
(2022) 01 GAU CK 0017
In the Gauhati High Court
Case No : MAC Appeal No. 31 Of 2015

Hafija Begum

APPELLANT

Vs

National Insurance Co. Ltd

RESPONDENT

Date of Decision : 05-01-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 174
Motor Vehicles Act, 1988 — Section 140, 166, 168

Citation : (2022) 01 GAU CK 0017

Hon'ble Judges : Malasri Nandi, J

Bench : Single Bench

Advocate : A.I. Uddin, A. Dutta

Final Decision : Disposed Of

Judgement

1. The instant appeal has been preferred by the present appellant Hafija Begum challenging the sustainability of the judgment and order dated

14.11.2014 passed by the learned Member, MACT, Sankardev Nagar, Hojai in MAC Case No. 344/12, whereby the claim petition filed by the present appellant was dismissed.

2. The brief facts giving rise to the present case is that on 13.03.2012 at about 4:30 A.M., while the husband of the appellant Abdul Wahab Barbhuyan was driving a vehicle bearing No. AS-25C-3207 (Truck) and when the vehicle reached at eighth mile the break of the vehicle did not work. So, the deceased jumped out from the vehicle and sustained grievous injuries on his person. Though he was taken to Jowai Civil Hospital but ultimately succumbed to his injuries.

3. The present appellant being claimant in MAC Case No. 344/12 filed a petition under Section 166/140 of M.V. Act, 1988 against the owner of the

vehicle and insurer of the vehicle National Insurance Co. Ltd, claimed a compensation of Rs. 25,43,190/- for the death of her husband Abdul Wahab

Barbhuyan. After completion of trial the learned Tribunal has dismissed the case on the ground that the accident was not occurred due to mechanical

defect of the vehicle. As the vehicle was not examined by the Motor Vehicle Inspector showing the damage to the vehicle which was driving by the

deceased at the relevant time of accident, under such circumstances, the driver is to prove the fact that he was not driving the vehicle in a rash and

negligent manner for which the accident took place. Therefore, in such situation the driver cannot claim any compensation from the owner of the

vehicle.

4. The Tribunal also referred the judgment of Ningamma and Another Vs. United India Insurance Co. Ltd reported in AIR 2009 SC 3056 which is

reproduced as follows-

â??In the case of Ningamma (supra) Honâ??ble Supreme Court held that when an application of the aforesaid nature claiming compensation under

the provision of 166 of M.V. Act is received, the Tribunal is required to hold the enquiry into the claim and then proceed to make an award which,

however, would be subject to be provisions of Section 162, by determining the amount of compensation, which is found to be just. Person or persons

who made claim for compensation would therefore be paid such amount. When such a claim is made by the legal representatives of the deceased, it

has to be proved that the deceased was not himself responsible for the accident by rash and negligent driving.â??

5. As per the case of the appellant/claimant, her husband Abdul Wahab Barbhuyan, being driver of the vehicle bearing No. AS-25C-3207 (Truck) met

with an accident and succumbed to his injuries as the vehicle being driven by him lost control due to sudden break failure. As such the accident

occurred due to mechanical defect of the vehicle and not because of rash and negligent driving by the driver of the vehicle.

6. In support of such contentions, the claimant herself stepped into the witness box and examined as P.W. 1 who deposed in her evidence that on

13.03.2012 at about 4:30 A.M. the vehicle bearing No. AS-25C-3207 (Truck) which was driving by her husband met with an accident at Lalip under

Jowai P.S. and her husband died during treatment in the hospital. It is further

stated that the accident occurred due to failure of the break and the vehicle dashed against the side of nearby hillock. As a result, the door of the vehicle was opened and her husband fell from the vehicle and sustained grievous injuries on his person. Admittedly, P.W.1 was not present when the accident took place. In his cross examination P.W. 1 also stated that she did not witness the accident. Her husband was the driver of the Truck. He did not know the name of the owner of the vehicle.

7. P.W. 2 Rahimuddin Laskar, claimed that he accompanied the deceased at the relevant time of accident. He was in the vehicle. From his deposition it reveals that just before the accident when the vehicle reached near Lalip, the vehicle dashed against nearby hillock. As a result, the door of the vehicle was opened and the husband of the claimant fell down from the vehicle and sustained grievous injuries on his person. At that time he was sitting beside the driver.

8. In his cross examination, P.W. 2 replied that he was the passenger of the truck. The vehicle was a goods carriage vehicle. The accident might be occurred due to mechanical defect of the vehicle. P.W. 2 nowhere stated that the accident occurred due to failure of the break of the vehicle. Apart from that the claimant has not produced any motor vehicle inspection report of the vehicle to prove the fact that accident occurred due to mechanical defect of the vehicle. There was no material produced by the appellant/claimant to show that the deceased was not at fault in causing the accident.

9. In the case at hand, the claimant has claimed compensation under Section 166/140 of the M.V. Act.

10. To claim compensation under Section 166 of the M.V. Act the claimant is required to prove rash and negligent driving by the driver of the offending vehicle. Legal proposition regarding the aspect of discharging the onus to prove this fact is well established. The law to this effect is relevant to be considered. It is held in *Oriental Insurance Co. Ltd. Vs. Premlata Shukla & Ors.* III (2007) ACC 54 (SC) that the insurer, however, would be liable to reimburse the insured to the extent of the damages payable by the owner to the claimants subject of course to the limit of its liability as laid down in the Act or the contract of insurance. Proof of rashness and negligence on the part of the driver of the vehicle, is therefore, sine qua non for maintaining an application under Section 166 of the Act.

11. Even the similar proposition has been repeated in Oriental Insurance Company Limited Vs. Meena Variyal and Ors., reported in (2007) Vol 5

SCC 428, Minu B. Mehta and Anr. v. Balkrishna Ramchandra Nayan and Anr., reported in 1977 (2) SCC 441 and Surender Kumar Arora and Anr v.

Manoj Bisla and Ors., reported in (2012) Vol 4 SCC 552.

12. The mode and manner of proving the rash and negligent driving of the offending vehicle has also been considered in various other judgments and

has held that this onus to prove the rash and negligent driving is not to be discharged beyond doubt or in similar manner as a fact is to be proved in a

civil case. Rather it has to be proved on the touchstone of preponderance of probability and holistic view is to be taken while dealing with the Claim

Petition based upon negligence.

13. It has to be borne in mind that the Motor Vehicles Act does not envisage holding a trial for a petition preferred under Section 166 of the Act.

Under Section 168 of the Act, a Claims Tribunal is enjoined to hold an enquiry to determine compensation which must appear to it to be just. Strict

rules of evidence are not applicable in an inquiry conducted by the Claims Tribunal. Further in State of Mysore Vs. S.S. Makapur, 1993 (2) SCR 943,

the Honâ??ble Supreme Court has held that the Tribunals exercising quasi-judicial functions are not courts and are not bound by strict rules of

evidence.

14. Further, the approach of the Tribunal has also been defined by the Honâ??ble Supreme Court of India in N.K.V. Bros.(P) Ltd. v. M. Marumai

Ammal, 1980 ACJ 435 (SC) that the Accident Claims Tribunal must take special care to see that innocent victims do not suffer and persons liable do

not escape liability merely because of some doubt here and some obscurity there. The court should not succumb to niceties, technicalities and mystic

maybes. The court is bound to take broad view of the whole matter. As such, the case of the appellant/claimant has to be decided in view of the

above said legal proposition of law.

15. In the case at hand, as I have already stated that the deceased was the driver of the vehicle bearing No. AS-25C-3207 (Truck) and while he was

driving the vehicle the accident occurred due to failure of break. Admittedly, the claimant was not present at the relevant time of accident. In the

claim petition the claimant stated that on the date of accident her husband Abdul

Wahab Barbhuyan was driving the truck bearing No. AS-25C-

3207(Truck) while proceeding from 8th Mile and on reaching at a place called Lalip, the break of the said truck suddenly failed so the driver to

prevent himself from danger jumped from the running truck and as a result of which he fell down and sustained grievous injuries on his person.

Immediately, he was shifted to the Jowai Civil Hospital. But ultimately, he succumbed to his injuries. While deposing before the court the claimant had

changed her vision. She nowhere stated that her husband has jumped from the Truck and sustained injuries, rather she stated that just before the

accident due to failure of break the vehicle dashed against a nearby hillock and the door of the vehicle was opened and her husband fell from the

vehicle and sustained injuries on his person. The projected eye witness i.e. P.W. 2 Rahimuddin Laskar did not support her claim that the accident

occurred due to failure of break.

In his cross examination, P.W.2 clearly stated that accident might be occurred due to break failure. The claimant has not produced any document like

M.V.I. Report of the vehicle to ascertain the fact that due to mechanical defect of the vehicle, the accident occurred.

16. Ext. 2 is the FIR lodged by one Abdul Khalek stating that on 13.03.2021 at around 4:30 A.M. bearing No. AS-25C-3207 (Truck) which was driven

by Abdul Wahab Barbhuyan while proceeding from 8th Mile and on reaching at Lalip, the break of the said truck failed and to avoid the danger the

driver jumped from the running truck as a result of which the driver sustained grievous injuries on his person and ultimately he succumbed to his

injuries on the way to hospital.

17. On receipt of the said ejahar one G.D. Entry was made vide No. 158 dated 13.03.2012 and forwarded to O.C. Jowai P.S. for registering an U.D.

Case. On the basis of the ejahar one UD Case was registered vide Jowai P.S. UD Case No. 10/12 under Section 174 Cr.P.C. It appears from the

record of M.A.C. Case No. 2054/12 that further investigation of the case was not done. The vehicle was not seized nor inspected by Motor Vehicle

Inspector. As such it cannot be said that the vehicle bearing No. AS-25C-3207 (Truck) had any mechanical defect for which the accident took place.

As it is not proved that the accident occurred due to rash and negligent driving by the driver of the vehicle, as such, the provision of Section 166 M.V.

Act is not attracted here in his case.

18. Though it is not necessary to decide the claim under motor vehicle Act that the driver should be prosecuted yet charge-sheet against him serves a

purpose to make extra prima-facie case of involvement of driver and to corroborate the mode and manner of the accident which resulted in the death

or the injury of the victim. However in the present case, the driver has been exonerated as FIR is silent in respect of the fact that the accident

occurred due to rash and negligent driving by the driver of the vehicle.

19. Under such facts and circumstances of the case the appellant is not entitled to get the benefit under Section 166 of the M.V. Act. But the

appellant is entitled to the amount on the head of no fault liability Rs. 50,000/- in case of death of her husband.

20. Hence, the appeal is allowed in the context of paying compensation on the head of no fault liability amounting to Rs. 50,000/-. National Insurance

Company is liable to pay compensation of Rs. 50,000/- to the claimant/appellant Hafiza Begum in her bank account through NEFT. The

claimant/appellant is directed to furnish her bank details of any nationalized bank to the Insurance Company for necessary payment.

21. The appeal is disposed of with aforesaid modification.

22. LCR be returned.