

(2019) 06 GAU CK 0004

In the Gauhati High Court

Case No : Motor Accident Appeal No. 308 Of 2014

Kamala Boruah

APPELLANT

Vs

Dhriti Ranjan Roy And 2 Ors

RESPONDENT

Date of Decision : 03-06-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173
Indian Penal Code, 1860 — Section 279, 304A

Citation : (2019) 06 GAU CK 0004

Hon'ble Judges : Ajit Borthakur, J

Bench : Single Bench

Advocate : D Das, P Hujurir

Final Decision : Allowed

Judgement

Ajit Borthakur, J

1. Heard Mr. K Sarmah, learned counsel for the claimant/ appellant and Mr. RK Bhatra, learned counsel appearing for the respondent No.3/ the New India Assurance Co.Ltd. None appeared for the respondent opposite party Nos. 1 and 2.

2. This appeal under Section 173 of the Motor Vehicles Act, 1988 (For short 'MV Act') is directed against the judgment and order, dated 19.06.2014, passed by the learned Member , Motor Accident Claims Tribunal (For short 'The Tribunal'), Sonitpur at Tezpur in MAC Case No. 28 of 2009 dismissing the claim of the claimant for compensation under Section 166 of the MV Act on account of death of her husband in a road traffic accident.

3. A claim for compensation under Section 166 of the MV Act was filed by the claimant/ appellant before the learned Tribunal, Sonitpur at Tezpur, on account of death of her husband in a road traffic accident, on 02.10.2008 at Lahowal on N.H. No.37. It was alleged that the said accident occurred due to rash and negligent driving of the vehicle bearing registration No.AS 12 C-3761 (TATA Indica) by the respondent / Opposite party No.2, the driver. The said offending

vehicle was insured with the New India Assurance Co. Ltd., the respondent/ opposite party No.3. The insurance was valid on the day of the accident and the driver had a valid driving license. The claim petition was contested by the respondent/ opposite parties except the driver/ respondent No.2 herein. The learned Tribunal after perusing the materials on record, evidence of the claimant and the written statements filed by the respondent/ opposite parties, passed the impugned judgment, dated 19.06.2014, dismissing the claim on the ground that the involvement of the aforementioned vehicle in the accident is doubtful.

4. Being aggrieved, the claimant/ appellant has preferred the instant appeal on the following grounds:-

(a) That the learned Tribunal failed to appreciate that in connection with the accident, Lahowal PS Case No. 167 of 2008 under Sections 279/304 A of the IPC was registered. Though the offending vehicle could not be traced out by the police initially, but, later on, the driver of the said vehicle surrendered before the Tezpur PS and reported involvement of the vehicle driven by him. The police seized the said vehicle along with the documents. Thereafter, the claimant filed the claim case against the owner, driver and the insurance company and as such, there cannot be any question to suspect the involvement of the said vehicle of the respondent No.1 in the accident;

(b) That neither the owner of the vehicle nor the insurance company has specifically denied involvement of the vehicle in the accident and existence of a valid insurance policy, on the date of the accident and as such, there is no reason for disbelieving the claim; and

(c) That the learned Tribunal has failed to appreciate the fact that the MV Act is a social legislation providing compensation to the victim and while deciding the claim, the strict principles of the Evidence Act to prove the claim beyond reasonable doubts like in the criminal cases is not applicable.

5. Mr. K Sarmah, learned counsel for the claimant/ appellant in his argument has emphasized the above grounds of appeal and contended that the claim case may be remanded back to the learned Tribunal for consideration afresh.

6. Per Contra, Mr. RK Bhatra, learned counsel for the respondent No.3/ the New India Assurance Co. Ltd. contended that a conjoint reading of the evidence, oral and documentary, on record, the involvement of the vehicle No. AS 12 C-3761 (TATA Indica) in the accident is highly doubtful inasmuch as Lahowal PS failed to identify the offending vehicle during investigation until Tezpur PS forwarded the documents of the alleged offending vehicle to it and the charge-sheet submitted by the said Lahowal PS was based on the documents supplied by the Tezpur PS. Therefore, Mr. Bhatra submitted that the claim of the claimant/ appellant is highly doubtful and further appears to be concocted and collusive in nature.

7. I have considered the above arguments advanced by the learned counsel of both the sides and perused records.

8. On scrutiny of the pleadings of the parties and the evidence led in the proceeding, it appears that there is no denial of the fact that the claimant/appellant's husband Nayak Bipul Boruah died on 02.10.2008, night, in a road traffic accident, on NH-37 at Lahowal, under Lahowal Police Station in Dibrugarh district, Assam. The post mortem report vide Ext. 3 shows that his death was due to haemorrhage and shock as a result of the injuries sustained, which were ante-mortem and caused by blunt impact. The accident information report of Lahowal PS, dated 25.11.2008, vide Ext. 1 shows that the offending vehicle was a TATA Indica vehicle bearing registration AS 12 C 3761, the registered owner of which was the respondent/ opposite party No.1 and it was driven at the relevant time by the respondent/ opposite party No.2.

9. The respondent/ opposite party No.1, who is a resident of Tezpur, as PW-1, deposed that his said vehicle was used for commercial purpose and during the relevant period, the respondent/ opposite party No.2 was his driver and he used to be on long trips. In his written statement, the respondent/ opposite party No.1 has not denied that his said vehicle was on trip to Dibrugarh on the relevant day of the accident and in cross-examination, he deposed that on enquiry, his driver admitted that he had taken the vehicle to Dibrugarh on that day. The respondent/ opposite party No.2 was, however, not examined in the claim proceeding. Although initially, the identity of the offending vehicle could not be known vide Ext. A, the certified copy of the FIR and Ext. B, the relevant GDE No.47, dated 01.10.2008 of Lahowal PS, it is noticed from Ext. 2 the certified copy of Lahowal PS, Charge Sheet No. 158/08, dated 30.11.2008, that after the accident, the driver of the offending vehicle surrendered at Tezpur PS and therefore, Lahowal PS on completion of investigation on its own, laid the charge-sheet under Sections 279/304 A of the IPC against the respondent/ opposite party No.2. The involvement of the said vehicle in the accident, thus, came to light only on surrender of its driver at Tezpur PS, when the information about the accident was circulated throughout all the police stations.

10. As stated in the grounds of appeal, the MV Act is a social legislation, where strict rules of the Evidence Act to prove the claim beyond reasonable doubt like in a criminal case are not applicable. Therefore, such a claim for compensation under the MV Act being of the nature of an enquiry, based on the aforesaid relevant exhibited documents and the oral testimony of the witnesses, this Court finds no reasonable ground to look with suspicion at the claim of the claimant/appellant as well as the statutory police investigation into the accident.

11. Accordingly, the appeal stands allowed and the impugned judgment, passed by the learned MACT, Tezpur is set aside and remanded back to the learned Tribunal with a direction for a fresh decision in the claim proceeding on its merits, preferably within a period of three months from the date of receipt of a certified copy of this order and accordingly, both parties are directed to appear before the learned Tribunal on 20.06.2019.

12. Send back the LCR along with a copy of this judgment and order.