
(2015) 05 TP CK 0002
In the Tripura High Court
Case No : MAC App. No. 54 of 2009

Bhanu Debnath

APPELLANT

Vs

Kartik Chandra Saha and Others

RESPONDENT

Date of Decision : 06-05-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 163-A, 166, 170

Citation : (2016) ACJ 712

Hon'ble Judges : Deepak Gupta, C.J

Bench : Single Bench

Advocate : S.K. Dutta, for the Appellant; P. Gautam, G.S. Das and D. Deb, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Deepak Gupta, C.J—This appeal by the claimant-appellant is directed against the award, dated 22nd December, 2008 passed by the learned Motor Accident Claims Tribunal, West Tripura, Agartala in Case No. TS (MAC) 128 of 2000, whereby he dismissed the claim petition filed by the claimant holding that the deceased did not die due to injuries sustained in a motor vehicle accident or due to the negligence of the driver and is, therefore, not entitled to get any compensation.

2. The claimant is the widow of Late Sri Rebati Debnath and mother of victim Sukhlal Debnath. She filed a claim petition on 08.03.2000 under Section 163A of the Motor Vehicles Act praying for compensation on account of the death of her son in a motor vehicle accident.

3. In this claim petition it was alleged that the deceased was traveling in a "jeep" bearing registration No. TRT-2187. According to the claimant, on 04.09.1998 at 7.00 p.m. her son Sukhlal Debnath along with several other passengers was travelling from Takrarjala to Jampuijala in the vehicle in question. She alleged that the victim and the other passengers had requested the driver of the jeep not to ply the vehicle without police escort because Takarjala-Jampuijala road was

extremist infested area and many incidents of kidnapping, murder etc. had taken place on this road. However, the driver of the said vehicle did not pay heed to the request of the passengers and drove the vehicle and some extremists fired open to the jeep. It is alleged that some passengers were seriously beaten by the extremists in the jeep and 10/12 persons were kidnapped by them. According to the claimant, due to the attack by the extremists her son was seriously injured and he was taken to the Takarjala hospital from where he was referred to G.B.P hospital, Agartala but died on the way due to the injury received. It was alleged that the deceased was a businessman earning more than Rs. 5,000/- per month.

4. The vehicle in question is, admittedly, owned by Sri Kartik Chandra Saha and insured with the New India Insurance Company. The driver of the vehicle was neither named in the claim petition nor was he made a party to the claim petition. The petition was dismissed by the Motor Accident Claims Tribunal on 01.03.2005 being not maintainable. This order was challenged before the Gauhati High Court and on 20.06.2007 the Gauhati High Court allowed the appeal on the ground that this question should be decided after evidence of the party is recorded. Thereafter, on 15.07.2008 the petitioner moved an application for amendment praying that the petition be treated to be one under Section 166 of the Motor Vehicles Act and not under Section 163-A. This application was allowed.

5. The petitioner examined herself and one other PW. On behalf of the insurance company one witness was examined. The learned Tribunal relying upon the record of the police and the allegations made in the FIR held that the accident had not occurred in the manner claimed by the petitioner and in fact the deceased had been shot by the militants not while traveling in the jeep but after he had got down from the jeep and had been captured by the extremists while he was trying to escape from the clutches of the extremists.

6. Mr. S.K. Dutta, learned counsel appearing on behalf of the claimant, submits that the learned Tribunal has relied upon the FIR and the same could not have been relied upon. According to Mr. Dutta, the police paper i.e. FIR, charge sheet etc. could not have been relied upon by the Tribunal to decide the case. His next submission is that since the insurance company had not sought permission to contest the case on merits under Section 170 it could not be permitted to contest the case on merits. On the other hand, learned counsel for the respondents has supported the award and urged that the claimant has miserably failed to prove that the deceased died in a motor vehicle accident or that the accident occurred due to the negligence of the driver of the vehicle and hence the insurance company is not liable.

7. As already submitted above, the claimant Smt. Bhanu Debnath stepped into the witness box. She is the mother of the deceased. She is not an eye-witness either to the occurrence or to the time when her son along with the other passengers boarded the jeep. Therefore, her evidence with regard to the manner in which the accident occurred is of no consequence. The claimant herself has

relied upon certain documents including copy of the FIR of Takarjala Police Station Case No. 41/1998. In her statement the FIR was exhibited as Exbt. 1. Therefore, it is obvious that this witness has relied upon this FIR.

8. The FIR in question which was exhibited as Exbt. P/1 has been lodged at the instances of one Narayan Shil. It is mentioned that when about 20-25 businessman were traveling in the jeep, the same was attacked by extremists and the extremists kidnapped 10-12 businessman who were traveling in the jeep. They were also tortured. This FIR was filed within an hour and a half of the occurrence taken place. This FIR does not actually disclose the entire facts and as rightly pointed out by Mr. S.K. Dutta, it is a very cryptic and does not give detail what had happened.

9. The petitioner also examined PW-2 one Dulal Debnath who also claimed to be traveling in the vehicle. According this witness, when he along with the victim and other passengers were proceeding in the jeep they had first requested the jeep driver not to ply the jeep without police escort and also stated that when they were sitting in the jeep, some unknown extremists started firing upon the jeep and some passengers including this witness were beaten up by the extremists and some persons were kidnapped. According to this witness, due to the attack of the extremists one passenger namely, Sukhlal Debnath was seriously injured and taken to hospital where he died on the way to Agartala.

10. The learned Tribunal has disbelieved this witness and in my opinion rightly so. This witness Dulal Debnath is the son of Rebati Debnath, resident of Village - Ambagan, P.S. - Bishalgarh, West Tripura and as rightly held by the Tribunal, is the real brother of the deceased. Neither in the claim petition nor in the statement of the mother there is any mention of this witness traveling in the vehicle in question. The learned Tribunal has also found that the name of this witness is not mentioned in the list of various passengers as given to the list attached with the FIR. Therefore, there is no doubt that this witness was not a passenger of the jeep and he being the brother of the deceased has given a false statement.

11. The insurance company examined one witness i.e. Sri Uma Pada Das the Administrative Officer who states that they collected the police investigation report in connection with Teliamura Police Station Case No. 41/98 and according to this police investigation report, the extremists had kidnapped 10-12 passengers from the jeep bearing No. TRT-2187. It is also alleged that after the passengers had been taken out from the jeep they were beaten up by the extremists. Victim Sukhlal Debnath tried to escape by running away and then he was shot down by the extremists. The FIR and final report of the police station were marked as Exbt. A series. The only suggestion put to this witness is that the report submitted by the police officer is not correct. No suggestion has been put to this witness that the police report as filed is a false police report. I may point out that it is very difficult to believe the story of the claimant that the passengers in the jeep had asked the driver not to drive the vehicle without a

police escort. According to the averments made in the petition and the evidence led there were about 20-25 passengers in the jeep. If 20-25 passengers were not willing to travel in the jeep how could one single driver had forcibly asked them to travel in the same? It is apparent that this is a false story. It is also more than apparent that the deceased was not traveling in the jeep at the time when he was shot.

12. There were about 20-25 persons traveling in the jeep. Out of these, 10-12 persons were kidnapped by the extremists. They were tortured and it is when the deceased tried to escape that he was shot dead. The issue is whether this incident can be said to be arisen out of the use of a motor vehicle. Reliance has been placed by Mr. Dutta on the judgment of the Agartala Bench of the Gauhati High Court in First Appeal No. 198 of 1996 (Smt. Bipal Boshi Das Vs. The Oriental Insurance Company Ltd. and another) decided on 08.06.2005. Reliance has also been placed on the judgment of the Apex Court in Samir Chanda Vs. Managing Director, Assam State TPT. Corpn., (1998) 2 ACC 333 : (1998) ACJ 1351 : (1998) 6 AD 406 : AIR 1999 SC 136 : (1998) 6 JT 40 : (1998) 120 PLR 281 : (1998) 5 SCALE 25 : (1998) 6 SCC 605 : (1998) 1 SCR 219 Supp : (1998) AIRSCW 3491 : (1998) 7 Supreme 66 wherein the Apex Court in the case of a bomb blast held that when the explosion took place inside the bus and the police escort was not there the negligence was of the driver. Reliance has also been placed on the judgment passed in the case of Smt. Rita Devi and Others Vs. New India Assurance Co. Ltd. and Another, (2000) 2 ACC 291 : (2000) ACJ 801 : (2000) 85 FLR 801 : (2000) 5 JT 355 : (2000) 1 LLJ 1656 : (2000) 125 PLR 768 : (2000) 4 SCALE 85 : (2000) 5 SCC 113 : (2000) 2 UJ 1283 . In my view these cases are totally different.

13. The question that arises is whether such an incident can be said to be an accident or not? This Court has taken the view in a number of cases that if there is firing on a vehicle and the driver and conductor have been negligent in taking the vehicle into an area, which is infested with terrorism then the injury of the death could be said to be arising out of the use of the vehicle.

14. In this regard, reference may be made to the Rita Devi's (supra), which is a Judgment which actually expanded the scope and meaning of the phrase "arising out of the use of a motor vehicle". However, in this Judgment also certain parameters have been laid down in Para 10, which reads as follows:

"10. The question, therefore is, can a murder be an accident in any given case? There is no doubt that "murder", as it is understood, in the common parlance is a felonious act where death is caused with intent and the perpetrators of that act normally have a motive against the victim for such killing. But there are also instances where murder can be by accident on a given set of facts. The difference between a "murder" which is not an accident and a murder which is an accident, depends on the proximity of the cause of such murder. In our opinion, if the dominant intention of the Act of felony is to kill any particular person then such killing is not an accidental murder but is a murder simpliciter, while if the

cause of murder or act of murder was originally not intended and the same was caused in furtherance of any other felonious act then such murder is an accidental murder."

In Rita Devi's (supra) case, the Apex Court clearly held that where the intention of the perpetrators of the crime is to kill any particular person or persons then that is not an accident and is a murder simpliciter.

15. To elaborate this position further supposing a person boards a vehicle solely with the intention of killing of some other passenger traveling in the vehicle and either causes injury or kills the passenger in the vehicle can it be said that such an incident arises out of the use of the motor vehicle only because the motor vehicle is moving? In my view, the answer has to be an emphatic "no" because in view of Rita Devi's (supra) case, if the intention is to cause harm to a particular person or persons then the intention is to commit a criminal felonious act and that cannot be an accident.

16. Mr. S.K. Dutta learned counsel has relied upon a Judgment of a learned Single Judge of the Gauhati High Court in Haridas Das Vs. Smt. Usha Rani Banik and Others, AIR 2006 SC 1634 : (2006) 2 CTC 321 : (2006) 3 JT 526 : (2006) 3 SCALE 287 : (2006) 4 SCC 78 : (2006) AIRSCW 1771 : (2006) 3 Supreme 125 , wherein relying upon Rita Devi's (supra) case and some other cases, the learned Single Judge held that the occurrence which was the subject matter in that case arose out of the use of a motor vehicle. However, that is a case in which the vehicle with 40-45 passengers was passing through a jungle. The bus was stopped and the driver was informed that there were armed persons in the area and he should not proceed with the vehicle into that area. However, the driver did not listen and proceeded towards that dangerous area and when the bus had moved ahead and was negotiating a curve some armed persons stopped the bus and fired indiscriminately at the bus resulting the death of 28 passengers of the bus. That case stands on a different footing because there was indiscriminate firing on the bus and this Court in AAAC APP No. 122 of 2004 and many other cases decided thereafter has held that where there is indiscriminate firing on the vehicle then it is a case of an accident. However, at the cost of repetition it may be reiterated that when it is not a case of indiscriminate firing but some particular person or persons being targeted then that is not a case of accident but a case of murder.

17. It may also be pointed out that a Division Bench of the Gauhati High Court in National Insurance Co. Ltd. Vs. Kasheni and Others, (2006) 1 ACC 644 : (2007) ACJ 43 : (2005) 3 GLT 465 dealt with a similar issue. In that case, the deceased was traveling in an auto rickshaw and some un-identified persons tried to stop the vehicle. The driver of the auto rickshaw instead of stopping the vehicle sped away. Thereafter, the auto rickshaw was fired on and the bullet hit the deceased and killed him on the spot. The assailants fled away. The Division Bench held on the basis of the evidence that even before the deceased had boarded the auto rickshaw he had been chased by the miscreants and therefore their intention was

to kill him and as such, the occurrence did not arise out of the use of the motor vehicle.

18. In the present case as observed by me earlier that there is no proof of negligence of the driver of the vehicle. The mother was obviously not present at the spot. The other witness i.e. the brother was also not present at the spot as held by me above. No other witness was produced though there were many. It also stands proved that when the occurrence took place the deceased was not inside the vehicle. He had been kidnapped and taken away from the vehicle. Thereafter he was shot dead. I am clearly of the view that such an accident cannot by any stretch of imagination be said to be arising out of the use of a motor vehicle.

19. Lastly, even if it is held that the occurrence arises out of the use of the motor vehicle the question would be whether the insurance company can be held liable? In the present case, the policy of insurance excludes riot, strike and terrorism and this act would be an act of terrorism and the insurance company therefore, also cannot be held liable. In this behalf reference may be made to the Judgment of the Apex Court in Muralidhar Sarangi Vs. The New India Assurance Co. Ltd., AIR 2000 SC 934 : (2000) 100 CompCas 499 : (2000) 2 JT 485 : (2000) 125 PLR 813 : (2000) 2 SCALE 138 : (2000) 3 SCC 466 : (2000) 1 SCR 1220 : (2000) 1 UJ 550 : (2000) AIRSCW 694 : (2000) 2 Supreme 25 . In that case, the trucks belonged to the insured were destroyed and attacked in Assam by the Bodo terrorists and the Apex Court held that this could not be said to be a malicious act but was an act of terrorism and therefore, the insurance company was not liable.

20. In this view of the matter, there is no merit in the appeal which is, accordingly, dismissed.