

(2018) 12 GAU CK 0006
In the Gauhati High Court
Case No : MAC Appeal No. 242 Of 2014

National Insurance Co Ltd

APPELLANT

Vs

Bijaya Modi And 3 Ors

RESPONDENT

Date of Decision : 06-12-2018

Acts Referred:

Citation : (2018) 12 GAU CK 0006

Hon'ble Judges : Suman Shyam, J

Bench : Single Bench

Advocate : A Saikia, M B U Ahmedr

Final Decision : Disposed Off

Judgement

SUMAN SHYAM

1. Heard Mr. R. K. Bhatra, learned counsel for the appellant. I have also heard Mr. S. K. Talukdar, learned counsel representing the respondent Nos.1 to 4.
2. In this appeal the judgment and order dated 07.05.2014 passed by the learned Additional District Judge No.IV (FTC), Kamrup, Guwahati in MAC Case No.2414/2006 has been put under challenge.
3. The facts of the case, briefly stated, are that the husband of the respondent No.1/claimant, viz., Dulal Modi was knocked down by the offending vehicle bearing No.AS-23C-2538 on 08.08.2004 at about 9.00 P.M. while the deceased was waiting on the road side of Nahorkotia Daily Bazar near the Hanuman Mandir. It is the case of the claimants that the accident had occurred due to rash and negligent driving of the offending vehicle resulting into the death of the sole bread earner in the family and hence, the claimants were entitled to receive compensation. The appellant being the Insurer of the vehicle, was impleaded as the respondent No.3 in the claim petition.
4. The owner and driver of the vehicle, who were impleaded as defendant Nos.1 and 2, had filed joint written statement but did not lead evidence before the

learned court below.

5. The appellant/OP No.3 had also filed a separate written statement and had examined two witnesses, viz., DWs 1 and 2.

6. Based on the pleadings of the parties, following issues were framed by the learned court below :-

"I. Whether the accident occurred on 08.08.2004 at about 9.00 P.M. due to rash and negligent driving of the driver of the vehicle vide No.AS-23-C-2538 (mini Truck)?

II. Whether Dulal Modi died as a result of the said motor vehicle accident?

III. Whether the claimant is entitled to get any compensation for the death caused to the deceased Dulal Modi in the said accident, if yes, what will be the just and reasonable amount of compensation?

IV. Who amongst the opposite parties is liable to pay the compensation to the claimant?"

7. During the course of trial, the claimants side had led evidence in support of their claim that the total monthly income of the deceased at the time of his death was Rs.5,000/- and his age was 48 years. Based on such claim, an amount of Rs.10,50,000/- was claimed as compensation.

8. After taking note of the facts and circumstances of the case, the learned court below had come to a conclusion that the total monthly income of the deceased was Rs.3000/- and therefore, applying the multiplier of 13, the amount of compensation after deducting 25% on account of personal expenses, was worked out at Rs.3,51,000/-. That apart, a sum of Rs.25,000/- as funeral expenses, Rs.1,00,000/- as loss of consortium and Rs.1,00,000/- on account of loss of care and guidance and a further sum of Rs.5000/- was awarded for loss of estate besides awarding a sum of Rs.5,000/- for transportation of the body. In total, a sum of Rs.5,86,000/- was awarded by the learned court below as compensation to be paid to the claimants with interest @ 6% per annum to be calculated on the said amount from the date of filing the claim petition till the payment is made.

9. Mr. Bhatra has primarily assailed the award by stating that the deceased was a gratuitous passenger in the truck and therefore, under the Insurance policy, no liability to pay compensation will befall upon the Insurance Company in the facts and circumstances of the case. The learned counsel for the appellant has further contended that in the additional written statement filed by the appellant it was specifically stated that the deceased was a gratuitous passenger but notwithstanding such pleading, the learned court below has neither framed any issue on the point nor recorded any finding of fact on such count. Referring to the testimony of DW 1 and the charge-sheet filed in connection with the case registered in the Court of CJM, Dibrugarh, by the Officer-in-charge of Naharkatia

Police Station dated 30.09.2004, Mr. Bhatra submits that it is clearly mentioned in the said charge sheet that the deceased Dulal Modi had fallen down from the truck and died due to rash and negligent driving of the driver. From the above evidence, it is established that the deceased was a gratuitous passenger and therefore, the Insurance Company would have no liability to pay any compensation in the facts and circumstances of the present case.

10. Responding to the aforesaid argument, Mr. Talukdar, learned counsel for the respondents/claimants, contends that the eye-witness to the incident, viz., PW 2 has categorically deposed that the offending vehicle had knocked down the deceased near the Hanuman Mandir while he was standing on the road and therefore, the plea that the deceased was a gratuitous passenger is completely untenable in the eye of law. Mr. Talukdar further submits that the charge-sheet allegedly exhibited by DW 1 would not be a piece of admissible evidence to establish that the deceased was a gratuitous passenger travelling in the truck. On such grounds the learned counsel has prayed for dismissal of the appeal.

11. I have considered the submissions made by the learned counsel for the parties and have also gone through the materials available on record.

12. As noted above the only ground pressed in this appeal is that the deceased was a gratuitous passenger and therefore, the impugned award is illegal. From a scrutiny of the LCR, I find although draft issues were filed on behalf of the appellant, yet, no such issue was proposed. Accordingly, the learned court below did not frame any issue on the question as to whether or not the deceased was travelling in the vehicle as a gratuitous passenger. Consequently, there is neither any finding of fact in respect thereof nor has the award been passed by taking into account such contention. Although Mr. Bhatra has placed reliance on the testimony of DW-1 to contend that there were cogent evidence led by the appellant to establish that the deceased was travelling as a gratuitous passenger, yet, I am afraid, the said contention of Mr. Bhatra cannot be accepted by this Court due to want of cogent evidence in support of such plea. Even assuming that the certified copy of the charge sheet No.106/2004 dated 30.09.2004 was produced by the witness DW-1, yet, the said witness is an employee of the Insurance Company and therefore, would not be competent to prove the charge sheet. It may be correct to say that the certified copy of a public document can be taken judicial notice by the court but mere production of certified copy of the document would not amount to proof of its content. If the appellant was serious about pressing the aforesaid allegation then the I.O. of Naharkatia Police Station, who had prepared the charge-sheet, ought to have been examined as a witness which has, admittedly, not been done in this case.

13. As noted above, there is an eye-witness to the accident i.e. PW 2 and he has deposed before the Court that the offending vehicle had knocked down the deceased. During the cross-examination no suggestion has been put to the witness that the deceased was travelling in the truck. Under the circumstances, I am unable to accept the submission of Mr. Bhatra that the appellant had

succeeded in establishing that the deceased was a gratuitous passenger travelling in the truck. On the contrary, I find that the learned court below had taken note of all the relevant facts and circumstances of the case and the evidence available on record while coming to a conclusion on the quantum of compensation that the claimants would be entitled to in the facts and circumstances of the case. Since Mr. Bhatra has not urged any other ground in this case, hence, I am of the view that there is no merit in this appeal.

14. Before parting with the record it would be pertinent to mention herein that after the decision of the Hon'ble Supreme Court in the case of National Insurance Co. Ltd. Vs. Pranay Sethi and others, reported in (2017)16 SCC 680 the compensation payable under the conventional heads had undergone some changes and to such extent, the claimants may not be entitled to the sum of Rs.2,30,000/-awarded by the learned court below on such count. Funeral expenses, loss of consortium, loss of care and guidance and loss of estate would not be payable to the claimant at the rate awarded by the learned court below and instead a sum of Rs.70,000/- on such conventional head would now be payable by the Insurance Company to the claimants in terms of the decision in the case of Pranay Sethi & others (supra).

15. In view of the above, while affirming the award for payment of Rs.3,51,000/- as compensation on account of loss of dependency of the claimants due to the accidental death of deceased Dulal Modi, it is hereby clarified that an additional amount of Rs.70,000/- would be payable to the respondents/claimants over and above the sum of Rs.3,51,000/- awarded by the Tribunal. In other words, the total amount payable under the award would now be Rs.4,21,000/-. On the said amount, interest at the rate of 7.5% per annum would be applicable from the date of filing of the application till the payment is made. The amount of compensation awarded by the learned court below would stand modified to the above extent. Balance, if any, payable to the claimants after deducting the amount already paid shall be deposited before the Registry of this Court within 45 days from today.

The deposit already made by the appellant is permitted to be adjusted with the balance amount which the appellant is liable to pay in terms of the order passed by this Court. If on the other hand, no further amount is found to be due and payable by the Insurance Company after calculation of the amount under this order, it will be open for the appellant to approach the Registry of this Court for withdrawal of the statutory deposit.

The appeal stands disposed of accordingly.