

(2023) 02 GAU CK 0057
In the Gauhati High Court
Case No : MAC App. No. 294 Of 2016

Chandrakala Yadav And 4 Ors

APPELLANT

Vs

Dipak Das And Anr

RESPONDENT

Date of Decision : 23-02-2023

Acts Referred:

Motor Vehicles Act, 1988 — Section 163, 163A, 173

Citation : (2023) 02 GAU CK 0057

Hon'ble Judges : Marli Vankung, J

Bench : Single Bench

Advocate : S K Jain, R Goswami

Final Decision : Allowed

Judgement

1] Heard Mr. B.K. Jain, learned counsel for the appellant and Mr. R. Goswami, learned counsel for respondent No.3.

2] This appeal filed under Section 173(1) of the Motor Vehicles Act, 1988 is against the impugned Judgment dated 26-06-2013 passed in M.A.C. Case No. 180 of 2009 by the learned Member, Motor Accident Claims Tribunal No.2, Kamrup, Guwahati.

3] Facts of the case in a nutshell is that the late Rajaram Yadav aged about 40 years, on 10.01.2009 at about 10:30 A.m, was engaged in loading goods (fertilizer) contained in the bags, in his capacity of a collie, on the Truck No. AS-01-AC/3290 at Noonmati, B.G. Yard, Guwahati. The said Rajaram Yadav (deceased) fell down from the Truck while loading the goods/ fertilizer bags and on the forced impact by press of some goods, sustained grievous bodily injured and thereby succumbed to the injuries. The incident was registered at Noonmati Police Station U/D Case No.03/2009, dated 10.01.2009 and on completion of the investigation, the final report was submitted under 174 Cr.P.C. before the learned CJM, Kamrup, Guwahati. The appellants/claimants who is the wife and children of the deceased Rajaram Yadav, the sole bread winner of his family, claimed for

compensation under 163-A of the Motor Vehicle Act, 1988 before the learned MAC Tribunal, Kamrup, Guwahati.

4] The respondent No.3 denied the allegation of the appellant claiming that there was no cause of action and that claim petition was not maintainable. The following issues were framed by the learned MAC Tribunal Kamrup, Guwahati ;

1. Whether the victim Rajaram Yadav died on account of bodily injuries sustained in the motor vehicle accident dtd.10.01.2009, involving offending Truck bearing No.AS/01-SC3290 arising out of the use of the motor vehicle?

2. Whether the claimants are entitled to receive any compensation and if so, to what extent and by whom payable?

3. What other relief(s), if any the claimants are entitled to?

5] The learned Tribunal vide its Order dated 04.02.2010 awarded a sum of Rs.50,000/- (Rupees fifty thousand)only to the claimants on the principle of no fault liability considering the materials on record.

6] Thereafter, on taking evidence on hearing both the parties, the learned MAC Tribunal passed the impugned Judgment & Order dated 26.06.2013 holding that the deceased did not die from the use of the vehicle bearing Registration No. AS-01-AC/3290 but died due to the force impact by press of some goods. And thus held that the claimants are not entitled to get compensation. Aggrieved by the impugned Judgment & Order dated 26.06.2013, this appeal has been preferred.

7] The learned counsel for the appellant submits that from the facts of the case, it is not disputed that the incident occurred due to fall of the deceased Rajaram Yadav, while he was loading the fertilizer bags on the said vehicle and that he sustained serious injurious on the impact of press of some of the goods.

8] The learned counsel for the appellant submits that the compensation was claimed under 163-A of the Motor Vehicles Act, 1988 which clearly provides that compensation can be granted in respect of accident involving the death of, or bodily injury, persons arising out of the use of the motor vehicle. He submits that in the instant case since it is an undisputed fact that the deceased had suddenly falling down from the truck thus sustaining serious injurious on the impact of press of some of the goods which caused this death, therefore the vehicle was duly involved in the accident and the claimants are entitled to compensation u/s 163-A of the Motor Vehicles Act, 1988.

9] In support of his submission, the learned counsel for the appellant has cited the Judgment of the Apex Court in Rita Devi & Ors. -Vs- New India Assurance Co. Ltd. reported in (2000) 5 SCC 113, National Insurance Company Ltd. -Vs- Pranay Sethi & Ors. reported in (2017) 16 SCC 680, Mafisuddin Khadim vs. National Insurance Co. Ltd. reported in 2011(1) GLT 309 & CRP/172/2019 dated 03.03.2021 in Ranju Begum & Ors. -Vs- Shahjahan Ali & Anr.

10] Mr. R. Goswami, learned counsel for the opposite party in all fairness has not raised any serious objection, submitting that since the application for compensation is made under Section 163 of the Motor Vehicles Act, 1988, and the Apex Court and this Court has rendered judgments in this regards. He also submits that the compensation may be granted as per the 2019 amendment of section 163-A of the Motor Vehicles Act which can be applied retrospectively since the amendment was made during the pendency of the appeal.

11] The learned counsel for the opposite party in support of his submission has cited the Judgment in Zile Singh -Vs- State of Haryana and Others. reported in 2004 STPL 15564 SC, National Insurance Co. Ltd. Bhangagarh, Guwahati -Vs- Suren CH.Ray & 2 Ors. in MAC.App/140/2018 and National Insurance Company Ltd. Vs. Bijaya Bhuyan & Ors. reported in 2019 STPL 11334 Gauhati.

12] Having heard the submissions made by both the parties, the court finds that it is not disputed that the accident which occurred on 10.01.2009, was due to the fall of the deceased Rajaram Yadav who worked as a collie, from the vehicle No. AS-01-AC/3290 while he was unloading the bags of fertilizer, on his fall the impact pressed on him by some goods caused him serious injuries and he succumbed to the injuries.

13] The Apex Court in Rita Devi Vs. New India Assurance Co.Ltd. (Supra) wherein the facts of the case was 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, 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. The Apex court took the view that

“under 163-A(2), in any claim for compensation under that sub-section, the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person. That a conjoint reading of the sub-clauses of Section 163A shows that a victim or his heirs are entitled to claim from the owner/Insurance Company a compensation for death or permanent disablement suffered due to accident arising out of the use of the motor vehicle, without having to prove wrongful act or neglect or default of any one. That, if it is established by the claimants that the death or disablement was caused due to an accident arising out of the use of motor vehicle then they will be entitled for payment of compensation.”

14] The Apex court held in the instant case that, 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 was 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, the Apex Court held that on the facts and circumstances of the case the death of the deceased (Dasarath Singh) was caused was due to an accident arising out of the use of the motor vehicle . The Apex Court then came to the conclusion that the claimants were entitled for compensation of committing the theft of the auto rickshaw.

15] In Mafisuddin Khadim (Supra), this court referred to the decision of a bench of this court in Oriental Insurance Company Vs. Arun Datta & others. reported in (2001) 3 GLT 250, wherein the learned Single Judge referring to the decision held in the case of Smt. Rita Vs. New India Assurance Company Ltd., (Supra) held that, the injury sustained by the passenger due to fall of the suit case was an accident, where a passenger of a Bus sustained injury due to fall of a suit case upon him due to sudden application of brake of the Bus, held that the Insurance Company was liable to pay the awarded amount.

16] In the case of Mafisuddin Khadim (Supra), the tree had suddenly fallen on the top of the vehicle and due to falling of the tree on the said vehicle, which was used by the appellant, the appellant sustained the injuries. The learned court held that:

" 22. As revealed from the record, there is nothing on record to find that the injured, who was driving the vehicle had any negligence or lapse on his part. Admittedly, Had he not used the vehicle at the relevant time, he would not have sustained the injuries. So, it can be held that he sustained the injuries only because, unfortunately, he had used the said vehicle. Therefore, he sustained the injuries during the course of the use of the vehicle aforesaid. In view of the above, considering the entire aspect of the matter and in the light of the principles laid down in the above cited decisions and the statutory provisions prescribed by the Motor Vehicles Act, I have no hesitation in holding that the claimant sustained the injuries while using the vehicle and as such the injuries sustained by him was caused due to accident arising out of the use of the said vehicle. Therefore, the only conclusion would be that the claimant sustained the injuries in a vehicular accident.

23. In view of the above discussion, I am of the considered opinion that the learned trial Judge committed error by holding that the injuries sustained by the claimant, due to fall of a tree on the vehicle, did not amount to a vehicular accident. Accordingly, it is held that the vehicle used by the claimant met with an accident on the relevant date and as such the claimant sustained the injuries in a vehicular accident involving the said vehicle."

17] Thus, in view of the above decisions, in this instant case, where the accident was caused due to the fall of the deceased from the vehicle registered as Registration No. AS-01-AC/3290 and died due to the impact pressed on him by some goods, I am of the considered view that the incident occurred due to the involvement of the vehicle and covered under Section 163-A MV Act, it is not required for the claim and to prove that the accident occurred due to the

movement of the said vehicle or prove any negligent.

18] For the above reasons , I am of the considered opinion that the learned MAC Tribunal erred in finding that the injuries sustained by the deceased Rajaram Yadav and his death occurred due to force impact by press of some goods which is not arising out of the use of the motor vehicle as per the M.V. Act. The Judgment & Order dated 26-06-2013 passed by the learned Member, Motor Accident Claims Tribunal No.2, Kamrup, Guwahati is thus set aside.

19] On the submissions of the counsels of both the parties, this court also finds it fit that the compensation amount to be awarded to the claimant may be calculated in terms of the amendment of Section 163-A of the Motor Vehicles Act. The Apex Court in National Insurance Company Ltd. (Supra) has held that :

“Since the provision of section 163A of the Act was introduced as a social security scheme to give relief to the victim of vehicular accident belonging to certain class and the Second Schedule is only a procedural tool to determine compensation in a claim under section 163A, amendment of such procedural provision can by no stretch of imagination be held to affect any vested right. The context, as indicated in the notification amending the Second Schedule as well as the judicial pronouncement, in which, the amendment has been made also give indication wherefrom it can be inferred that the amended provision of the Second Schedule shall be applicable in pending proceeding. Thus, keeping in view the basic object of introducing section 163A and also amendment of Second Schedule which merely relates to procedural matter and the social welfare object of the legislation itself, as well as, the context, in which the amendment occurred, this court is of the considered opinion that the amended Second Schedule has to be taken into account in the pending proceeding under section 163A for deciding the quantum of compensation.”

20] In view of the above, this court finds it fit that instead of referring the matter back to the learned MAC Tribunal, to direct the Respondent No.3/United Insurance Company Ltd. to satisfy the above award of Rs. 5,00,000 as per the amendment of section 163 A of the Motor Vehicle Act,1988 with interest @ 6% per annum from the date of filing of the claim petition, by depositing the same with the learned MAC Tribunal (2) Kamrup, Guwahati within 6 weeks. Any payment made in the meantime towards satisfaction of the award shall stand adjusted.

21] MACT Appl.No.294 of 2016 accordingly stands allowed and disposed.

22] LCR is to be sent back forthwith.