

(2005) 03 GAU CK 0102
In the Gauhati High Court

National Insurance Co. Ltd.	Vs	APPELLANT
Kasheni and Others		RESPONDENT

Date of Decision : 09-03-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 165, 170, 173

Citation : (2006) 1 ACC 644 : (2007) ACJ 43 : (2005) 3 GLT 465

Hon'ble Judges : Ranjan Gogoi, J;Amitava Roy, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Ranjan Gogoi, J.—This appeal, by the insurer, u/s 173 of Motor Vehicles Act, 1988 (hereinafter referred to as "the Act") is directed against the judgment and award dated 15.11.2002, passed by the learned Member, Motor Accidents Claims Tribunal, Nagaland, Dimapur in M.A.C. Case No. 117 of 1998. By the aforesaid award dated 15.11.2002, learned Tribunal has granted compensation to the extent of Rs. 2,22,000 in favour of the respondent-claimant on account of the death of her son in an incident which has been found by the learned Tribunal to have arisen out of the use of a motor vehicle (autorickshaw) bearing registration No. NL 01-T 2217.

2. To appreciate the challenge made, the cases brought by the respective parties before the learned Tribunal may briefly be noticed at this stage.

Respondent No. 1, claimant, is mother of one Kughavi who, it is claimed, was travelling in an autorickshaw bearing registration No. NL 01-T 2217 on 11.10.1997 as a bona fide passenger. According to the claimant-respondent, on the said date, when the autorickshaw was passing through Eros Line, some unidentified persons tried to stop the vehicle, but the driver of the vehicle instead of stopping had speeded away. Thereafter, according to claimant-respondent, the persons who tried to stop the autorickshaw fired on the autorickshaw from behind and the bullet hit the son of the claimant-respondent

killing him on the spot. According to claimant-respondent, the driver of the autorickshaw fled from the place of occurrence and thereafter the assailants had set the autorickshaw on fire. On the above facts, claimant-respondent approached the learned Tribunal for grant of compensation on account of the death of her son and contended that such death had occurred while her son was travelling in the autorickshaw as a bona fide passenger and, therefore, the incident in which her son was killed occurred in the course of the use of vehicle in a public place. On the basis of the claim petition filed, M.A.C. Case No. 117 of 1998 was registered before the learned Claims Tribunal at Dimapur.

3. The claim made by the claimant-respondent was resisted by the appellant insurer as well as the owner of the vehicle by filing their respective written statement.

In the written statement filed, the appellant insurer, apart from putting the claim out to strict proof that the autorickshaw was driven under a valid permit and by a person having a valid licence at the time of the incident, had contended that the statements made in the claim petition and the police report filed along with had clearly established that the death of the son of the claimant-respondent was on account of a murder which was committed at a time when the deceased was travelling in the vehicle. The insurer had, therefore, pleaded in the written statement filed that the alleged incident was not on account of the use of the motor vehicle and that there was no rash and negligent driving of the vehicle leading to the death of the son of the claimant. The insurer had also contested the claim of the respondent-claimant on the point of quantum of the compensation, if any, payable.

The owner of the vehicle (autorickshaw) in the written statement filed, had taken the stand that on the relevant day, the deceased along with another were travelling in the autorickshaw forcibly and they were being chased by some unknown miscreants in 3 Gypsy vehicles. Owner of autorickshaw, in the written statement filed, had further taken the stand that the aforesaid unknown miscreants who were chasing the deceased and his co-passenger overtook the autorickshaw and subsequently shot dead the son of claimant-respondent and abducted his co-passenger.

4. On the basis of pleadings advanced by the parties as noticed above, the learned Tribunal framed as many as four issues for trial in the case. The aforesaid four issues may be conveniently set out hereinafter:

Issue 1 : Whether the claim petition is maintainable in the present form and is the Tribunal having jurisdiction to entertain the case?

Issue 2: Whether the driver of alleged offending autorickshaw No. NL 01-T 2217 was having all requisite particulars as per Motor Vehicles Act and was the driver having valid and effective driving licence at the time of accident?

Issue 3: Whether the claimant is entitled to any compensation? If so, what

amount and payable by whom?

Issue 4: Whether deceased was travelling in the autorickshaw No. NL 01-T 2217 on the fateful day? And whether the said autorickshaw was insured with National Insurance Co. Ltd., Dimapur?

5. To prove the case put forward, the claimant-respondent examined herself as a witness before the learned Tribunal. In her deposition, the claimant had stated that her son died while travelling in an autorickshaw near Eros Line sometime in the year 1997. Apart from the aforesaid statement made, the rest of the deposition of the claimant was with regard to the income of the deceased and the fact that she had no other means of support apart from her son who had died in the accident. In cross-examination, this witness had stated that her son was aged around 18-19 years at the time of his death. The deposition of the claimant-respondent also revealed that she was blind.

The insurer examined one of its officers working in the Dimapur Branch, Sankar Kr. Deb, as DW 1 and one Sudarshan Das, an investigator of the insurance company as DW 2. The evidence of the witnesses examined by the insurer, particularly DW 2 is to the effect that on the day of the incident, the autorickshaw bearing registration No. NL 01-T 2217 was coming from Chumukedima side and on reaching the 4th Mile, the deceased and another person stopped the autorickshaw and boarded it. They had asked the driver to speed and the driver having refused to oblige, one of the two occupants himself drove the vehicle forcibly and reached the town area. DW 2 had deposed that at that time there was one Gypsy vehicle which was chasing the autorickshaw. The further evidence of DW 2 discloses that at one point of time Gypsy overtook the autorickshaw whereafter the autorickshaw was burnt by the occupants of Gypsy and the son of the claimant-respondent was shot dead by the unknown miscreants. Driver of the autorickshaw fled from the place of the incident and reported the same to one Ms. Nino to whom the autorickshaw was sold by its registered owner. The report of the investigator submitted to the insurer, was proved by DW 2 as Exh. D2. The signature of DW 2 was also proved as Exh. D1. In cross-examination, DW 2 had admitted that the report of investigation submitted by him (Exh. D2) as well as the statements made in his deposition were on the basis of inquiries made locally and that in the course of such inquiry he had not examined the driver of the autorickshaw or its owner.

The owner of the autorickshaw did not examine any witness in support of the case pleaded. In fact after filing the written statement, the said owner had not participated in the proceedings before the learned Tribunal.

6. On the pleadings advanced and the evidence adduced, the appellant insurer had contended before the learned Tribunal that the incident in which the death of the son of claimant-respondent had occurred, cannot be legitimately said to be arising out of the use of the motor vehicle, i.e., autorickshaw bearing registration No. NL 01-T 2217. It was an act of murder which had caused the death of the

son of the claimant and merely because the murder had taken place in the autorickshaw, no liability for compensation under the Motor Vehicles Act could be fastened on the owner so as to make the insurer vicariously liable.

As against the above contention advanced on behalf of insurance company, in the oral arguments advanced on behalf of the claimant before the learned Tribunal, it was contended that the deceased son of the claimant was a bonafide passenger in the autorickshaw bearing registration No. NL 01-T 2217. While travelling in the said autorickshaw, at a particular point of time, the autorickshaw was asked to stop by some unknown persons and as the driver sped away without stopping, the unknown persons had fired at the autorickshaw killing the son of the claimant on the spot. The argument advanced is that if the autorickshaw had stopped, the firing would not have had taken place and, therefore, the driver of the vehicle must be held to be responsible for the death that had occurred. As the incident had occurred while the deceased was using a public vehicle, the owner and the insurer are liable to compensate the claimant on account of the death of her son.

7. Learned Tribunal on consideration of the cases of the respective parties as pleaded before it, the evidence adduced and the arguments advanced came to the conclusion that death of the son of claimant had occurred in the course of use of the motor vehicle (autorickshaw). The learned Tribunal on the basis of the conclusion reached, as noticed above, determined the amount of compensation payable to the claimant-respondent at Rs. 2,22,000 and by the impugned award directed the appellant insurer to satisfy the said award within a period of 30 days, failing which, interest at the rate of 9 per cent from the date of filing of the claim was ordered by the learned Tribunal.

A reading of the judgment and award dated 15.11.2002, passed by the learned Tribunal would, however, go to show that the learned Tribunal after holding that both the parties had failed to adduce necessary evidence to prove the respective cases as pleaded, thought it proper to record its conclusion that the death of the son of the claimant was due to an accident arising out of the use of the motor vehicle in question and, therefore, claimant would be entitled to compensation which was assessed, as already noticed at Rs. 2,22,000.

8. Mr. B.N. Sharma, learned Counsel appearing for the appellant insurer has reiterated the arguments advanced before the learned Tribunal in support of the present appeal. Mr. Sharma has argued that the evidence of the sole witness examined on behalf of the claimant, i.e., the claimant herself, does not throw any light on the details of the accident/incident in which death had occurred. Learned Counsel has further argued that the stand taken by the insurer as well as the owner of the auto-rickshaw in the written statements filed is to the effect that the deceased son of the claimant along with another person were being chased by certain miscreants and at that point of time they had forcibly boarded the vehicle, i.e., autorickshaw, which was overtaken by the miscreants who were travelling in a Gypsy, whereafter the son of the claimant was fired upon and killed by the miscreants. In view of the aforesaid stand taken by the insurer and

the owner of the autorickshaw, it was incumbent on the part of the claimant to adduce positive evidence to establish a proximate relationship between the death that had occurred and the use of the vehicle. Learned Counsel for the insurer has vehemently argued that the liability of the owner to pay compensation and that of the insurer to indemnify the owner will not arise merely because death had taken place in a vehicle. What is required in law is that the death must have occurred in the course of the use of the motor vehicle, which necessarily means that had it not been for the use of the motor vehicle, death would not have occurred. In the present case, the son of the claimant was being chased by some unknown miscreants and he had used the autorickshaw to flee away from the said miscreants who eventually overtook the autorickshaw and shot dead the son of the claimant. In these circumstances, according to the learned Counsel for the insurer, it cannot be said that the death had occurred on account of use of the motor vehicle. Death had occurred on account of a murder committed and, therefore, compensation that has been awarded against the insurer is beyond the terms of the policy which had visualized indemnification of the owner on account of the compensation payable for accidents arising out of the use of the vehicle. The learned Counsel for the insurer has also argued that the award is vitiated in law as compensation has been granted without ascertaining the age of the deceased and his income.

9. The arguments advanced on behalf of the appellant insurer, as noticed above have been sought to be countered by Mrs. A. Modi, learned Counsel appearing for the respondent-claimant. Learned Counsel by placing before the court the evidence of DW 2 has submitted that when the said witness had admitted that his report of investigation and his oral testimony in court with regard to the incident is not based on the statements of the owner of the vehicle or the driver thereof and the said facts are on the basis of examination of some unknown persons, no credence can be placed on the evidence of DW 2. In such a situation, the case projected by the appellant insurer would have no legs to stand.

The learned Counsel has further argued that the materials on record, particularly with regard to the burning down of the autorickshaw and the disappearance of the driver from the place of occurrence, are clear indications of the fact that the unknown miscreants were really after the driver of the autorickshaw and the death of the son of claimant which had occurred in the circumstances noted must necessarily be held to be arising out of the use of motor vehicle. Learned Counsel for respondent-claimant, therefore, has argued that there is no infirmity with the conclusions reached by learned Tribunal on the aforesaid score. It is further argued by the learned Counsel for respondent-claimant that the manner in which the quantum of compensation had been worked out by the learned Tribunal cannot be a ground on which the award of the learned Tribunal can be assailed, particularly when no leave/permission u/s 170 of the Act was either sought for or granted to the appellant insurer.

10. We have given our anxious consideration to the submissions advanced on

behalf of the rival parties. Section 147 of the Act mandates that a policy of insurance must insure, amongst others, the owner of a motor vehicle against any liability that may be incurred by such owner in respect of the death or bodily injury to any person "caused by or arising out of the use of the vehicle in a public place" (emphasis is ours). Section 165 of the Act authorises the State Government to constitute Claims Tribunals "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...". The liability of the insurer as well as the power of the Tribunal, therefore, must be understood to be restricted to claims of compensation for death or bodily injury caused by or arising out of the use of vehicle in a public place, while death or bodily injury "caused by" the use of vehicle in a public place would require strict and proximate relationship between the use of motor vehicle and the accident/incident resulting in death or injury, the expression "arising out of use of the vehicle" would have a wider connotation. In a given case, the proximity between the use of motor vehicle and death or injury suffered may not be direct and immediate; yet compensation may be awarded under the provisions of the Act. In other words, even in a situation where death or bodily injury is not directly caused by the use of motor vehicle, yet if such death or injury has some relationship with the use of motor vehicle, compensation can still be awarded under the Act. A beneficial legislation must necessarily receive a liberal interpretation insofar as a claim for compensation is concerned. This is precisely why courts have, on occasions, travelled beyond the proximate cause of the accident leading to the death or injury and have held such death or injury to be arising out of the use of a motor vehicle in situations where such relationship may at times appear to be a little remote. It will be difficult and even unnecessary to deal with such cases illustratively as in the ultimate resort a cogent relationship must be established by having regard to the facts of each case.

11. Having understood the law in the manner indicated above, we may now proceed to analyse the situation that the evidence and materials on records give rise to. If the case of the claimant-respondent, as stated in the claim petition is that her son was travelling in the autorickshaw as a bona fide passenger and that though the autorickshaw was signalled to stop, the driver of autorickshaw did not pay any heed to the said signal and instead drove away at a high speed leading to the firing in question, the aforesaid facts should have been established by leading cogent evidence. The above requirement was imperative keeping in mind the case of the insurer and the owner of the autorickshaw as pleaded before the learned Tribunal, i.e., that the deceased son of the claimant was being chased by some miscreants when he boarded the autorickshaw which was eventually overtaken and the son of the claimant was shot dead by the miscreants. The basic facts giving rise to an entitlement for compensation must be proved by the claimant, however, liberally the pleadings or the evidence may be construed by the court. In the present case, the only witness examined by claimant is herself.

Claimant, unfortunately, is a blind person, what was narrated by her in her evidence is that her son died while he was travelling in an autorickshaw. Beyond that no details of the incident was deposed to. As against the evidence of the claimant, the insurer to prove the case pleaded, had examined two witnesses out of whom, the evidence of DW 2 would be of significance. DW 2 in his evidence had proved the report of investigation submitted by him and had orally testified that the son of the claimant on being chased by miscreants had forcibly boarded the autorickshaw which was overtaken and burnt down and the son of the claimant was shot dead. While it is correct that there is room to doubt the veracity of the evidence of DW 2 as he had admitted in his evidence that his report of investigation as well as his oral testimony is based on the examination of "some persons" and that he had not examined the owner or the driver of the autorickshaw, merely because the said evidence of DW 2 is held by the court to be of doubtful nature, cannot be a ground to hold that the case of the claimant necessarily stands proved. In the present case, having regard to the basic facts in which liability to pay compensation had to be established and particularly having regard to the facts in which the use of the motor vehicle (autorickshaw) was involved, it is our considered view that the claimant-respondent ought to have led more positive evidence to prove that death of her son had occurred in an incident arising out of the use of the autorickshaw. The burden on the claimant to prove the above basic fact became imperative in view of the stand taken by the insurer in the written statement filed. It was, therefore, incumbent on the part of claimant to lead clear, cogent and reliable evidence to prove that the death of her son was not an act of homicide; but was the result of an accident involving or, arising out of the use of the autorickshaw. Having regard to the evidence of claimant and what logically transpires from such evidence, it is our considered view that the claimant-respondent has not succeeded in proving that the death of her son was caused by or arose out of the use of a motor vehicle so as to confer power and jurisdiction on the learned Tribunal to award compensation or to make the appellant insurer liable for such compensation under the insurance policy in force. In view of the above conclusions reached by us and the inevitable consequence that must follow, we do not consider it necessary to go into the alternative argument advanced by learned Counsel for the appellant which pertains to the correctness of the quantum of compensation awarded.

In the result, we allow this appeal and set aside the judgment and award dated 15.11.2002 passed by the learned Tribunal. However, to avoid hardship to claimant-respondent, we direct that any amount received by the claimant-respondent under orders of the learned Tribunal or this court shall not be recovered from her.