(2018) 06 GAU CK 0086

In the Gauhati High Court

Case No : MACApp. 197 of 2012

National Insurance Co Ltd APPELLANT

Vs

Simarani Bhuyan And Ors RESPONDENT

Date of Decision : 18-06-2018

Acts Referred:

Citation : (2018) 06 GAU CK 0086

Hon'ble Judges : MIR ALFAZ ALI, J

Bench : Single Bench

Advocate : B. K. Purkasyastha, D. Saikia

Final Decision : Dismissed

Judgement

1. Heard Mr. B. K. Purkasyastha, learned counsel for the appellant and Mr. D. Saikia, learned Sr. Counsel for the respondent Nos. 1 to 5.

2. This appeal is by the Insurance Co. against the judgment and award dated 12-06-2012 passed by the MACT No. 2, Kamrup, GuwahatiÂ in MAC

Case No. 1043/2006 (old MAC Case No.2689 of 2006).

3. The brief facts of the case are that on 23-06-2006 one Soumik Raj Bhuyan, husband of the claimant No. 1, was proceeding by driving a car bearing

registration No. AS-01-X/3866 from Dhekiajuli towards Golaghat. When he reached the Numaligarh Tea Estate on the National Highway, the

offending vehicle (bus) bearing registration No. AS-05-B/3234, which was coming from the opposite direction in excessively high speed, hit the car

and the driver of the car, Soumik Raj Bhuyan sustained grievous injury in the accident and died instantaneously. The wife and legal representatives of

the deceased filed a claim petition before the tribunal and the learned tribunal by the impugned judgment, awarded a compensation of Rs. 24,42,000/-

with interest @ 6% from the date of filing of the claim petition.

4. Aggrieved by the said order, the Insurance Co. preferred the instant appeal.

5. Learned counsel, Mr. B.K. Purkayastha for the appellant submits, that the accident having taken place due to head-on-collision of two vehicles,

learned tribunal ought to have held both the vehicles equally responsible attributing contributory negligence to the deceased. However, the learned

tribunal held the owner/driver of the bus solely responsible for the accident. Mr. Purkayastha further contends, that income tax was not deducted from

the gross income of the deceased, while determining the loss of dependency and the deduction towards personal expenses, though, ought to have been

made 1/3rd, learned tribunal deducted 1/4th without taking into consideration the actual dependents of the deceased.

6. The death of the victim in the accident involving the offending vehicle was not in dispute. It was also not disputed that the deceased was earningÂ

Rs. 18,000/- as monthly salary at the time of accident and his age was 32 years.

7. Learned Sr. counsel Mr. D. Saikia for the claimants, submits that the Insurance Co. did not adduce any evidence to substantiate the plea of

contributory negligence and as such, learned tribunal rightly saddled responsibility with the appellant being the insurer of the offending vehicle, which

was solely responsible for the accident.

8. The claimant stated in his claim petition that the accident occurred solely due to rash and negligent driving of the bus and examined one Diganta

Bora (PW 2), an eye witness of the occurrence, who testified that he was also proceeding in the same direction following the car driven by the

deceased. On reaching near Numiligarh tiniali, he noticed a 709 bus coming from the opposite direction in excessive speed and the driver of the bus

lost control, while negotiating a curve of the road, and as a result, abruptly crossed the lane and hit the Wagon-R, which was on the extreme side of

the road and was moving at a normal speed. The evidence of PW 2, who was eye witness of the occurrence remained unchallenged. Though, the

driver of the offending vehicle filed a written statement denying its liability, but he did not come to the witness box, either to substantiate his plea or to

controvert the pleadings and evidence adduced by the claimant to the effect, that the accident occurred solely due to rash and negligent driving of the

offending vehicle. The insurance co. examined one witness (DW 1), who happened to be its investigator, deposed that the accident occurred due to

head on collision. Evidently the DW 1 examined by the insurance co. was not an eye witness and as such, he did not have any personal knowledge as

to how the accident occurred.

9. Specific case of the claimant was that the accident occurred due to rash and negligent driving of the offending vehicle and such plea was

substantiated by the evidence of PW 2, who was an eye witness to the occurrence, which remained unimpeached. Whereas, no evidence was

available on record to show, that the deceased also contributed to the accident. The negligence or the contributory negligence as the case may be,

being the question of fact, it needs to be proved by adducing evidence. Therefore, in absence of any evidence to show that the deceased also

contributed to the accident, there could not be any presumption of contributory negligence merely on surmises and conjectures, only because of the

fact that the accident occurred due to head on collision of the two vehicles.

10. The Apex Court in Mira Devi & Anr.â?"VS-HRTC & Ors. reported in (2014) 4 SCC 511 observed that â??to prove a contributory negligence,

there must be cogent evidenceâ?. In the instant case when the claimant clearly established by pleadings and evidence, that the accident occurred

solely due to rash and negligent driving of the offending vehicle and the respondent did not adduce any evidence and even the driver of the offending

vehicle opted to remain away from the witness box, there was no question of attributing contributory negligence to the deceased without any evidence.

Therefore, the findings of the learned tribunal holding, that the accident occurred solely due to rash and negligent driving of the offending vehicle

cannot be faulted.

11. Relying on the decision of the Apex Court in Sarla Verma & Ors. â?"VS- Delhi Transport Corporation and Ors. reported in AIR 2000 9 SC

3104,Â Mr. Purkayastha contends, that while determining loss of dependency, only the net income has to be taken into consideration after deducting

the income tax. Learned counsel further contends, that deduction towards personal expenses of the deceased ought to have been 1/3 rd and not 1/4th

as the actual dependents of the deceased were three, being wife, son and mother. In the instant case, claim petition was filed by the parents, wife, son

and sister of the deceased. It was stated that the father was not dependent on the earning of the deceased. If the father of the deceased is not taken

into consideration, then the actual dependents of the deceased would remain four.

12. Be that as it may, what attracted my attention and also pointed out by the learned counsel for the claimants is that the learned tribunal awarded a

paltry amount on account of conventional heads like loss of consortium, funeral expenses and loss of estate. Learned tribunal also did not consider the

further prospect in view of the age of the deceased. Had the tribunal taken into consideration the future prospect and awarded reasonable amount

towards the conventional heads, the quantum of award even after deduction of income tax, if any, would have been more than what was awarded by

the tribunal. Therefore, keeping in view, that the award was already on lower side, I am not inclined to interfere with the quantum of award or to

reduce the award on the ground as stated above. This appeal, therefore, is found to be devoid of merit and accordingly,

dismissed.Â Â Â Â Â Â Â Â Â Â Â Â

13. Statutory amount of Rs. 25,000/- deposited by the Insurance Co. be adjusted against the award.

14. Send back the LCR immediately.

