

(1999) 04 GAU CK 0003
In the Gauhati High Court
Case No : M.A. (F) No. 132 of 1994

Aswini Bala Das (Smti) and Others

APPELLANT

Vs

New India Assurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 29-04-1999

Acts Referred:

Citation : (1999) 2 GLT 231

Hon'ble Judges : N.C. Jain, J; D. Biswas, J

Bench : Division Bench

Advocate : T.N. Srinivasan, for the Appellant; D.P. Chaliha and S.K. Borkakati, for the Respondent

Judgement

N.C. Jain, J.—This is an appeal by the claimants against the award of the Motor Accident Claims Tribunal, Nalbari awarding Rs. 67,000/- to the claimants. The mother has been held entitled to a sum of Rs. 41,000/-. The brother has been given a sum of Rs. 13,500/- whereas the sister of the deceased has been given a sum of Rs. 12,500/-. The Tribunal determined the amount of compensation at a sum of Rs. 134,000/-. However, Rs. 67,000/- has been deducted on account of contributory negligence on the part of the deceased in driving the vehicle which met with an accident.

2. Although much can be said on the point whether the brother and sister of the deceased can be held to be dependants of the deceased in the presence of mother who is a claimant, yet we are not going into this question, as no appeal has been filed by the Insurance Co.

3. The counsel for the claimants has argued two points before us. It has been argued in the first instance that the Tribunal has committed error in holding the present case to be one of contributory negligence. We asked the counsel a specific question as to what evidence has been brought on the record of the case to prove the negligence of the driver of the vehicle No. WMK-3804. The learned Counsel for the Appellants could not point out a single sentence from the

statement of any of the 5 witnesses who have been produced by the claimants into the witness box. He has pointed out to Ext. 2, First Information Report in which it has been stated that Arun Biswas the driver of Truck No. WMK-3804 was rash and negligent in driving. Simply because an allegation has been made in the FIR about the negligence of a particular driver, he cannot be held to be negligent until and unless the allegation is substantiated by a witness in a statement on oath before a court of law. There being absolutely no evidence that it was Ajit Biswas who was negligent in driving his truck which has caused vehicular accident with the Mini Truck driven by the deceased, the conclusion of the Tribunal that the drivers of both the vehicles were equally negligent deserves to be upheld.

4. It has next been argued by the counsel for the Appellants that the Tribunal after giving the award should not have entertained the application for review and found that the claimants would be entitled to interest @ 12% from the date of award till realisation. This argument of the counsel for the claimants has got merit. In the impugned award dated 28.2.92, the Tribunal rightly awarded (sic) from the date of application till (sic). This part of the award has been set aside by the Tribunal by an order dated 10.9.92 awarding interest @ 12% from the date of award. This modification has been made without issuing notice to the claimants. Even after notice, the learned Tribunal could not modify the award for several reasons. The Tribunal becomes functus officio after passing of the main award and it is only the appellate court which could have modified the same. Moreover, the approach of the Tribunal is not warranted by any proposition of law. If the interest is to be awarded from the date of the award, the persons against whom award is likely to be given would keep on delaying the final disposal of a claim petition. Many times the delay in disposal takes place on account of busy schedule of a Tribunal for which the claimants can surely be not the claimants can surely be not blamed. If the interest is to be awarded from the date of award, the claimants will suffer at both ends. They would be getting compensation late which they on account of untimely death of a bread earner should get at the earliest. There cannot be more unjust approach of a court, if the claimants are deprived of interest from the date of application. We are keen to express our displeasure against the Insurance Co. for adopting course by way of filing such like application for modification of the award on the point of interest. This is what the Insurance Company should not have done.

5. For the reasons recorded above, we do not find any force in the appeal in so far as the enhancement of compensation amount. However, the claimants are entitled to grant of interest @ 12% from the date of application till realisation. In view of partial success of the appeal, we impose costs of the appeal upon the Insurance Co. The costs are quantified at Rs. 5,000/-. The Insurance Co. is directed to deposit the balance amount in the light of the observations made by us along with the costs within a period of 2 months from today with the Registrar General of this Court. Naturally, the enhanced amount including the costs would be shared by the claimants in the same proportion which has been given by the

Tribunal.