Items No. 20-24

IN THE HIGH COURT OF MANIPUR
AT IMPHAL

MAC APP. No. 6 of 2019

Nayak Infrastructure Pvt. Ltd. Head Office at Swarupananda Road, P.O. Lumding, Nagaon District, Assam – 782447 : Principal Office at 2nd Floor, Kamakhya Commercial, C.K. Road, Panbazar Guwahati, Assam – 781001

Through Bishwajit Nayak, aged about 45 Years, a resident of Lamding, P.O & P.S. Landing, Hojai District, Assam – 782447.

….*Appellant*

- Versus -

1. Kachim Ali, aged about 50 years, S/o Kalachan.
2. Mafijan Bibi, aged about 45 years, W/o Kachim Ali.
   All are residents of Dhamdhama Village, P.O. Dhamdhama, P.S. Ghagrapar Nilabari District, Assam – 781349.

….*Principal Respondents*

3. Mr. Samir Ahemed Barlaskar, aged about 25 years, S/o Md. Nazim Uddin Barlaskar, Village – Kalyanigram, P.O. Leburbond, Cachar District, Assam – 78802 (Driver of Tata Tipper bearing Regd. No. MZ05-5273).

.... *Proforma Respondent*

With
MAC APP. No. 7 of 2019

Nayak Infrastructure Pvt. Ltd. Head Office at Swarupananda Road, P.O. Lumding, Nagaon District, Assa – 782447 : Principal Office at 2nd Floor, Kamakhya Commercial, C.K. Road, Panbazar Guwahati, Assam – 781001

Through Bishwajit Nayak, aged about 45 Years, a resident of Lamding, P.O & P.S. Landing, Hojai District, Assam – 782447.

….*Appellant*

- Versus -

1. Hareswar Saharia, aged about 45 years, S/o Gambhir Saharia, a resident of Pillingkata Dhekiajani Village, P.O. Basistha, P.S. Meghalaya, Kamrup (M) District, Guwahati – 29, Assam.

2. Rina Deka, aged about 43 years, W/o Hareswar Saharia, a resident of Pillingakata Dhekiajani Village, P.O. Basistha, P.S. Meghalaya, Kamrup (M) District, Guwahati – 29, Assam.

….*Principal Respondents*

3. Mr. Samir Ahemed Barlaskar, aged about 25 years, S/o Md. Nazim Uddin Barlaskar, Village – kalyanigram, P.O. Leburbond, Cachar District, Assam – 78802 (Driver of Tata Tipper bearing Regd. No. MZ05-5273).

.... *Proforma Respondent*

With

MAC APP. No. 8 of 2019

Nayak Infrastructure Pvt. Ltd. Head Office at Swarupananda Road, P.O. Lumding, Nagaon District, Assam – 782447 : Principal Office at 2nd Floor, Kamakhya Commercial, C.K. Road, Panbazar Guwahati, Assam – 781001

Through Bishwajit Nayak, aged about 45 Years, a resident of Lamding, P.O & P.S. Landing, Hojai District, Assam – 782447.

….*Appellant*

- Versus -

1. Shri Gaur Mohan Nath, aged about 53 years, S/o (L) Chytanya Nath.
2. Smt. Tara Rani Nath, aged about 48 years, W/o Gaur Mohan Nath.
3. Smt. Ayodha Nath, aged about 30 years, W/o (L) Sarajit Nath.
4. Sourabh Nath, aged about 6 years, S/o (L) Sarajit Nath.
5. Opi Nath, aged about 3 years, D/o (L) Sarajit Nath.
   (Claimants No. 4 & 5 are being minors represented by their mother Smt. Ayodha Nath/Claimant No. 3).

   - All are residents of Boruah Tilla Village, P.S. Kalamagura, P.S. Ratabari, Karimganj District, Assam.

….*Principal Respondents*

6. Mr. Samir Ahemed Barlaskar, aged about 25 years, S/o Md. Nazim Uddin Barlaskar, Village – Kalyanigram, P.O. Leburbond, Cachar District, Assam – 78802 (Driver of Tata Tipper bearing Regd. No. MZ05-5273).

.... *Proforma Respondent*

With

MAC APP. No. 9 of 2019

Nayak Infrastructure Pvt. Ltd. Head Office at Swarupananda Road, P.O. Lumding, Nagaon District, Assam – 782447 : Principal Office at 2nd Floor, Kamakhya Commercial, C.K. Road, Panbazar Guwahati, Assam – 781001

Through Bishwajit Nayak, aged about 45 Years, a resident of Lamding, P.O & P.S. Landing, Hojai District, Assam – 782447.

….*Appellant*

- Versus -

1. Hurip Ali @ Harich Ali, aged about 55 years, S/o (L) Siraj Ali, a resident of Islampur Ratabari Village, P.O. Kalamagura, P.S. Ratabari, Karimganj District, Assam.
2. Sarbul Nesha, aged about 50 years, W/o Hurip Ali, a resident of Islampur Ratabari Village, P.O. Kalamagura, P.S. Ratabari, Karimganj District, Assam.
3. Resna Bibi, aged about 22 years, W/o (L) Altaf Hussain a resident of Islampur Ratabari Village, P.O. Kalamagura, P.S. Ratabari, Karimganj District, Assam.

….*Principal Respondents*

4. Mr. Samir Ahemed Barlaskar, aged about 25 years, S/o Md. Nazim Uddin Barlaskar, Vilage – kalyanigram, P.O. Leburbond, Cachar District, Assam – 78802 (Driver of Tata Tipper bearing Regd. No. MZ05-5273).

.... *Proforma Respondent*

With

MAC APP. No. 10 of 2019

Nayak Infrastructure Pvt. Ltd. Head Office at Swarupananda Road, P.O. Lumding, Nagaon District, Assam – 782447 : Principal Office at 2nd Floor, Kamakhya Commercial, C.K. Road, Panbazar Guwahati, Assam – 781001

Through Bishwajit Nayak, aged about 45 Years, a resident of Lamding, P.O & P.S. Landing, Hojai District, Assam – 782447.

….*Appellant*

- Versus -

1. Bilat @ Bilayat Khan, aged about 55 years, S/o Moslem a resident of Bharirar Pam Village, P.O. Mandia, P.S. Baghbar, Barpata District, Assam – 781308.
2. Suya Bhanu, aged about 45 years, W/o Bilat @ Bilayat Khan, a resident of Bharirar Pam Village, P.O. Mandia, P.S. Baghbar, Barpata District, Assam – 781308.

….*Principal Respondents*

3. Mr. Samir Ahemed Barlaskar, aged about 25 years, S/o Md. Nazim Uddin Barlaskar, Vilage – Kalyanigram, P.O. Leburbond, Cachar District, Assam – 78802 (Driver of Tata Tipper bearing Regd. No. MZ05-5273).

.... *Proforma Respondent*

BEFORE
HON'BLE THE CHIEF JUSTICE MR. RAMALINGAM SUDHAKAR

For the appellants	:	Mr. I. Denning, Advocate
For the respondents	:	Mr. A. Deni Sharma, Advocate
Date of hearing & order	:	05.03.2020

O R D E R

[1] Heard Mr. I. Denning, learned counsel appearing for the appellants and Mr. A. Deni Sharma, learned counsel appearing for the respondents.

[2] These appeals have been filed by the Nayak Infrastructure Pvt. Ltd. Company engaged in construction of Northeast Frontier Railway Project BG Line (Jiribam to Tupul) challenging the award of the Claim Tribunal.

[3] Matter was listed on 09.12.2019 and notice was issued on 11.12.2019.

[4] Mr. A. Deni Sharma, learned counsel appearing for the respondents has sought for early disposal of the appeal. The appeals are taken in view of the limited scope of the plea taken by the learned counsel appearing for the appellants.

[5] Brief facts of the cases are as follows :

One company namely, Coastal Project Limited Manipur Unit having its head office at Film Nagar, Jubilee Hills, Hyderabad, Andhra Pradesh is under joint venture agreement with Nayak Infrastructure Private Limited having its unit/worksite at Kambiron in Manipur. One, Md. Mainuddin Ali, PW No. 2 was engaged in supply of labourers to the Coastal Project Limited and Nayak Infrastructure under the joint venture company for implementation of the railway tunnel construction work in Jiribam to Tupul which is coming within the jurisdiction of Tamenglong District.

[6] On the fateful day (i.e.) on 02.10.2015, the Tata Tipper bearing registration No. MZ05-5273 belonging to Nayak Infrastructure Private Limited (appellant herein) was proceeding towards Jiribam with several workers. When they reached near Nungkao Village Part – II, NH – 37 at about 7.00 a.m., suddenly the Tata Tipper veered off the road and fell down into a deep gorge. At the accident, many persons suffered injury and five persons died. In this regard, an FIR No. 73(10)2015 NBA PS U/s 279/338/427/304-A/ IPC was registered by the Officer in-charge, Nungba Police Station on 02.10.2015.

[7] One, Samir Ahmad Barlaskar is the driver and the appellant is the owner. Consequent to the death claim filed by the legal heirs of the deceased, the matter was taken up. In respect of the deceased person, the legal heirs deposed as witnesses. Besides the claimant witness, P.W. No. 2, Mainuddin Ali, resident of Hahakata, Baksa (Btd) District, Assam, labour supplier and ocular witness was examined. P.W. No. 3, Mr. K.R.V.V.S.N. Rajum, Deputy General

Manager in the Coastal Project Limited, Manipur Unit was examined. P.W. No. 4, Mr. Namdingpou Kamei, Sub-Inspector of Police, Nungba Police Station was examined. P.W. No. 5, (i) Dr. Bigen Chingangbam **(in MAC APP. No. 6 of 2019 & MAC APP. No. 7 of 2019),** (ii) Dr. Soreigam Ragui **(in MAC APP. No. 8 of 2019),** (iii) Dr. Meghachandra Wangkheirakpam **(in MAC APP. No. 9 of 2019**), (iv) Dr. Saka Koko Maring **(in MAC APP. No. 10 of 2019),** Demonstrators in the Department of Forensic Medicine, JNIMS, Imphal who conducted postmortem of the deceased persons were examined. Several exhibits were marked in support of the claim of each five claim petitions and these are not in dispute in the present appeals.

[8] Based on the FIR, certified copy of the accident information report and documents of the Tata Tipper bearing registration No. MZ05-5273, driving license of the driver etc., the Tribunal framed the following issues :

(i) Whether the deceased died in the accident arising out of the Tata Tipper bearing registration No. MZ05-5273 which happened on 02.10.2015 at 7.00 a.m. near Nungkao Part – II along NH No. 37? If so, whether the accident occurred due to the rash and negligence of the driving of the driver of the said Tata Tipper?

(ii) Whether the respondents are jointly and severally liable to pay the compensation to the claimants for causing the death of the deceased in the said road accident ?

(iii) What would be the just proper and appropriate amount of compensation liable to pay to the claimants ?

(iv) Relief ?

[9] As far as the death of five individuals are concerned, there is no dispute that the FIR at Exhibit A/2, information accident report at Exhibit A/3 and A/4 coupled with postmortem certificates issued by the doctor show that the death of these five persons was due to the accident resulting in the Tipper Lorry falling into the deep gorge.

[10] On the plea of negligence on the evidence of ocular witness namely, Mainuddin Ali (P.W. No. 2), it was held by the Tribunal that he is a labour supplier to Coastal Project Limited and Nayak Infrastructure Private Limited a joint venture. These people namely labourers are travelling on the Tata Tipper bearing registration No. MZ05-5273 and proceeding to the worksite and the vehicle veered off the road and fell down into the deep gorge. As to the cause of the death of the deceased in the accident, the fact is that the police report, FIR and accident report clearly states that the vehicle was travelling in rash and negligent manner which could also be due to mechanical defect as a result of which the vehicle fell into the deep gorge. Either way, the owner is responsible for the nature of the accident which has resulted in the death. To that extent, finding negligence is justified and correct. The Tribunal in this case however, fixed the liability at the rate of 70% on the owner of the vehicle and 30% on the deceased.

[11] The primary reason for holding that there is contributory negligence on the part of the deceased victim on account of allegation that he was travelling on the goods vehicle. On that plea, counsel for the claimant has not raised any issue. He accepted the apportionment of negligence of 70/30 as held in para No. 12 of the award of the Tribunal, which reads as follows :

> *"12. From the evidences, it is clear that the deceased victim had boarded the ill fated Tata Tipper bearing Registration No. MZ05-5273 without proper permission from the vehicle authority. The respondent No. 2 had also informed the deceased victim and the other deceased persons not to board the vehicle as the vehicle was already stone dust loaded and no space was available.*
>
> *Under such circumstances, it needs to be pointed out that the deceased victims ought to have taken care by observing the space of the vehicle which was stone dust loaded. Hence, this Court is of the opinion that there was contributory negligence on the part of the deceased victim.*
>
> *Considering the above cited facts an circumstances, this Court holds the opinion that the offending Tata Tipper contributed 70% negligence in the occurrence of the accident and the deceased victim contributed 30% negligence."*

[12] The point in issue raised by Mr. I. Denning, learned counsel appearing for the appellants is that the Tribunal has not discussed how the apportionment of negligence has been made in this regard. While the appellant is trying to say that the victims forcibly occupied the vehicle, the evidence of P.W. No. 2 and 3 makes it clear that the P.W. (2) was eye witness who deposed that the labourers were loaded on the vehicle to go to the worksite. To that extent, the owner of the vehicle has to be held primary responsible.

[13] It is also proved by the P.W. No. 3, Mr. K.R.V.V.S.N. Rajum, Deputy Manager in the Coastal Project Limited, Manipur Unit that the deceased were employed in the joint venture company. In this circumstance, there is no reason for these people to forcibly occupy the Tipper Lorry. Furthermore, the fact is that early morning, all the labourers were loaded to the Tipper Lorry to go to the work place before the fateful accident. The primary responsibility to take care of the labourers is the owner, namely, the joint venture company who is engaging the poor and helpless labourers who work in far flung north east areas of the country. On the contrary, they have used the Tipper Lorry to transport the labourers. They have to provide proper transport facilities like buses. Therefore, the owner, employer, the contractor and the driver are the persons responsible.

[14] The plea of forcibly entering into the vehicle does not appear to be justified. The Tribunal has shown some indulgence to the appellant/owner of the joint venture company by apportioning the liability at 70/30 which may not be appropriate in view of the fact of the appellants who are Private Limited Company followed the rules and regulations of transporting labourers by a proper passenger transport vehicle and not by using Tippler Lorry made for carrying goods.

[15] In view of the above, there is no justification to modify or alter the apportionment of liability any further, as it will create injustice to the legal heirs of the deceased. Hence, the plea of error in the order of the Tribunal apportioning the negligence at 70/30 is rejected.

[16] On the issue No. 2 & 3, the Tribunal has passed in favour of the claimant and held that the appellant is liable to pay the compensation. On this issue, there is no serious dispute by the learned counsel for the appellant. So far as the quantum is concerned, the Tribunal has passed the following award with interest of 6% :

MAC Case No. 28 of 2016/2/2019

Sl. No.	*Details of the award / compensation*	*Total amount*
1.	*Loss of earning due to death calculated as Rs. 78,120/- X multiplier 18 – Contributory negligence @ 30% (Rs. 4,38,348/-) = Rs. 14,06,160/- - Rs. 4,38,438/- = Rs. 9,67,812/-*	*Rs. 9,67,812/-*
2.	*Loss of consortium*	*Rs. 40,000/-*
3.	*Funeral Expenses*	*Rs. 15,000/-*
4.	*Total*	*Rs. 10,22,812/-*

MAC Case No. 27 of 2016/1/2019

Sl. No.	*Details of the award / compensation*	*Total amount*

1.	*Loss of earning due to death calculated as Rs. 78,120/- X multiplier 18 – Contributory negligence @ 30% (Rs. 4,38,348/-) = Rs. 14,06,160/- - Rs. 4,38,438/- = Rs. 9,67,812/-*	*Rs. 9,67,812/-*
2.	*Loss of consortium*	*Rs. 40,000/-*
3.	*Funeral Expenses*	*Rs. 15,000/-*
4.	*Total*	*Rs. 10,22,812/-*

MAC Case No. 31 of 2016/5/2019

Sl. No.	*Details of the award / compensation*	*Total amount*
1.	*Loss of earning due to death calculated as Rs. 1,17,180/- X multiplier 17 – Contributory negligence @ 30% (Rs. 4,38,348/-) = Rs. 19,92,060/- - Rs. 5,97,618/- = Rs. 13,94,442/-*	*Rs. 13,94,442/-*
2.	*Loss of consortium*	*Rs. 40,000/-*
3.	*Funeral Expenses*	*Rs. 15,000/-*
4.	*Total*	*Rs. 14,49,442/-*

MAC Case No. 30 of 2016/4/2019

Sl. No.	*Details of the award / compensation*	*Total amount*
1.	*Loss of earning due to death calculated as Rs. 1,34,400/- X multiplier 18 – Contributory negligence @ 30% (Rs. 7,25,760/-) = Rs. 24,19,200/- - Rs. 7,25,760/- = Rs. 16,93,440/-*	*Rs. 16,93,440/-*
2.	*Loss of consortium*	*Rs. 40,000/-*
3.	*Funeral Expenses*	*Rs. 15,000/-*
4.	*Total*	*Rs. 17,48,440/-*

MAC Case No. 29 of 2016/3/2019

Sl. No.	*Details of the award / compensation*	*Total amount*
1.	*Loss of earning due to death calculated as Rs. 78,120/- X multiplier 18 – Contributory negligence @ 30% (Rs. 4,38,348/-) = Rs. 14,06,160/- - Rs. 4,38,348/- = Rs. 9,67,812/-*	*Rs. 9,67,812/-*
2.	*Loss of consortium*	*Rs. 40,000/-*
3.	*Funeral Expenses*	*Rs. 15,000/-*
4.	*Total*	*Rs. 10,22,812/-*

[17] On the quantum of compensation granted by the Tribunal as above, a specific question was made to the counsel for the appellant to point out any errors. He pleaded that except minor discrepancy considering the age of the

deceased, the nature of employment, the income claimed, the number of dependants and other attendant circumstances, the quantum of compensation is not excessive and not disputed. Therefore, this Court does not find any reason to reduce or modify the compensation granted by the Tribunal any further. Accordingly, the awards of the Tribunal are confirmed along with interest.

[18] Before parting, Mr. I. Denning, learned counsel for the appellant, pleaded for time to deposit the award amount before this Court. On his pleading, time is granted till 19th June, 2020.

[19] Appeals are disposed of as above.

CHIEF JUSTICE

bipin

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