

(2008) 01 GAU CK 0058
In the Gauhati High Court

Dibyalata Konwar

APPELLANT

Vs

New India Assurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 22-01-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2009) ACJ 2371 : (2008) 1 GLT 671

Hon'ble Judges : B.P. Katakey, J

Bench : Single Bench

Final Decision : Allowed

Judgement

B.P. Katakey, J.—This appeal, by the claimant is directed against the judgment dated 13.10.2004 passed by the learned Member, Motor Accident Claims Tribunal, Sibsagar in MAC Case No. 80/2001 rejecting the claim of the claimant u/s 166 of the Motor Vehicle Act, 1988 (in short, "the Act") by holding that the involvement of the motor vehicle bearing Registration No. AS-25 B-5958 (Bus) could not be proved. The claimant/appellant filed an application u/s 166 of the Act before the learned Tribunal, which has been registered as MAC Case No. 80/2001 claiming compensation of Rs. 36,58,700/- for the death of her husband, Puneswar Konwar, aged about 55 years and an employee under Oil and Natural Gas Corporation (in short, "ONGC"), contending that while her husband was returning home on a bicycle from the house of a relative, after attending some social function and reached near Darika Bridge, Sibsagar, the offending vehicle bearing Registration No. AS-25 B-5958 dashed him from behind causing severe injuries and a result of which her husband died, it has further been contended in the said application seeking compensation that her husband was drawing gross salary of Rs. 49,206.03 per month and left behind apart from the claimant three sons and one daughter, who at that relevant point of time, were aged about 23, 20, 17 and 14 years, respectively. The claimant alongwith the claim petition has also filed an accident report submitted by the Traffic Branch of Sibsagar Police Station. The notices being issued by the learned Tribunal on the owner, driver and well as the Insurance Company, the owner and the driver choose not to

contest the proceeding and did not appear, for which an order dated 30.01.2002 was passed to proceed ex-parte against them. The Insurance Company, however, on receipt of the notice, entered appearance and filed the written statement denying each and every averments made in the claim petition, such denial, however, was not specific. The claimant, in support of his claim, examined five witnesses, namely (1) Dr. Robindra Nath Bordoloi (CW-1), who held the autopsy on the dead body of Puneswar Konwar, the husband of the claimant; (2) the claimant herself (CW-2); (3) Sri Sanjib Mech (CW-3), who is a witness to the occurrence; (4) Sri Bonamali Handique (CW-4); (5) the Investigating Officer, who investigated the incident on the basis of the first information report submitted by the claimant's son and filed the charge sheet as (CW-5) and (6) Shri Prabhat Dihingia (CW-6), who travelled in the Bus as a passenger. The Insurance Company though contested the proceeding by filing written statement did not, adduce any evidence. The owner and the driver also did not participate in the proceeding and did not cross-examine the claimant's witness though they were cross-examined by the Insurance Company. The learned Tribunal upon appreciation of the evidences on record, passed the impugned judgment and order, as aforesaid.

2. I have heard Mr. T.J. Mahanta, learned Counsel for the appellant. None appears on behalf of the respondent No. 1 /Insurance Company today though the power has been filed on behalf of the Insurance Company/respondent No. 1 by the learned Counsel. The owner of the vehicle in spite of the service of notice of the appeal did not contest the appeal.

3. Mr. Mahanta, the learned Counsel for the appellant prays for striking out the name of the respondent No. 3, the driver of the vehicle. The name of the driver of the vehicle is struck off from the list of respondents, which shall, however, not make the present appeal non maintainable, on two grounds, firstly he did not contest the proceeding before the learned Tribunal and secondly, a claim petition is maintainable even in the absence of the driver as party.

4. Mr. Mahanta, referring to the averments made in the claim petition as well as the deposition of CW-2, the claimant, CW-3, a witness to the occurrence as well as CW-5, a passenger travelling in the vehicle has contended that the owner of the vehicle having not controverted the statements made in the claim petition relating to the involvement of vehicle No. AS-25 B-5958 in the accident and there being positive evidence of CW-3 and CW-5, who are the witnesses to the occurrence, the learned Tribunal is wrong in holding that the claimant failed to prove that the vehicle No. AS-25 B-5958 was involved in the accident. According to Mr. Mahanta, the Insurance Company even while cross-examining the claimant, who examined herself as CW-2 did not suggest that the vehicle No. AS-25 B-5958 was not involved in the accident. That apart, according to Mr. Mahanta, it is evident from the deposition of the Investigating Officer, who investigated the occurrence on the basis of the first information report filed by the claimant's son after registering a police station case that it is the vehicle No.

AS-25 B-5958 which was involved in the accident and after investigation the charge sheet against the driver, has been filed. Mr. Mahanta, therefore, submits that the grounds on which the evidence of these witnesses were disbelieved by the learned Tribunal are not tenable in law, more so, when in a proceeding for compensation under the Act, the provisions of the Indian Evidence Act are not to be strictly followed. Relating to the quantum of compensation to which the claimant is entitled to for the death of her husband in a motor accident occurred on 08.08.2001 arising out of the use of the aforesaid motor vehicle, it has been submitted by Mr. Mahanta that it is evident from the pay slip, which has been exhibited as Exhibit-4 issued by the authority of ONGC for the month of July, 2001 that the gross salary of the claimant's husband was Rs. 49,206.03 and the deceased having three years more service and left behind the claimant and four children who were dependent on his income, the claimant is entitled to the amount of compensation as claimed in the application filed u/s 166 of the Act.

5. It is apparent from the impugned judgment passed by the learned Tribunal dated 13.10.2004 that the learned Tribunal has disbelieved CW-3, Sanjib Mech, relating to his statement that he saw the occurrence and noted the registration number as well as the name of the vehicle, on the ground that night was dark and as the vehicle moved hurriedly from the spot where it stopped, it can not be accepted that he could not the name and number of the Bus. The evidence of CW-4, the Traffic Sub Inspector of Police, who filed the accident report in Sibsagar Police Station Case No. 223/2001 relating to the involvement of the Bus in the accident has also been disbelieved on the ground that the name of the Bus has not been mentioned in the charge sheet or in the accident report and the witness has not stated about the source or manner in which he could collect the number of the Bus. The learned Tribunal found the evidence of CW-5, not reliable on the ground that though he stated to have travelled in the Bus and saw the occurrence he did not report the matter either to the Bus counter or to the police and he is also not witness to the connected GR case. The learned Tribunal while holding that the claimant could not prove the involvement of the vehicle bearing Registration No. AS-25 B-5958 in the accident, however, has not taken into consideration of the fact that the owner of the vehicle did not contest the proceeding and has chosen not to file the written statement countering the claim of the claimant and the statements made in the claim petition.

6. The claimant, in the claim petition, has made a categorical statement relating to the involvement of the vehicle bearing Registration No. AS-25 B-5958 in the accident occurred on 08.08.2001 at 8-30 P.M. near Darika Bridge on national highway under Sibsagar Police Station and giving details about how the accident occurred and also the name and address of the owner and the driver of the vehicle. As noticed above, no written statement has been filed by the owner or the driver of the vehicle contesting such claim/ averments of the claimant in the claim petition. The Insurance Company in the written statement has denied all the averments made in the claim petition contending that without the documentary proof regarding the age, service, copy of the FIR, police report,

medical report as well as the post mortem report, it is in dark and, therefore, denied by the statements made in the claim petition, though the claimant in the claim petition annexed the accident report submitted by the Traffic Sub Inspector of Police.

7. The learned Tribunal in the judgment passed has not doubted the death of the claimant's husband in a motor accident occurred on 08.08.2001 at about 8.30 P.M. near Darika Bridge but has held that the claimant has failed to prove the involvement of vehicle No. AS-25 B-5958 in the accident. Therefore, this Court is required to scrutinize as to whether the learned Tribunal is right to holding so on the basis of the evidences on record. As noticed above, the owner or the driver of the vehicle did not controvert the positive statement of the claimant about the involvement of the vehicle in the accident as narrated in the application u/s 166 of the Act. The Insurance Company has in the written statement though denied all the statements made in the claim petition, such denial is evasive and not specific.

8. The claimant, who examined herself as CW-2, in clear terms has stated about the involvement of the vehicle and also the submission of the accident report by the Traffic Sub Inspector relating to the involvement of the vehicle. The said accident report, copy of which was annexed to the claim petition, was admitted into evidence in original and marked as Exhibit-3 as proved by the claimant herself, i.e. CW-2, without any objection from the Insurance Company, who cross-examined this witness. The Insurance Company, during cross-examination of this witness has also not challenged the involvement of the said vehicle in the accident and also the contents of Exhibit-3. CW 5 Sanjib Mech, in his examination-in-chief has stated that while he was returning home from the market, after purchasing house hold articles, he saw a passenger Bus near Darika Bridge and he also heard a sound at a distance of about 20 Mtrs. away from him and saw the driver of the Bus coming out and, thereafter, immediately came back to the bus and hurriedly went off with the Bus. This witness has further stated that he immediately went to the place and saw a person lying dead on the road with bleeding injuries. This witness further stated that he noted down the registration number of the vehicle as well as the name of the Bus. During cross-examination by the Insurance Company, this witness has, however, stated that he did not disclose the name of the Bus as well as the number to other persons, but told the members of the deceased family that he noted the registration number and if necessary, he will supply the same. The Insurance Company not even suggested to this witness that the said vehicle was not involved in the accident or he was not present when the accident occurred.

9. CW-4 was a Traffic Sub Inspector attached to Sibsagar Police Station, who filed the accident report and also deposed relating to the filing of charge sheet on 08.06.2002 against the driver of the vehicle bearing Registration No. AS-25 B-5958 in connection with Sibsagar Police Station case registered on the basis of the first information report lodged by the son of the claimant. This witness has

also categorically stated that during the course of investigation it could be ascertained about the involvement of the said vehicle in the accident. The Insurance Company though extensively cross-examined the witness could not bring out any major contradiction. However, he has stated during cross-examination that he did not mention about the source of information received relating to the Bus number and also that he has not mentioned the name of the Bus. The learned Tribunal, as discussed above, has disbelieved this witness solely on the ground that the source of information relating to the Bus number involved in the accident has not been disclosed, which in my considered view is not required to be disclosed in the charge sheet and maybe required at the time of trial of the criminal case. There is no reason as to why the Traffic Sub Inspector of police should be disbelieved as there is nothing on record to show that the said witness was biased in conducting the investigation.

10. Shri Prabhat Dihingia (CW-5) has also deposed before the Court that he was a passenger in respect of the Bus bearing registration No. AS-25 B-5958 and was travelling in the cabin alongwith other staff in the Bus as there was no seat available for him in the Bus. This witness has stated that at the time of approaching the Darika Bridge the said vehicle dashed a bicycle for which they asked the driver to stop the vehicle and accordingly after crossing the bridge the driver stopped the vehicle and went down to see what has happened requesting other passengers not to come down from the Bus. He has further deposed that the Bus driver, after inspecting the incident started the Bus and went off by driving the Bus. During cross-examination by the Insurance Company this witness, however, has stated that he did not inform either the police or Bus counter at Sibsagar and he is not a witness to the GR case. The learned Tribunal as noticed above, has disbelieved the witness on the ground that he did not report to the police or Bus-counter about the accident and is not a witness in the police case, which in my considered opinion, cannot be the ground to disbelieve the positive statement of this witness, more so, when such evidence is corroborated by the evidences of CWs-2, 3 and 4. The Court cannot ignore the fact that most of the persons are reluctant to report to the police about any such happening because of the apprehension that they would be harassed, more so when they were travelling in a night Bus and eager to reach their destination. Therefore, mere non disclosure of such accident to police, would not make his statement unreliable.

11. From the aforesaid discussion, I am of the view that the grounds on which the evidences of CWs-2, 3 4 and 5 were disbelieved by the learned Tribunal cannot be sustained in law. The claimant could prove by adducing cogent and reliable evidence that vehicle No. AS-25 B-5958 was involved in the accident on 08.08.2001 and the said vehicle dashed against the bicycle and as a result of which the claimant's husband sustained injury and ultimately died. The finding of the learned Tribunal in that respect is, therefore, set aside.

12. The next question, which requires consideration is relating to the quantum of

compensation to which the claimant is entitled to. It is evident from Exhibit-4, i.e. pay slip, issued by the authority of ONGC, which is admitted into evidence without there being any objection from the Insurance Company, that the gross salary of the deceased for the month of July, 2001, i.e. the month preceding the month of accident was Rs. 49,206.03 and the net salary which he received for the said month was Rs. 31,885/-, after deducting the amount contributed towards the provident fund, LIC premium, professional tax, income tax etc. It is also in evidence of the claimant herself, who has been examined as CW-2 that the deceased had three years more service left, his age at the time of the accident being little over 55 years. The claimant in the deposition has also stated that she got all the retiral benefits payable to the husband though he died in harness, due to the accident occurred. There is also a positive statement made by the claimant in her deposition that the ONGC has paid a sum of Rs. 5,00,000/- due to the death of her husband in the accident. From the evidences on record as well as the statements made in the claim petition, it is apparent that the claimant left behind apart from the claimant, three sons and one daughter, who by the time have attained the age of majority and who were dependent on the income of the deceased.

13. By applying the unitary method of calculating the just amount of compensation payable to the claimant for the death occurred to her husband as observed by the Apex Court in U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, , while ascertaining the annual dependency, it is required to break up the family into units taking two units for each adult. Admittedly, there were six adult members including the deceased, and as such, the total unit would be $6 \times 2 = 12$. The net income of the deceased being Rs. 31,885/-, which is rounded to Rs. 32,000/-, the share per unit would be Rs. $32,000/-12=2,666/-$ (rounded to Rs. 2,700). It can thus be assumed that Rs. $2,700/- \times 2=5,400/-$ was spent on the deceased, the said amount being his share. Since the deceased was a working member there must be some provision for transport and out of pocket expense, which in the present case can safely be taken as Rs. 3,600/-. Therefore, the total amount spent on the deceased would be Rs. $5400+Rs. 3600= Rs. 9,000$. The monthly loss to the dependants of the deceased would therefore, be Rs. $32,000/- -Rs. 9,000 = Rs. 23,000$ and the annual loss of dependency would be Rs. $23,000 \times 12 = 2,76,000/-$, which is to be multiplied by the use of an appropriate multiplier to assess the compensation under the head of loss to dependants.

14. As noticed above, the age of the deceased was little over 55 years and he had almost three years of service. There is no evidence on record to show the longevity of the parents of the deceased and also about his health condition. But at the same time, while ascertaining the appropriate multiplier the increments, which the deceased would have got had he not been killed in the accident as well as the future promotion have to be taken into consideration. Keeping in mind all these factors, in my view 6 (six) would be the appropriate multiplier. In view of the above, the loss of dependency comes to Rs. $2,76,000/- \times 6 = 19,56,000/-$,

which amount the claimant is entitled to as compensation. There being in evidence of the claimant during cross-examination that the claimant received a sum of Rs. 5,00,000/- as compensation for the death of the husband in the accident from the employer, the said amount is to be deducted from the amount of Rs. 19,56,000/-. The claimant is, therefore, entitled to the sum of Rs. 14,56,000/-. The claimant is also entitled to interest @9% from the date of accident till the date of realization. There being no dispute relating to the contract of insurance between the respondent/Insurance Company and owner of the vehicle, the Insurance Company is directed to satisfy the award with interest within a period of four months from today.

The impugned judgment and award is set aside. The appeal is accordingly allowed.