
(2022) 09 GAU CK 0034
In the Gauhati High Court
Case No : Mac Appeal No. 78 Of 2015

National Insurance Company Limited	APPELLANT
Vs	
Md. Raket Ali	RESPONDENT

Date of Decision : 19-09-2022

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173
Indian Penal Code, 1860 — Section 279, 304A, 427

Citation : (2022) 09 GAU CK 0034

Hon'ble Judges : R.M. Chhaya, CJ

Bench : Single Bench

Advocate : R. Goswami, P.K. Goswami

Final Decision : Dismissed

Judgement

1. Feeling aggrieved and dissatisfied by the judgment & award dated 17.11.2014 passed by Motor Accident Claims Tribunal No.2, Kamrup at Guwahati in MAC Case No.1054/2012, the Insurance Company has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter after referred to as "1988 Act" for the sake of brevity).

2. The following facts emerge from the record of this appeal. It is the case of the respondent Nos.1 & 2/claimants that their son Manowar Hussain succumbed to the injuries received in an accident which took place at Mukalmua Chowk on 04.01.2012 as he was hit by a motorcycle bearing registration No.OR-19/L-9293. It is the case of the claimants that when the deceased reached the scene of accident, i.e. Sapkata, one cyclist tried to cross the road and at that moment to save the cyclist, he fell down on the road and at that moment he was knocked down by the aforesaid motor cycle, which was being driven in rash and negligent manner. It is the case of the claimants that their son sustained serious injuries and ultimately succumbed to the same during treatment on 05.01.2012.

3. An FIR was lodged with Mukalmua Police Station, which was registered as

Mukalmua P.S. Case No.13/2012 for alleged offences under Sections 279/304(A)/427 IPC. Thereafter, the present claim petition under Section 166 of the 1988 was filed claiming a total sum of Rs.10,00,000/- as compensation, wherein it was claimed that the deceased was 22 years old and was a businessman and was earning a sum of Rs.10,000/- per month.

4. Oral as well as the documentary evidence was adduced before the Tribunal and the Tribunal while partly allowing the claim petition, awarded a sum of Rs.8,85,000/- with 6% interest from the date of filing of the claim petition till its realization. Being aggrieved by the same, the present appeal is filed by the Insurance Company.

5. Heard Mr. R. Goswami, learned counsel for the appellant/ Insurance Company. Also heard Mr. P.K. Goswami, learned counsel, appearing for the respondent Nos.1 & 2/claimants. None appears for the respondent No.3.

6. Mr. R. Goswami, learned counsel appearing for the appellant/ Insurance Company has raised a sole ground to the effect that the Tribunal has committed an error while applying the multiplier. According to Mr. R. Goswami, learned counsel appearing for the appellant/Insurance Company, the multiplier has to be based upon the age of the claimant and not the deceased. On the aforesaid ground, it was contended by Mr. R. Goswami, learned counsel appearing for the appellant/Insurance Company that the appeal be allowed and the amount of compensation awarded by the Tribunal deserves to be modified.

7. Per contra, Mr. P.K. Goswami, learned counsel, appearing for the respondent Nos.1 & 2/claimants has opposed this appeal. Mr. P.K. Goswami contended that the appeal is bereft of any merits as the sole ground which is raised in this appeal is covered by the judgment of the Apex Court in the case of Sarala Verma (SMT) & Ors. -Vs- Delhi Transport Corporation, reported in (2009) 6 SCC 121 as well as National Insurance Company Limited -Vs- Pranay Sethi & Ors., reported in (2017) 16 SCC 680 and it was contended that the Tribunal has committed no error in applying the multiplier considering the age of the deceased and not considering the age of the claimants and submitted that the appeal be dismissed.

8. No other or further submissions, contentions or grounds have been raised by the learned counsels appearing for the respective parties.

9. Considering the binding decisions of the Apex Court, the Tribunal has committed no error in reckoning the age of the deceased while determining which multiplier. The multiplier is to be fixed as per the age of the deceased and not the claimants. Hence, the sole ground raised in this appeal being meritless, the appeal deserves to be dismissed and is hereby dismissed. However, there shall be no order as to cost.

10. The Registry is directed to send back the LCR to the Tribunal forthwith.