
(2010) 11 GAU CK 0032
In the Gauhati High Court
Case No : MAC App. No. 65 of 2000

Mafisuddin Khadim

APPELLANT

Vs

National Insurance Company Ltd.

RESPONDENT

Date of Decision : 18-11-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 165, 165(1), 166, 2

Citation : (2011) 2 TAC 396

Hon'ble Judges : C.R. Sharma, J

Bench : Single Bench

Advocate : Somik Deb, for the Appellant; P. Datta, for the Respondent

Final Decision : Allowed

Judgement

C.R. Sarma, J.—This is an appeal against the judgment and order, dated 16-5-2000, passed by the learned Member, Motor Accident Claims Tribunal, West Tripura, Agartala in TS (MAC) No. 387 of 1997. By the impugned judgment and order aforesaid, the learned Member, Motor Accident Claims Tribunal dismissed the said claim case, filed by the Appellant. Being aggrieved by the said order of dismissal, the Appellant has come up with this appeal challenging the correctness of the impugned judgment and order aforesaid.

2. I have heard Mr. Somik Deb, learned Counsel for the Petitioner. Also heard Mr. P. Datta ,learned Counsel appearing for the Respondents.

3. The Appellant's case, as may be necessary for disposal of this appeal, in brief, is stated below:

4. On 26-4-97, the Appellant, along with other passengers, was proceeding to "Killa" from "Udaipur" in his own vehicle, bearing registration No. TRT-1103 (g) which was driven by him. When the said vehicle reached a place called "Raiyabari" bazaar, suddenly a big tree had fallen on the said vehicle causing injury to the Appellant. According to the Appellant, he sustained injuries on his right ear, forehead and other parts of his body. The said vehicle, at the relevant

time, was insured with the Oriental Insurance Company Ltd i.e the Respondent. The Appellant, who sustained injuries in the said vehicular accident, filed a claim case, being T.S.(MAC) case No. 380 of 1997 seeking compensation of Rs. 19 lakhs.

The Appellant's claim was contested by the insurer i.e the Respondent by filing a written statement. In its written statement, the insurer denied the Appellant's claim that the Appellant had sustained the injuries in a vehicular accident.

5 Upon the pleadings of both the parties, learned Member, Motor Accident Claims Tribunal framed the following issues for determination:

i. Whether the Petitioner sustained injury in a vehicular accident on 26-6-97 at about 6-30 am at Raibabari bazaar on Udaipur-Killa road due to rash and negligent driving of vehicle No. TRT-1103 (Jeep) ?

ii. Whether the Petitioner is entitled to get compensation, if so what should be the amount of compensation and who shall be held liable for payment ?

6. In support of his claim, the Appellant, as claimant examined himself and one Medical Officer, namely, Dr. A. K. Mahapatra, who had examined him. The Respondent declined to examine any witness. Having heard both the parties and considering the materials on record, the learned trial Judge decided the issue No. 1 in negative, holding that the injuries sustained by the Petitioner, due to fall of a tree on the vehicle, could not be said to be injuries sustained in a vehicular accident. With the above findings, the learned trial Judge dismissed the claim case.

7. Dissatisfied with the findings and decisions, rendered by the learned trial Judge, the claimant, as Appellant, has come up with this appeal, challenging the correctness of the findings of the learned trial Judge.

8. Mr. Somik Deb, learned Counsel, appearing for the Petitioner, taking me through the materials on record and the memo of appeal has submitted that the learned trial Judge committed error by failing to appreciate that the injuries sustained by the Petitioner, due to fall of a tree on the vehicle during the course of the use of the vehicle, amounted to accident and that the injuries sustained by the Petitioner was the injuries arising out of the use of the motor vehicle. It is further submitted by the learned Counsel that, as the claimant/Appellant had no negligence or lapse on his part, the fall of the tree on the vehicle resulting the injuries, sustained by the insured, amounted to an accident involving the concerned vehicle and as such the learned trial Judge ought to have decided the said issue in favour of the Appellant.

9. In support of his contention, the learned Counsel for the Appellant has relied on the following decisions:

(1) Grant Appellant v. National Coal Board (1956) A.C. 649;

(2) Challis v. London and South Western Railway Company (1905) K.B. 154

(3) Oriental Insurance Company v. Arun Datta and Ors. (2001) 3 GLT 250

10. Refuting the said argument, the learned Counsel, appearing for the Respondent has submitted that the injuries, sustained by the Appellant, due to fall of a tree on the vehicle cannot be treated as injury sustained in a vehicular accident and as such the learned trial Judge committed no error by dismissing the claim, made by the Appellant.

11. Having heard the arguments, advanced by the learned Counsel for the parties and considering the materials on record, it is found that on the fateful day, the claimant was travelling in his vehicle as mentioned above and, as alleged by him, he sustained injuries due to fall of a tree on the top of the vehicle. The learned trial Judge dismissed the claim petition on the ground that the injuries sustained, due to fall of the tree, on the vehicle, did not amount to vehicular accident. The learned trial Judge, in arriving at the said finding, observed as follows:

On perusal of FIR I find that Petitioner sustained injuries while he was proceeding to Killa driving his vehicle TRT-1103 a big tree fell on his vehicle at Raiyabari. It is further alleged in the FIR that Sahajalal Miah and 2/3 others fell the tree from a tilla. If that be so, if the Petitioner who is the driver-cum-owner of the vehicle TRT-1103 sustained injury on falling of tree on his vehicle, I failed to understand who Petitioner can claim that he sustained injuries in a vehicular accident. On perusal of the evidence on record, I find that Petitioner sustained injuries when a tree fell on his vehicle. Injury sustained by the Petitioner on falling a tree on his vehicle cannot be said that he sustained injuries in a vehicular accident, as from the evidence, I find that the vehicle did not meet with any accident on the relevant period.

12. In view of the above, the short question involved in this appeal is as to whether the injury sustained, due to fall of a tree on the vehicle during the course of the use of the vehicle, amounted to vehicular accident or not.

The term "accident" has not been defined in Section 2 of the Motor Vehicles Act as well as in the Workmen's Compensation Act. Admittedly, the provision, made in the Motor Vehicles Act, granting relief to the victims of vehicular accident is a benevolent legislation. Therefore, in view of absence of any definition with regard to the expression "accident" in the Motor Vehicles Act, it can be well understood, in the light of the scope and ambit of the said legislation that the legislature left the matter to be determined on the basis of attending facts and circumstances of each case. However, the term "accident" has been used in various provision of the Motor Vehicles Act.

Section 165 which deals with the establishment of Tribunals, reads as follows:

165. Claims Tribunal-(1) A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (hereafter in this Chapter referred to as Claims Tribunal) for such area as may be specified in

the notification for the purpose of adjudicating, upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both.

(2) A Claims Tribunal shall consist of such number or members as the State Government may think fit to appoint and where it consists of two or more members, one of them shall be appointed as the Chairman thereof.

(3) A person shall not be qualified for appointment as a member of a Claims Tribunal unless he-

(a) is, or has been, a Judge of a High Court, or

(b) is, or has been a District Judge, or

(c) is qualified for appointment as a High Court Judge (or as a District Judge)

(4) Where two or more Claims Tribunals are constituted for any area, the State Government, may by general or special order, regulate the distribution of business among them.

In Section 165, provision has been made for paying compensation in respect of the accidents involving the death of, or bodily injury to, persons arising out of the use of the motor vehicle, or damages to any property of a third party so arising, or both. In Section 163A also, the terms "accident arising out of the use of the motor vehicle" has been used. In Section 166, it has been provided-

An application for compensation arising of an accident of the nature specified in Sub-section (1) of Section 165 may be made-

(a) By the person who has sustained the injury, or

(b) By the owner of the property ; or

(c) Where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

(d) By any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be.

13. Therefore, a conjoint reading of Sections 165, 163A and 166 of the Motor Vehicles Act, makes abundantly clear that compensation can be claimed or granted in respect of accident involving the death of, or bodily injury to, person(s) arising out of the use of the motor vehicle. Therefore, there is no difficulty in understanding that any injury or death caused to a person(s) during the course of the use of the motor vehicle amounts to accident, involving the vehicle concerned.

14. Accordingly to Black's Law dictionary, Fifth Edition, the word "accident" inter alia means a fortuitous circumstances, event, or happening; an event happening

without any human agency, or if happening wholly or partly through human agency, an event which under the circumstances is unusual and unexpected by the person to whom it happens; an unusual, fortuitous, unexpected, unforeseen or unlooked for event, happening or occurrence; an unusual or unexpected result attending the operation or performance of a usual or necessary act or event; chance or contingency; fortune; mishap; some sudden and unexpected event taking place without expectation, upon the instant, rather than something which continues, progresses or develops; something happening by chance; something unforeseen, unexpected, unusual, extra-ordinary or phenomenal taking place not according to the usual course of things or event, out of the range of ordinary calculations; that which exists or occurs abnormally, or an uncommon occurrence. The word may be employed as denoting a calamity, casualty, catastrophe, disaster, an undesirable or unfortunate happening; any unexpected personal injury resulting from any unlooked for mishap or occurrence; any unpleasant or unfortunate occurrence, that causes injury, loss, suffering or death; some untoward occurrence aside from the unusual course of events. An event that takes place without one's foresight or expectation; an undersigned, sudden, an unexpected event.

15. According to concise Oxford English Dictionary, the expression "accident" indicates an unfortunate incident that happens unexpectedly and unintentionally; some that happens by chance or without apparent cause.

16. According to the Webster's Third new International Dictionary and Seven Language Dictionary, the term "accident" implies an unexpected happening causing loss or injury which is not due to any fault or misconduct on the part of the person injured but from the consequence of which he may be entitled to some legal relief; sudden event or change occurring without intent or volition through carelessness, unawareness, ignorance, or a combination of causes and producing an unfortunate result.

17. In Wharton's Law Lexicon, 14th Edition, the expression "accident" has been defined inter alia to mean an extra ordinary incident; something not expected. It is also had a equitable jurisdiction, which was concurrent with that of the Courts of Law. The meaning to be attached to the word "accident", in relation to equitable relief is some unforeseen and undersigned event, productive of disadvantage and not due to negligence or misconduct on the part of the person seeking relief.

18. At paragraph 486 of volume 33, Halsbury's Laws of England, 4th Edition, while defining the expression "industrial accident" the author has dealt with the general expression "accident" and thereupon, has summarised the legal proposition thus:

The term "accident" must be interpreted according to its popular meaning. It includes personal injury sustained under circumstances which can be referred to as "an accident" and it also includes cases in which there are no such

circumstances capable of being so described but in which the results of the occurrence are so unexpected that they may fairly be considered as accidental. Unexpected means unexpected by the person who is injured. Thus, "accident" may also include occurrences intentionally caused by others, for example personal injury resulting from an assault is caused by accident, but self-inflicted injury, such as suicide, is not unless, as a result of an accident or of a shock resulting from an accident, there is a condition of nervous or mental derangement which leads to a man committing suicide. If the accident has not caused any physical derangement, but, there being an accident with a physical result, the injured person, when faced with it, thinking it over, brooding over it, loses his moral courage to face it and thinks that the only way out is to kill himself, that is not a consequence of the accident.

Accident", in the above sense, may include nervous shock, exposure to heat or to cold or damp and strain from lifting heavy weights.

19. In the case of Grant Appellant (supra), a mine worker was injured by the derailment of a bogie in which he was riding when it struck some stone which had fallen from the roof of the travelling road. The House of Lords observed that the injuries sustained by the worker was a result of an accident.

20. In the case of Challis (supra), an engine driver while driving a train under a bridge was injured through a stone wilfully dropped on the train by a boy from the bridge. In the said case, it was held that the injuries was caused by an accident arising out of and in the course of his employment within the meaning of Workmen's Compensation Act, 1897.

21. In the case of Oriental Insurance Company (supra), 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. The learned Motor Accident Claims Tribunal, while deciding the claim case granted compensation in favour of the said passenger holding the Insurance Company liable to pay the awarded amount. The said judgment and award was challenged on the ground that the fall of the suit case due to sudden application of brake of the Bus did not amount to accident, covered u/s 166 of the Motor Vehicles Act. A learned Single Judge of this Court, referring to the decision held in the case of Smt. Rita Devi and Others Vs. New India Assurance Co. Ltd. and Another, corresponding to 2000(2) GLT SC 1 held that the injury sustained by the passenger due to fall of the suit case was an accident.

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, 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. 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.

24. In view of the above discussion, there is sufficient merit in this appeal. Hence, the appeal is allowed. The impugned judgment and order is set aside and quashed. The matter is remanded back to the Motor Accident Claims Tribunal, Agartala for fresh disposal in the light of the above observation, after giving opportunities to both the parties. As the claim case relates to the year 2000, the learned Member, Motor Accident Claims Tribunal, West Tripura, Agartala is directed to dispose of the matter within a period of three months from the date of receipt of copy of this judgment and order.

Return the Lower court records.