

(2022) 02 GAU CK 0063
In the Gauhati High Court
Case No : MACApp. No. 87 Of 2012

Bajaj Allianz General Insurance Co. Ltd APPELLANT
Vs
Kamini Devi And Ors RESPONDENT

Date of Decision : 28-02-2022

Acts Referred:

Indian Penal Code, 1860 — Section 279, 304A, 338, 427

Citation : (2022) 02 GAU CK 0063

Hon'ble Judges : Malasri Nandi, J

Bench : Single Bench

Advocate : R. Goswami, B.D. Goswami, R.K. Bhatra

Final Decision : Allowed

Judgement

1. Heard Mr. R. Goswami, learned counsel appearing for the appellant/ Bajaj Allianz General Insurance Co. Ltd as well as Mr. B.D. Goswami, learned counsel appearing for the respondent no. 1/claimant and Mr. R.K. Bhatra, learned counsel appearing for the respondent no. 4/ National Insurance Company Limited.

2. This appeal has been preferred by the appellant Bajaj Allianz General Insurance Co. Ltd, insurer of the vehicle AS01T/3595 (Indigo Car) challenging the judgment and order dated 23.12.2010 passed by the learned Member, MACT Nalbari in MAC Case No. 285/2006.

3. The brief facts of the case is that on 16.07.2006, the son of the claimant Biren Kumar Sarma was travelling in a vehicle AS01T/3595 (Indigo Car) from Guwahati to Sivasagar along with staff of newspaper (Natun Somoy) and when they reached near Jorhat at about 5.30 A.M. another vehicle bearing no. AS-23D/6371 (truck) coming from opposite directions in a rash and negligent manner knocked down the vehicle bearing no. AS01T/3595. As a result, the driver of the vehicle (Indigo Car) and son of the claimant Biren Kumar Sarma died on the spot. After the accident, one case was registered vide Jorhat P.S. Case No. 381/06 under Section 279/338/304A/427 IPC. At the relevant time of accident both the

vehicles were duly insured.

3. The respondent no. 1/claimant filed the claim case before the MACT Nalbari praying for compensation on account of death of her son Biren Kumar Sarma. After completion of the trial, the learned Member, MACT, Nalbari awarded compensation in favour of the claimant by fastening both the Insurance Companies to pay on equal share 50% each of the awarded amount.

4. It was urged by learned counsel for the appellant Mr. R. Goswami that while assessing the compensation for the death of a bachelor, instead of making a deduction of 50% from the income of the deceased, has made a deduction of 1/3rd only resulting in excessive compensation to the respondent no. 1/claimant, who is the mother of the deceased. As the respondent no. 1 was the sole claimant there was no good reason to make any deviation from the law laid down in the case of Sarla Verma Vs. Delhi Transport Corporation, 2009 ACJ 1298.

5. Another contention argued by learned counsel for the appellant is that the allegation in the claim petition as well as in the evidence adduced by the claimant was against the driver of the offending truck bearing no. AS-23D/6371 only and not against the vehicle no. AS-01T/3595 (Indigo Car) which was insured by the appellant. Though the learned Member, MACT Nalbari discussed the contention of both sides but without any rhyme or reason came to a finding that both the vehicles which were involved in the accident were equally liable to pay for compensation, which requires to be interfered.

6. Per contra, learned counsel for the respondent no. 4 Mr. R.K. Bhatra, appearing for the National Insurance Company, has argued that both the vehicles collided each other and head on collision implies contributory negligence. Learned Tribunal has rightly delivered the judgment fastening both the Insurance Company to pay 50% of the awarded amount. In support of his submission, learned counsel for the respondent no. 4 has placed reliance on the following case law:-

(i) Bijoy Kumar Dugar Vs. Bidya Dhar Dutta and Others (2006) 3 SCC 242.

7. On the other hand, Mr. B.D. Goswami, learned counsel appearing for the respondent no. 1/claimant has submitted that as per P.M. report, the deceased was 38 years of age, but the Tribunal has wrongly taken up the age of the deceased as 40 years, while calculating the award. Learned counsel has also drawn attention of the Court that no interest was given by the learned Tribunal on the awarded amount which is against the settled position of law. It is further contended that learned Tribunal took the income of the deceased as Rs. 3,000/- though his income was proved by the Editor of the daily newspaper 'AJI' by adducing evidence. As such, the income of the deceased be considered as Rs. 9,000/- per month.

8. I have perused the record of MAC Case No. 285/2006 and the documents available in the record.

9. It is an admitted fact that two vehicles i.e. AS-01T/3595 and AS-23D/6371 were involved in the alleged accident. The vehicle no. AS-01T/3595 in which the deceased was travelling along with some other staff of newspaper 'Naton Somoy' and 'AJI' and the other vehicle no. AS-23D/6371 i.e truck which was alleged to be knocked down AS-01T/3595 (Indigo Car). It appears from the MAC Case No. 285/2006 that 3(three) witnesses were examined before the Tribunal. PW-1, is the claimant who is admittedly not an eye witness to the accident but according to PW-1, she had heard that the accident occurred due to negligence of the truck. Her son was travelling in a vehicle no. AS-01T/3595 and the accident occurred due to negligence of the driver of the vehicle no. AS-23D/6371 (truck) which knocked down the vehicle no. AS-01T/3595 (Indigo Car) in which her son was travelling on the day of the accident.

10. PW-2 is Md. Helaluddin Ahmed who accompanied the deceased on the day of the accident in the vehicle no. AS-01T/3595. He deposed in his evidence that he was a staff of the 'Nuton Somoy' newspaper under Ramdhenu Prakashan Pvt. Ltd. On 16.07.2006, he was travelling in a vehicle AS-01T/3595 from Guwahati to Sivasagar along with staff including Biren Kumar Sarma and when they reached Jorhat at about 5.30 A.M., another vehicle no. AS-23D/6371 (truck) knocked down their vehicle from front side at Saraibandha bye pass of N.H. 37, Jorhat. As a result of which, Biren Kumar Sarma and driver of their vehicle Tapan Das died on the spot. The accident occurred due to negligence of the driver of the truck bearing no. AS-23D/6371. Due to the alleged accident he had also received grievous injuries on his person. He took treatment at Jorhat Civil Hospital and Assam Medical College, Dibrugarh.

11. The claimant has exhibited some documents before the Tribunal. Exhibit-1, is the accident information report, which reveals that an accident occurred on 16.07.2006 at about 5.30 A.M. at Saraibandha bye pass of N.H. 37, Jorhat and one Biren Kumar Sarma died due to the alleged accident. The vehicle bearing No. AS-23D/6371 (1109 truck) was shown to be the offending vehicle. The Exhibit-2 is the FIR lodged by the Traffic In-charge, Jorhat police station, Bhaktiram Kakati before the Officer-In-Charge, Jorhat P.S. stating interalia that on 16.07.2006 at about 5.30 A.M. One truck bearing no. AS-23D/6371 loaded with Tea leaves while travelling from Tinsukia to Guwahati through N.H. 37 in a rash and negligent manner and when reached Jorhat, Saraibandha bye pass of N.H. 37 dashed against another vehicle bearing no. AS-01T/3595 (Indigo Car) coming from opposite direction. As a result, both the vehicles have been sufficiently damaged. The driver of the Indigo Car, Tapan Das and the passenger Biren Kumar Sarma died on the spot. The other two passengers travelling in the said vehicle sustained grievous injuries on their person. They were immediately shifted to Jorhat Civil Hospital. On the other hand, the driver of the truck fled away from the scene leaving the truck on the spot. The traffic in-charge of Jorhat police station prayed to register a case against the driver of the truck bearing no. AS-23D/6371 and accordingly, a case was registered vide Jorhat P.S. case no. 381/2006 under Section 279/338/304A/427 IPC.

12. To determine the negligence of the driver of the offending vehicle, I am being guided by the judgment of Hon'ble High Court in the case of Basant Kaur & ors. Vs- Chattar Pal Singh and Ors. (2003) ACJ 369 Madhya Pradesh, wherein it has been held that registration of a criminal case against the driver of the offending vehicle is enough to record the finding that the driver of offending vehicle is responsible for causing the accident.

13. Therefore, in view of the evidence of P.W.-2 as well as the documents relating to criminal case it can be said that the deceased Biren Kumar Sarma sustained fatal injuries in the alleged accident due to rash and negligent driving by the driver of the offending vehicle bearing no. AS-23D/6371 (truck).

14. Regarding income of the deceased, as per claim petition, the deceased was working in the office of the Executive Editor of 'AJI' Ramdhenu Prakashan Pvt. Ltd. and his monthly salary was Rs. 9,100/-. In support of the income of the deceased, one witness was examined before the Tribunal. PW-3, Madhuram Boro, who deposed in his evidence that he was Editor of 'AJI' under Ramdhenu Prakashan Pvt. Ltd. Late Biren Kr. Sarma was an employee of their publication and he worked as a staff reporter and his monthly salary was Rs. 9,100/-. On the date of accident Biren Kumar Sarma was travelling in a vehicle bearing no. AS-01T/3595 from Guwahati to Sivasagar along with office staff of 'AJI' and 'Natun Somoy' and when they reached Jorhat at about 5.30 A.M. another vehicle bearing no. AS-23D/6371 coming from opposite directions in a rash and negligent manner knocked down the vehicle AS-01T/3595 at Saraibandha bye pass of N.H. 37. As a result of which, Biren Kumar Sarma and driver of their vehicle Tapan Das died on the spot. The other staff Md. Helaluddin and Anil Mazumdar also sustained grievous injuries due to the alleged accident.

In his cross-examination, PW-3 replied that he did not see the occurrence. He knew Biren Sarma long back and he had drawn his salary of Rs. 9,000/- per month.

15. To prove income of the deceased, the claimant has submitted one document vide exhibit-5. Exhibit-5, is the salary certificate issued by one Dulal Bora, Executive Editor of 'AJI' which reflects that Biren Kumar Sarma who died in a car accident at Jorhat on 16.07.2006 was an employee of 'AJI' and 'Natun Somoy'. He worked as a staff reporter since 01.03.2006 and his monthly salary was Rs. 9,100/- but Dulal Bora was not examined in this case to prove Exhibit-5. So exhibit-5 is not considered in this case.

16. The claimants exhibited two other documents vide Exhibit-6 and Exhibit-7, which show that Biren Sarma was the staff reporter of 'Natun Dainik'. In MAC Case No. 285/2006, the witnesses categorically stated that the deceased was the staff reporter of 'AJI' and 'Natun Somoy' but the documents show that he was the staff reporter of another newspaper namely 'Natun Dainik'. As such, Exhibit-6 and 7 are not considered in this case.

17. Under such circumstances, notional income of Rs. 5,000/- be considered as

monthly income of the deceased.

18. As per claim petition, the age of the deceased was 32 years at the time of accident but the post-mortem report shows that the age of the deceased was 38 years when the accident took place. No other document is available in the record to prove the age of the deceased. It is a settled position of law that if any age proof document is not available the age mentioned in P.M. report can be taken into consideration. As per P.M. report, age of the deceased was 38 years, which can be considered in this case.

19. As per the case of Sarla Verma Vs. Delhi Transport Corporation, [AIR 2009(6) SC 121], the multiplier would be 15.

20. In the instant case, the deceased was a bachelor. As such, the standardized deduction towards personal and living expenses of deceased is applicable as stated in the case of Sarla Verma (supra). Considering the aforesaid mandate in the instant case since the deceased was a bachelor, so 50% of the income of the deceased is required to be deducted with a presumption that had the deceased been alive, he could have spent 50% for his personal and living expenses.

21. In the case of National Insurance Co. Ltd. Vs. Pranay Shethi & Ors. reported in SLP(Civil) No. 25590 of 2014, it was observed that while determining the income of the deceased, in case of self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40-50 years and 10% where the deceased was between the age of 50-60 years should be regarded as the necessary method of computation.

22. In the case in hand, the deceased was 38 years of age at the time of the accident. So 40% should be added along with his established income of Rs. 5,000/-. Hence, monthly income of the deceased is considered as Rs. 5,000+Rs. 2,000 (40%)=Rs. 7,000/-.

23. In the case of Magma General Insurance Co. Ltd. Vs. Nanu Ram (2018) ACJ 2782) Hon'ble Supreme Court has held that the Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of filial consortium.

In the said case, Hon'ble Supreme Court awarded a sum of Rs. 40,000/- each towards loss of filial consortium to the father and sister of the deceased. In the present case, the claimant/respondent no. 1 is the mother of the deceased Biren Kumar Sarma. As such, she is entitled to get filial consortium for the death of her son.

24. As per SLP(Civil) No. 25590 of 2014 (National Insurance Co. Ltd. Vs. Pranay Shethi & Ors.) the Hon'ble Supreme Court has fixed compensation in case of death reasonable figures on conventional heads namely- Loss of estate and

Funeral expenses should be Rs. 15,000/- and Rs. 15,000/- respectively.

25. In view of the aforesaid discussion, the computation of compensation is awarded as follows:-

(a) Annual income of the deceased=Rs. 7,000X12=84,000/-

(b) After deducting 50% of the income of the deceased, the amount comes to Rs. 42,000/-.

(c) After multiplied with multiplier the amount comes to Rs. 42,000/- X15=6,30,000/-.

(d) Funeral Expenses= Rs. 15,000/-

(e) Loss of Filial Consortium=Rs. 40,000/-

(f) Loss of Estate= Rs. 15,000/-

Total = 7,00,000/-(Rupees Seven Lakhs) only

26. In the result, the appeal is allowed. The judgment passed by the learned Tribunal dated 23.12.2010 is set aside to the extent of directing appellant to pay 50% of the award. The compensation and award is modified as described above. As it is proved that the offending truck bearing no. AS-23D/6371 was solely responsible for causing the accident for which, the son of the claimant Biren Kumar Sarma died, as such, insurer of the said vehicle i.e. National Insurance Company Limited is liable to pay the entire amount of compensation amounting to Rs. 7,00,000/- (Rupees Seven Lakhs) only to the claimant. The compensation so awarded will carry an interest @ 6% per annum from the date of filing of the case till full and final realization. Any amount if paid earlier be adjusted accordingly.

27. Statutory amount in deposit be refunded accordingly.

28. LCR be returned back.