
(2005) 06 GAU CK 0060
In the Gauhati High Court

Bipal Bashi Das

APPELLANT

Vs

Oriental Insurance Co. Ltd.

RESPONDENT

Date of Decision : 08-06-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2008) ACJ 1728 : (2007) 1 GLR 242 : (2005) 3 GLT 407

Hon'ble Judges : T. Vaiphei, J;I.A. Ansari, J

Bench : Division Bench

Final Decision : Allowed

Judgement

I.A. Ansari, J.—Thus appeal, preferred u/s 173 the Motor Vehicles Act, 1988 (hereinafter referred to as "the M.V. Act") has arisen out of the award dated 12.7.1996, passed, in T.S. (MAC) 163 of 1995, by the Member, Motor Accident claims Tribunal, West Tripura, Agartala (hereinafter referred to as "the Tribunal") dismissing the application for compensation made u/s 166 of the M.V. Act by the claimant-appellant.

2. The material facts leading to the present appeal may, in brief, be set out as follows:

The claimant-appellant herein, Smti. Bipal Bashi Das, made an application u/s 166 of the M.V. Act seeking compensation for a sum of Rs. 11,00,000 for the death, of her husband, Kartik Das, who allegedly died in a motor vehicular accident, her case being, in brief, thus : On 6.4.1994, the claimant's husband, Kartik Das, boarded a Jeep bearing registration No. TRT 1867 for going to Teliamura from Taidubazar. Some other passengers also boarded the said Jeep. As Amarpur-Teliamura road was infested by extremists and possibilities of extremists attack on public vehicles passing over the road in the said area were very high, there was panic in the said area on account of extremist activities and it was, usually, considered unsafe to undertake journey through Amarpur-Teliamura Road, the claimant's husband (since deceased) and other passengers,

present in the said vehicle requested the driver of the said vehicle to proceed towards Udaipur from Taidubazar via Amarpur and, thereafter, to Teliamura via Agartala so as to avoid possibilities of attack on the said, vehicle, for, such a route, though a little longer, would have been free from any danger. The driver, however, did not accede to the requests so made by the passengers and started driving the vehicle along Amarpur-Teliamura Road, which was though a shorter route, was full of possibilities of attack by the extremists. As soon as the vehicle reached Pathar Quarry near 7 miles under Taidu Police Station, some extremists started firing aiming at the vehicle. As a result of the said firing, the claimant's husband sustained bullet injuries and when he was brought to Teliamura hospital, he was declared, dead. Terming that the act of driving the said vehicle by its driver through insecured, though shorter route, amounted to careless and negligent driving of the vehicle leading to the death of the claimant's husband, the claimant sought for compensation of Rs. 11,00,000.

3. The respondent No. 2 herein, namely, owner of the vehicle contested the claim by filing his written statement, wherein, while admitting that the claimant's husband, Kartik Das, was a passenger in the said vehicle and that the vehicle was fired upon by the extremists at the area aforementioned, resulting into Kartik Das' death and also sustaining of injuries by other co-passengers, the owner submitted, inter alia, that the said vehicle was driven cleverly by its driver, who managed to reach Teliamura hospital despite attack on the vehicle by the extremists, and, in these premises, this respondent contended that the claim application was not maintainable.

4. The insurer of the Said vehicle, namely, respondent No. 1 herein, also contested the case by filing their written statement, wherein they submitted, inter alia, that the death of the said deceased was not on account of any accident arising out of use of the said vehicle and, hence, the claim application was not maintainable. It was also submitted by the respondent No. 1 that the said vehicle did not, at the, relevant point of time, stand covered by any insurance policy. The fact that the said vehicle did not stand insured, at the relevant point of time, with the respondent No. 1 was, in fact, not disputed. The learned Tribunal, therefore, directed that the name of the respondent No. 1 be struck off the record. This direction has remained unchallenged till date.

5. By the impugned award, dated 12.7.1996, the learned Tribunal, primarily, relying on the decision rendered in the case of Managing Director, Assam State Transport Corporation v. Samir Chanda and Anr. reported in (1994) 2 GLR 226, concluded that the death of the said deceased was not on account of the use of the vehicle aforementioned and, hence, the claim application was not maintainable. Aggrieved by the dismissal of her claim application, the claimant is, now, before us with her present appeal.

6. We have heard Mr. S. Talapatra, learned senior Counsel, assisted by Mr. S.K. Dutta, learned Counsel appearing on behalf of the appellant, and Mr. S.M. Ali, learned Counsel appearing on behalf of the respondent No. 1, We have also

heard Mr. B. Das, learned senior Counsel assisted by Mr. A. Bhattacharya, learned Counsel, for. the respondent No. 2.

7. Before entering into the merit of this appeal, it is imperative to point out that since vehicle, in question, was, admittedly, not insured at the relevant point of time, it clearly follows that if this Court holds that the claimant's husband's death was accidental arising out of rash and negligent driving of the said vehicle by its driver, the compensation, if any, would be payable to the claimant-appellant by the respondent No. 2 and not by respondent No. 1.

8. Bearing in mind the above aspect of the matter, when we turn to the present appeal, what attracts our eyes, most prominently, is that the decision rendered by the Division Bench of this Court in Managing Director, Assam State Transport Corporation (supra) has been overruled in Samir Chanda Vs. Managing Director, Assam State TPT. Corpn.,

9. In Managing Director, Assam State Transport Corporation (supra), when the passengers were alighting from the bus, a bomb exploded inside the bus, causing serious injuries to the passengers of the said bus including the claimant Samir Chanda. Dealing with the claimant's application made under the M.V. Act, seeking compensation for the injuries sustained by the claimant, the Tribunal had concluded, thus,

But when the atmosphere is polluted and there is possibility of internal or external endanger to the vehicle, however remote the cause might be, an extra vigilance and care is necessary even when the vehicle is found property parked and in stationary condition. The driver and conductor are bound to take extra care which are found lacking here.

10. The above conclusions reached by the Tribunal were impugned in an appeal and a Division Bench of this Court held as follows-

we are constrained to hold that when there is a bomb blast and the accident is caused due to bomb blast, it is not a case of any negligence on the part of the owner or the driver, but because of some other events over which the owner or the driver have no control. Such an accident is riot the result of negligence or failure to do some duty. It cannot be said such a case that there is negligence of the part of the owner or the driver. If there is no negligence on the part of the owner or the driver, the question of paying compensation by the owner or by the driver does not arise. Accordingly, we allow these appeals and set aside the judgment and awards", dated 2.2.1993,¹ passed by the Member, Motor Accident Claims Tribunal, Kamrup at Guwahati in MACT Case No. 64(K) of 1984 and MACT Case No. 65 (K) of 1984.

11. A close reading of the decision reached in Managing Director, Assam State Transport Corporation (supra), clearly reveals that the Division Bench of this Court did not agree with the Tribunal's conclusion that when the atmosphere is polluted and there is possibility of internal or external endanger to the vehicle,

however, remote the cause might be, an extra vigilance and care is necessary even when the vehicle is found, properly parked and in stationary condition and that the driver and conductor were bound to take extra care, which were found lacking in the case ; what on the other hand, the Division Bench held was that when there was a bomb, blast and the accident as caused due to bomb blast, it could not have been regarded as a case of negligence on the part of the owner or the driver of the vehicle inasmuch as such an incident of bomb blast is an incident over which the owner or the driver had no control and that such an accident can not be said to be the result of negligence or failure to do some duty. The conclusions go reached by the Division Bench, were impugned in an appeal before the Supreme Court.

12. Taking note of the fact that the High Court was of the view that in the fact situation of the case, there was no negligence on the part of the owner and driver of the vehicle, the Supreme Court in *Samir Chanda (supra)*, referred to its earlier decision in *Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More*, wherein it had been held, thus,

...a collision between a petrol tanker and a truck on a National. Highway at about 3.00 a.m., as result of which the tanker went off the road and fell on its left side at a distance of about 20 feet from the highway. As a result of the collision, the petrol contained in the tanker leaked out and collected nearby. About four hours later, an explosion took place in the tanker causing burn injuries to those assembled near it and one such person's legal representative filed claim petition before the Tribunal u/s 92A as well as u/s 110A of the Motor Vehicles Act, 1939.

13. Taking note of the above, observations made in *Sguvahu Dayana Patil (supra)*, the Supreme Court observed, in para 13 of its decision in *Samir Chanda (supra)*, as follows:

(26) These decisions indicate that the word "use" in the context of, motor vehicles, has been construed in a wider sense to include the period when the vehicle is not moving and is stationary beings either parked on the road and when it is not in a position to move due to some breakdown or mechanical defect. Relying on the above-mentioned decisions, the Appellate Bench of the High Court has held that the expression use of a motor vehicle in Section 92A covers accidents which occur both when the vehicle is in motion and when it is stationary. With reference to the fact of the present case, the learned Judges have observed that the tanker in question proceeding along National Highway No. 4 (i.e., while in use) after colliding with a motor lorry was lying on the side and that it cannot be claimed that after the collision the use of the tanker had ceased only because it was disabled. We are in agreement with the said approach of the High Court. In our opinion, the word "use" has a wider connotation to cover the period when the vehicle is not moving and is stationary and the use of a vehicle does not cease on account of the vehicle having been rendered immobile on account of a breakdown or mechanical defect or accident, In the circumstances, it cannot be said that the petrol tanker was not in use at

the time when it was lying on its side after the collision with the truck.

14. In the backdrop of the law laid down in *Shivaji Dayanu Patil (supra)* and also taking into account its decision in *Union of India (UOI) Vs. United India Insurance Co. Ltd. and Others*, the Supreme Court in *Samir Chanda (supra)* further observed as follows:

After going through the judgment of the High Court, we are of the view that the High Court was not right on facts that there was no negligence on the part of the owner or the driver of the bus especially when the appellant has specifically pleaded about the negligence which was accepted by the Tribunal in the lights of the pleadings and of the evidence produced before it. The explosion took place inside the bus is an admitted fact and the usual police escort was not there. The High Court, except observing that there was no negligence, has not upset the finding of the tribunal that the atmosphere during the period of accident was so polluted requiring care on the part of the conductor and driver of the bus. There cannot be any doubt that the accident arose out of the use of the motor vehicle justifying the claim of the appellant.

15. On the basis of its above conclusions, the Supreme Court allowed the appeal in *Samir Chanda (supra)*; set aside the order of the Division Bench of this Court in the *Managing Director, Assam State Transport Corporation (supra)* and restored the award of the Tribunal.

16. From a careful reading of the above observations made in the case of *Samir Chanda (supra)*, it is abundantly clear that when on account of a particular prevailing situation, an extra care is required to be taken before or while using a vehicle at a public place and when, in such a grave situation if the owner or the driver as the case may be, does not take the required care and on account of the omission or failure of the owner or driver to take such care an injury is caused to, or death takes place of, a passenger, such injury or death must be held to have been caused on account of accident arising out of the use of the vehicle and such an accident would justify claim for compensation under the M.V. Act.

17. In the light of the law clearly laid down in *Samir Chanda, (supra)*, when we consider the case at hand, as pleaded by the claimant, we notice that there was absolutely no dispute that *Amarpur-Teliamura road at Pathar Quarry* was, at the relevant point of time, infested by extremists and possibility of attack by them on public vehicles very high. Placed in such situation, the passengers of the vehicle, in question, including the claimant's husband, *Kartik Das*, had requested the driver to proceed towards *Udaipur* from *Taidubazar* via *Amarpur* and from *Amarpur* to *Teliamura* via *Agartala*, for, the road to *Teliamura* from *Amarpur* via *Agartala* was free from extremists' attack. As the route, so suggested by the passengers, was a longer one the driver of the said vehicle, opted to follow *Amarpur-Teliamura road* merely because the same was a shorter road. Driving the vehicle with his mind affected by consideration of distance alone and ignoring the care, which he as a driver, ought to have taken in the situation prevailing in

the area aforementioned, when the driver was taking his vehicle through Patthar Quarry, the vehicle was attacked by the extremists, which led to the causing of injuries to the passengers and death of the claimant's husband. Omission to take requisite care in the use of the vehicle by its driver, thus, amounted to rash and negligent driving of the said vehicle and the death of the claimant's husband must be held to have been caused in the accident arising out of rash and negligent driving of the said vehicle by its driver.

18. It is also extremely important to note that in the case at hand, the dominant intention, in the light of the pleadings on record, was not to kill any of the passengers, in particular, but to attack the vehicle. When the dominant intention was not to cause death of any particular individual, but was an attack on the use of the vehicle, the death arising out of such an occurrence would be treated as an accidental death. In this regard, a reference may be made to the case of *Smt. Rita Devi and Others Vs. New India Assurance Co. Ltd. and Another*, wherein an auto-rickshaw, which was a public carrier, was hired by some unknown passengers from the auto rickshaw stand at Dimapur, the said auto rickshaw was subsequently reported by the owner to the police as having been stolen away and on the next day, the dead body of the said auto rickshaw's driver, Darshan Singh, was recovered by the police and since the whereabouts of the auto rickshaw could not be traced out, the insurance company compensated the owner for the loss of the auto rickshaw suffered by him. When Darshan Singh's widow, Rita Devi, made a claim application for compensation u/s 63A of the M.V. Act claiming damages for the death caused to her husband Darshan Singh, during the course of his employment in the accident arising out of use of the vehicle, the Tribunal held the owner of the vehicle liable to pay compensation to the widow. The insurance company preferred an appeal against the award in this High Court and the High Court, having come to the conclusion that there was no motor accident as contemplated under the M.V. Act allowed the appeal and set aside the award holding that the case was a murder and not an accident. Considering the decision in *Nisbet v. Rayne and Burn* reported in (1910) 1 K.B. 689, which has been followed by the House of Lords in the *Board of Management of Trim Joint District School v. Kelly* 1914 ACJ 667, the Apex Court in *Rita Devi* (supra) observed as follows:

Applying the principles laid down in the above cases to the facts of the case in hand, we find that the deceased, a driver of the auto-rickshaw, was duty bound to have accepted the demand of fare paying passengers to transport them to the place of their destination. During the course of this duty, if the passengers had decided to commit an act of felony of stealing the auto-rickshaw and in the course of achieving the said object of stealing the auto-rickshaw, they had to eliminate the driver of the auto rickshaw then it cannot but be said that the death so caused to the driver of the auto rickshaw was an accidental murder. The stealing of the auto-rickshaw as the object of the felony and the murder that was caused in the said process of stealing the auto rickshaw is only incidental to the act of stealing of the auto rickshaw. Therefore, it has to be said that on the

facts and circumstances of this case the death of the deceased (Dasarath Singh) was caused accidentally in the process of committing the theft of the auto rickshaw.

19. From the case of Rita Devi (supra), what one gathers is that a Tribunal may, in an appropriate case, be required to determine as to what the dominant intention for causing injury to, or death of, a passenger in a vehicle was. If the dominant intention was to cause the death of a particular individual, then it will amount, to murder but if the dominant object was connected with the use of the vehicle at a public place, then, the death would be described to have been caused as a result of accident.

20. In the case at hand too, as we have already indicated hereinabove, the dominant intention was not to kill the claimant's husband, but stop the movement of public vehicles through the area aforementioned, which was, according to the pleadings on record, substantially controlled by the extremists particularly, after dusk.

21. Situated, thus, it is clear that in the present case, the death of the claimant's husband was caused on account of use of the vehicle in question the death of the claimant's husband was, thus, accidental, which took place because of rash and negligent use/driving thereof by its driver inasmuch as without caring for the safety of the passengers, the driver chose to adopt the shorter route to his destination and did not follow the safer route despite, requests made by the passengers including the claimant's husband. The death of the claimant's husband, thus, if we may reiterate, cannot but be regarded as the death caused by accident arising out of use of the said vehicle.

22. What logically follows from the above discussion is that the claimant's husband's death was caused by accident arising out of rash and negligent use of the said vehicle by its driver. Both these elements having been satisfied on the basis of the pleadings alone, no further evidence was required to be adduced and the Tribunal, instead of dismissing the claim application as not maintainable ought to have determined as to what shall be the amount of compensation payable to the claimant for the death of her husband.

23. Though it has been agitated, on behalf of the respondent No. 2, that u/s 166 of the M.V. Act, no liability for payment of compensation can be imposed until the accident arises out of use of the motor vehicle and that in the case at hand, the death was not caused because of use of the vehicle and no claim for compensation could have been entertained, what needs to be pointed out is that u/s 166 of the M.V. Act, the question of compensation would, undoubtedly, arise only when the death or injury is caused as a result of an accident arising out of rash and negligent use of the vehicle but, at the same time, it also needs to be borne in mind that the use of the vehicle does not necessarily mean that the vehicle has to be in motion. Far from this, the use of the vehicle may be inferred even when it is stationary. Similarly, when care, on account of a given situation,

is required to be taken in driving a vehicle in a particular area and such a care is not taken, such a driving will amount to rash and negligent driving of the vehicle. The answer, therefore, to the question whether the death or injury, in a given case, has been caused as a result of the use of a vehicle or not will really depend on the facts of the given case. In the case at hand, in the face of the pleadings on record, there can be no escape from the conclusion that the claimant's husband's death was accidental arising out of rash and negligent driving of the said vehicle by its driver at a public place.

24. Considering, therefore, the matter in its entirety, we are firmly of the view that the impugned order, award is not sustainable in fact and in law and the proceeding need be remanded to the learned Tribunal for determining the quantum of compensation and for passing of appropriate directions, in this regard, for payment of compensation.

25. For the reasons pointed out hereinabove, this appeal succeeds. The impugned award/order, dated 12.7.1996, is hereby set aside and the proceeding is remanded to the learned Tribunal with a direction to obtain evidence, which may be adduced by the parties concerned, on the question of amount of compensation payable to the claimant and, then, to pass appropriate order(s) so as to enable the claimant to receive the compensation.

26. With the above observations and directions, this appeal shall stand disposed of. No order as to costs.

27. Send down the case record to the learned Tribunal.