

(2019) 02 GAU CK 0089
In the Gauhati High Court
Case No : MACApp. 90 Of 2014

Laba Kanta Mili And 3 Ors

APPELLANT

Vs

New India Assurance Co. Ltd. And 2 Ors

RESPONDENT

Date of Decision : 22-02-2019

Acts Referred:

Motor Vehicle Act, 1988 — Section 166, 173
Indian Penal Code, 1860 — Section 279, 304(A)

Citation : (2019) 02 GAU CK 0089

Hon'ble Judges : Manish Choudhury, J

Bench : Single Bench

Advocate : U Dutta, N Modi

Final Decision : Allowed

Judgement

1. This is an appeal under Section 173 of the Motor Vehicle Act, 1988, as amended (hereinafter referred to as the Act, in short), preferred against the judgment and award dated 13.12.2013 passed by the Motor Accidents Claims Tribunal, Lakhimpur in MACT Case No.11/2012. By the said judgment and award dated 13.12.2013, the learned Member, Motor Accident Claims Tribunal, Lakhimpur, North Lakhimpur had dismissed the claim application of the claimants, who are the appellants in the present appeal.

2. The facts leading to the institution of MACT Case No.11/2012 are recapitulated, in brief. On 02.11.2011 at about 9.30 am, the deceased, Bhadreswari Mili was proceeding to Pthalipahar as a pillion rider on a motorcycle bearing registration No. AS.07.TC-002, which belonged to her husband and was being driven by her son. At the relevant point of time, a vehicle bearing registration No.AS.07.C-2132 (709 truck) coming from the back side, dashed the motorcycle from behind. As a result, the deceased fell down from the motorcycle and sustained grievous injuries on her person. Due to the injuries sustained, the deceased died instantaneously on the spot. In respect of the said accident, a police case was also registered at Bihpuria Police Station being Bihpuria PS Case

No.313/2011 under Section 279/304(A), IPC against the driver of the vehicle bearing registration No.AS.07.C-2132 (709 truck). In connection with the said death of the deceased in the motor vehicular accident, the 4 (four) claimants instituted an application under Section 166 of the Act seeking compensation before the Motor Accidents Claims Tribunal, Lakhimpur for the death of the deceased. The claimant No.1 is the husband. While the claimant No.2 and claimant No.3 are the sons of the deceased, the claimant No.4 is the daughter of the deceased.

3. Pursuant to the institution of the claim application as MACT Case No.11/2012, notices were issued to the opposite parties for their appearances. The driver, owner and insurer of the vehicle bearing registration No. AS-07.C-2132 (709 truck) were arrayed as the opposite party No.1, 2 and 3 respectively. On receipt of notices, all the opposite parties had appeared and filed their written statements. The driver and the owner contended in their joint written statement that there was no rash and negligent driving on the part of the truck and it was the driver of the motorcycle i.e. the claimant No.2, who was solely responsible for and contributed to the accident. It was further contended that at the relevant point of time, the truck was having a valid policy of insurance duly insured with the opposite party No.3.

4. The opposite party No.3 as the insurer, had duly appeared in the proceeding of MACT Case No.11/2012 and contested the proceeding by filing the written statement. In the written statement, it was contended that the accident took place due to fault on the part of both the vehicles and therefore, the amount of compensation should be apportioned between the two vehicles. They denied rashness and negligence on the part of the truck.

5. On the basis of the pleadings of the parties, the tribunal below had framed three issues for adjudication of the claim application as under:-

1. Whether the accident took place on 02.11.2011 at about 9.30 am on PWD road near Sonari Gaon LP School under Bihpuria PS due to rash and negligent driving of the vehicle bearing registration No. AS.07/C-2132 (709 truck) causing death of Bhadreswari Mili, the wife and mother of the claimants?

2. Whether the claimants are entitled to get any compensation as prayed for?

3. What other relief/reliefs the parties are entitled to?"

6. In support of the claim application, the claimants' side examined three witnesses and exhibited a number of documents. The claimant No.2, Sri Jaganath Mili examined himself as CW-1. One Sri Amar Biswas was examined as CW-2 and CW-3 was one Moneswari Pegu, who was the President/Secretary of a co-operative society, Badati Miri Jim Boyan Mohila Somobai Sommittee Ltd. with Registration No.267 dated 11.03.1974.

7. The learned Tribunal on the basis of evidence, in respect of issue No.1, reached a finding that the truck came from the back side in a rash and negligent

manner and the accident took place due to such rash and negligent driving of the truck. Accordingly, the Tribunal decided the said issue in favour of the claimants. In respect of issue No.2, the learned Tribunal had held that the claimant No.1 was the owner of the motorcycle involved in the accident. It further observed that the claimant No.2 was the son of claimant No.1 and he drove the motorcycle at the relevant point of time without having any driving licence. It was further observed that there was failure on the part of the claimant No.1 being the registered owner of the motorcycle, to take due care in the matter by allowing the motorcycle to be used by his son, who had no driving licence. Since it was within the knowledge of the claimant No.1 that the claimant No.2 did not have the driving licence, permitting the claimant No.2 to use and drive the motorcycle, disentitled all the claimants to receive any compensation in respect of the death of the deceased. By holding so, the learned Tribunal had further held that the opposite party No.3-insurer could not be held liable. Accordingly, the claim application was dismissed on contest.

8. I have heard the submissions of Mr. U Dutta, learned counsel for the appellants. I have also heard the submissions of Ms. M Choudhury, learned counsel for the respondent No.1.

9. Mr. Dutta has submitted that from the evidence on record, it has been clearly established that the accident had happened when the truck dashed the motorcycle on which the deceased was the pillion rider, from back side and as a result of which, the deceased sustained serious injuries and succumbed to death instantaneously on the spot. The said fact has been duly established from the testimonies of CW-1 and CW-2 and their testimonies were not dislodged in any manner. The learned Tribunal on the basis of the evidence on record, has rightly reached the finding that the accident took place due to rash and negligent driving of the driver of the truck. Since that finding has not been assailed, the same has attained finality and the issue is not required to be re-adjudicated. He further submits that despite reaching the finding that it was the truck which was driven rashly and negligently, the compensation was wrongly denied to the claimants. Merely because the claimant No.2 (C.W-2) did not have any driving licence at the time of the accident, the compensation could not have been denied in the absence of any evidence to the affect that he had contributed to the accident in any manner.

10. Ms. M Choudhury, countering the submissions advanced on behalf of the appellants, has submitted that as CW-1, in his evidence, had himself admitted that he did not have any driving licence at the time of the accident to drive a motorcycle and since despite having no driving licence, his driving the motorcycle itself is contrary to the provisions of the Act, as it is not permissible. If a person does not have a driving licence to drive the particular kind of motor vehicle that fact itself is indicative of the fact that he is not competent to drive and if any accident occurs involving him would indicate and presumption can be drawn that it is due to his rashness and negligence the accident has occurred. Ms.

Choudhury has also submitted that in case of assessment of compensation the sole factor for consideration is loss of dependency and when the claimants, like in the instant case, are not dependents on the income of the deceased they are not entitled for any kind of compensation under the Act.

11. I have considered the submissions made by the learned counsels for the parties and also perused the materials available on record. Since the issue as to who was responsible for the accident, has been rightly decided by the learned tribunal it is not necessary to re-appreciate the evidence in this regard since the same has attained finality without being assailed by any of the parties. However, it may be mentioned that the accident had happened when the truck dashed the motorcycle from back side. CW-2, whose house was adjacent to the place of occurrence and who was an eye-witness to the accident, had categorically stated that the accident occurred when the truck tried to overtake the motorcycle and it knocked down the motorcycle from backside even when the motorcycle was on the correct side of the road. As a result of the impact, the deceased fell down on the road and died instantaneously on the spot.

12. The question, thus, for consideration is that if a person drives a motor vehicle without having driving licence and an accident occurs involving the motor vehicle driven by him, whether the person who was riding with him in the motor vehicle or his/her legal representatives will be deprived of compensation under the Act even in absence of any rash and negligent driving on the part of such person and when it is established that it is the other vehicle which has caused the accident.

13. In the instant case, even after deciding the issue that it was the rashness and negligence on the part of the truck driver which was the cause of the accident, the learned Tribunal had decided the other issue against the appellants-claimants by holding that they were not entitled to compensation. In *Sudhir Kumar Rana vs Surinder Singh and Others*, reported in (2008) 12 SCC 436, the facts involved were that the appellant was driving a two wheeler vehicle which met with an accident due to rash and negligence driving of the respondent No.1, therein, who was driving a mini truck. As a result of the said accident, the appellant suffered a number of injuries and the appellant filed a claim application under Section 166 of the Act. The tribunal opined that as the appellant did not possess a driving licence, he must be held to have contributed to the accident. Although, a sum of Rs. 30,000/- was awarded by way of compensation, in view of the finding that he was guilty of contributory negligence on his part, he was found to be entitled to a sum of Rs. 12,000/- only. When an appeal was preferred under Section 173 of the Act before the High Court, the High Court dismissed the appeal. The question arose for consideration before the Apex Court was as to whether the appellant could be said to have been guilty of contributory negligence. It was held that the question of contributory negligence would arise only when both the parties were found to be negligent. The Apex Court has further held that if a person drives a vehicle without a licence, he commits an

offence. The same, by itself, may not lead to a finding of negligence as regards the accident. The Apex Court has observed that it had been held by the courts below that it was the driver of the mini-truck which was being driven rashly and negligently. The Apex Court has, thus, observed that it was one thing to say that the appellant did not possess any licence but no finding of fact had been arrived to the effect that he was driving the two-wheeler rashly and negligently. If he was not driving rashly and negligently and he did not contribute to the accident, only because he was not having a driving licence he could be held to be guilty of contributory negligence.

14. From the testimony of CW-1 it is evident that he was an witness in the criminal case registered against the driver of the offending truck and he testified in the case. Similarly, CW-2 was also an witness in the criminal case. It is, thus, clear that CW-2 was not an accused in the criminal case registered in connection with the accident and it was the driver of the offending truck who faced trial. Taking into consideration the aforesaid fact situation obtaining in the present case and the observations made in the decision of Sudhir Kumar Rana vs Surinder Singh (supra), I am of the considered view that even if the driver of the motorcycle did not have any driving licence to drive a motorcycle at the time of the accident, the pillion rider on his motorcycle cannot be denied compensation when there was no contributory negligence on the part of the driver of the motorcycle and when the offending truck was solely responsible for the accident due to rash and negligence driving of the driver of the truck and when it hit the motorcycle from the backside. In such situation, in the event of death of such pillion rider the legal representatives cannot be denied compensation in respect of a claim application filed under Section 166 of the Act.

15. The claimants in the claim application who have preferred under Section 166 of the Act are the husband, two sons and a daughter respectively of the deceased, as has been referred above. CW-1, who is the claimant No.2/appellant No.2, in his deposition, had stated that the claimant No.1 was a school teacher. The other three claimants were all major at that time. He further deposed that his mother i.e. the deceased was a house wife. He, however, denied that the certificate (exhibit-4) was a fabricated document. On the other hand, CW-3, who was the President/Secretary of a women co-operative society deposed that she issued the income certificate (exhibit-4) in the capacity of the president of the said society. The deceased was an active member and employee of the society and she was involved in tailoring and embroidery wherefrom she used to get an amount of Rs. 6,000/- per month as remuneration. In her cross-examination, she denied about fabrication of the salary certificate (exhibit-4). She deposed that the deceased was her younger sister and denied that she deposed falsely. CW-3 further stated that though the society used to maintain register for the purpose of distributing salaries of the employees she did not bring the said register to the Court. From the evidence of CW-1, it appears that he is a cultivator by occupation. As regards the income of the deceased which had been sought to be established from the document exhibited as exhibit-4, the same

cannot be accepted, in the absence of production of any document evidencing receipt of such salary every month by the deceased and in view of non-production of pay register by CW-3, who was also the sister of the deceased. Thus, it is not accepted that the deceased was earning an amount of Rs.6,000/- per month. Admittedly, the deceased was the wife and mother of the appellants/claimants. Even if her engagement as a member/employee of the society is not accepted, it is a fact that she was a house wife and was an indispensable and integral part of the family of the appellants-claimants. In such situation, I am of the considered view that the assessment of compensation in respect of the deceased is to be assessed as is entitled in respect of to a house wife, who is considered to be the pivot in the family and who holds the family together.

16. In *Jitendra Khimshankar Trivedi and Others vs Kasam Daud Kumbhar and Others*, reported in (2015) 4 SCC 237, the Hon'ble Supreme Court considered the matter of compensation in respect of a house wife wherein the deceased was a house wife. In the said decision, the Hon'ble Supreme Court has observed that even assuming the deceased therein was not self-employed doing embroidery and tailoring work, the fact remains that she was a housewife and a homemaker. It is hard to monetise the domestic work done by such a housemaker. The service of the mother/wife is available 24 hours and her duties are never fixed. The Courts have all along recognised the contribution made by the wife to the house as invaluable and it cannot be computed in terms of money. A housewife/homemaker does not work by the clock and she is in constant attendance of the family throughout and such services rendered by the homemaker has to be necessarily kept in view while calculating the loss of dependency. The Hon'ble Court has gone on to observe that even, otherwise, taking the deceased as the homemaker, it is reasonable to fix her income at Rs.3000/- per month. The situation in the instant case is no different as the deceased herein was also the homemaker in the family of the appellants-claimants.

17. In order to award a just and reasonable compensation the income of the deceased, in the instant case, is also taken as Rs.3,000/- per month. Deducting 1/3rd for her personal expenses, the contribution of the deceased to the family is calculated at Rs.2,000/- per month. There is no evidence as regards the age of the deceased. Though in the post-mortem report (Exhibit-2) the age is reflected as 40 years the same is not acceptable as the correct age in view of the fact that in the claim application, the ages of the claimant No.2, 3 and 4 are mentioned as 26, 21 and 23 years respectively. Taking the ages of the sons and daughters in consideration, it is appropriate to adopt a multiplier applicable for the persons falling in the age group of 46 years to 50 years in the instant case. Thus, adopting multiplier of '13' the total loss of dependency is calculated at Rs.3,12,000/-. With respect to the award of compensation under conventional heads viz loss of estate, loss of consortium and funeral expenses, the same are taken as Rs.15,000/-, Rs.40,000/- and Rs. 15,000/- respectively. Thus, total amount of compensation which is payable is Rs.3,82,000/- and the same amount will bear interest @ 6 per cent from the date of claim application till the date of

realisation.

18. In view of the observation made above, it is directed that the amount of compensation of Rs.3,82,000/- along with interest @ 6 per cent shall be paid by the respondent No.1 within a period of 3 (three) months.

19. This appeal, accordingly, stands allowed in terms of the directions mentioned above. Office to send back the LCR in due course. No order as to costs.