tuensang, has relied on evidence which ought not to have relied upon by it, and thus it reached a perverse finding, and, therefore, the impugned judgment and award is liable to be set aside.

9. On the other hand, Mr. B. N. Sarmah, learned counsel for the respondents has submitted that the submissions of the learned counsel for the appellant that there is no proof of income of the deceased is not based on fact, as during the inquiry, the claimant's Witness No. 1 has categorically stated that her mother was running a restaurant at Naharlagun, from where she used to earn Rs.15,000-/ per month, and this testimony could not be demolished during cross-examination by the Insurance Company.

10. Learned counsel for the respondents has submitted that in absence of serious dispute regarding monthly income of the deceased and in absence of uncontroverted oral evidence on record, the Tribunal did the correct thing by relying on the uncontroverted testimony of the claimant's witnesses.

11. It is also submitted by the learned counsel for the respondents that if in absence of any documentary evidence, the oral evidence as regards income is rejected, it may cause severe hardship to the claimants, and said aspect has been considered by the Apex Court and various other High Courts in catena of judgments that considering the nature of occupation of the deceased, it may not be possible in all the cases to produce documentary evidence in respect of the income of the deceased, and if the Courts insist on documentary evidence only, it would cause untoward misery and hardship to the large number of claimants. In support of his submission, learned counsel for the respondents has cited following rulings:-

(i) **"Shivakumar M. -Vs- Managing Director, Bengaluru Metropolitan Transport Corporation"** reported in **"(2017) 5 SCC 79"**.

(ii) **Shri Brojen Borah -Vs- Divisional Manager, New India Assurance Company Ltd.,** (MAC Appeal No. 21/2018 decided on 21.02.2019)

(iii) **Kaushnuma Begum and Ors. -Vs- New India Assurance Company Ltd.** reported in **"(2001) 2 SCC 9"**

(iv) **"Gurmit Kaur and Anr. -Vs- State of Haryana and Ors."** reported in **"2000 (1) TAC 203"**

(v) **Smt. Bilasini Mondal -Vs- National Insurance Company Limited and Ors.** reported in **"2003 (2) TAC 435"**

12. The learned counsel for the respondent has submitted that as regards the submissions made by the learned counsel for the appellant that the claimant has not been able to prove the rash and negligent driving by the driver of the offending vehicle as no FIR, charge-sheet or post-mortem was exhibited is not teneable as PW-2 and PW-3 in their testimony have deposed before the Tribunal that the accident occurred solely due to rash and negligent driving of the offending motorcycle and the said testimony could not be demolished by the learned counsel for the Insurance Company during cross-examination of the said witnesses.

13. The learned counsel for the respondents has also submitted that the PW-3 also categorically stated in his testimony that had the motorcycle being driven in a moderate speed, it could have easily avoided the accident. He has also deposed that the accident occurred only due to sudden and heavy jerk and due to sudden putting of brakes by the driver. The testimony of the PW-3 also could not be demolished by the Insurance Company.

14. The learned counsel for the respondents has submitted that the unshaken evidence of the PWs- 1, 2 and 3 are sufficient to come to the finding that there was rash and negligent driving by the driver of the offending vehicle and the Tribunal had correctly come to the said finding and has correctly awarded the compensation to the respondents/claimants.

15. I have considered the rival submissions made by the

learned counsel for both the sides and have perused the materials on record including the case record of MAC Case No. 11/2019.

16. The main grounds taken by the appellant in this case as discussed hereinabove are only that the Tribunal mainly relied on oral testimony of the witnesses for the claimant and did not require the necessity of going through documentary evidence in support of the case of the claimant.

17. As regards the submission of the learned counsel for the appellant that the Tribunal was wrong in relying on the oral testimony of the claimants' witnesses for coming to the conclusion that the monthly income of the deceased was Rs.12,000/-, it appears that the witnesses for claimant have categorically stated in their testimony that the deceased was a 40-years-old woman and was running a restaurant in Naharlagun from where she used to earn Rs.15,000/- per month. This piece of evidence could not be controverted or demolished during the cross-examination by the Insurance Company. Hence, this Court sees no reason as to why same should not be relied upon by the Motor Accident Claims Tribunal. Rather, considering the nature of the business of running a restaurant, the Tribunal correctly held that due to fluctuation of business, the monthly earning of the deceased was taken to be Rs.12,000/- per month instead of Rs. 15,000/- as deposed by the witnesses.

18. It is also relevant to note that the assessment of earning

from a restaurant as given by the claimants does not appear to be unreasonable, and there is no counter evidence to the effect that the deceased had no business of restaurant as deposed by the witnesses for the claimants. Considering the nature of business in which the deceased was conducting, i.e., the business of restaurant, the insistence on documentary evidence may not be justified when the oral testimony of the witnesses remain uncontroverted. Hence, this Court is of considered opinion that the Tribunal was right in relying on the oral testimony of the witnesses to come to the finding of about the monthly earning of the deceased.

19. As regards the allegation of rash and negligent driving by the driver of the ill-fated vehicle, the witnesses for the claimant have categorically stated that the driver was driving the motorcycle at a very high speed and he puts the brakes all on a sudden which caused the accident. This piece of evidence could not be demolished by the Insurance Company during cross-examination. Hence, as the evidence available on record clearly suggests that the ill-fated vehicle involved in the accident was driven in a rash and negligent manner which caused the accident, there appears to be no ground as to why same may not be relied upon by the Tribunal.

20. As the degree of proof required in a motor accident claims case is lesser than that of a criminal trial and it is based on the principles of preponderance of probabilities. Hence, in absence of any evidence on record contrary to what has been deposed

by the witnesses for claimant side, there appears to be no wrong in relying on the testimony of the said witnesses. Hence, this Court is of considered opinion that the Trial Court was not wrong in relying upon the evidence of the claimant's witnesses which remained uncontroverted for coming to the finding that the driver of the offending vehicle drove the said vehicle in a rash and negligent manner which caused the accident. This court is of considered opinion that the claimants were able to prove the aforesaid facts on the touchstone of preponderance of probability.

21. As regards the submission of learned counsel for the appellant that the married daughter of the deceased may not be regarded as dependent and ought not to have been granted compensation, it appears that during the entire inquiry before the Motor Accident Claims Tribunal, Tuensang in MAC Case No. 11/2019, no such plea was taken by the Insurance Company that the married daughter is not the dependent of the deceased. It is held in the catena of judgments of this Court as well as the Apex Court that married daughter may be regarded as, is a legal representative of her deceased mother and she is entitled to claim compensation and as in the instant case, the Insurance Company has not raised any objection as regards dependency of the children of the deceased during the inquiry and no evidence was led by them to counter the claim of the claimants on this aspect, hence, this Court is of considered opinion that the Tribunal has correctly awarded

the compensation to the claimants and same needs no interference by this Court.

22. It is no *res integra* that the rules of adversarial litigation are not applicable to an inquiry under Section 166 of the Motor Vehicles Act, 1988 in the strict sense. More so, when the contesting Insurance Company fails to controvert the evidence at the stage of inquiry when such evidence was produced before the Motor Accident Claims Tribunal conducting the trial.

23. We have seen in the instant case also the Insurance Company had failed to controvert the evidence adduced by the claimants during the inquiry. It also failed to adduce any evidence to counter the case of the claimant.

24. In view of above discussion, this Court is of considered opinion that the present appeal filed by the Insurance Company is devoid of any merit and does not justify any interference by this Court.

25. Accordingly, this appeal is hereby dismissed.

26. It appears from record that the appellant has deposited an amount of Rs.25,000/- as statutory deposit in the Registry of this Court at the time of filing this appeal and has also deposited Rs.11,27,500/- as 50% of the awarded amount before this Registry on 28.06.2023. The said amount may be withdrawn by the respondent Nos. 1 to 5 from the Registry after proper verification by the Registry, if not already withdrawn.

27. The appellant is directed to pay the remaining amount of the award, after adjusting the amount which has already been deposited to the Registry to the Motor Accident Claims Tribunal, Tuensang, within a period of one month from the date of this order. Same shall be disbursed by the learned Member, Motor Accident Claims Tribunal, Tuensang, to the present respondent Nos. 1 to 5 after proper verification.

28. Send back the case record of MAC Case No. 11/2019 to the Motor Accident Claims Tribunal, Tuensang, along with a copy of this judgment.

29. This appeal is, accordingly, disposed of.

30. The Registry of the Principal Seat is directed to sent this case record to the Registry of Kohima Bench immediately.

JUDGE

Comparing Assistant