
(1998) 04 GAU CK 0024
In the Gauhati High Court
Case No : M.A.F. No. 33 of 1997

New India Assurance Co. Ltd.

APPELLANT

Vs

Member, M.A.C.T. and Others

RESPONDENT

Date of Decision : 07-04-1998

Acts Referred:

Constitution of India, 1950 — Article 227
Motor Vehicles Act, 1988 — Section 110B, 173

Citation : (1998) 2 GLT 103

Hon'ble Judges : V.D. Gyani, J;H.K.K. Singh, J

Bench : Division Bench

Advocate : B.B. Narzary, S. Chouhan, N. Tagia and A.C. Mahanta, in MAF 33 of 1997, for the Appellant; A. Roy, S.K. Barkataki, S. Chouhan and S. Mitra, for the Respondent

Final Decision : Dismissed

Judgement

V.D. Gyani, J.—Both these appeals, u/s 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"), arise out of the same judgment and award dated 28.8.96 passed by the learned Member, Motor Accident Claims Tribunal, Tinsukia in M.A.C. Case No. 28/95. While M.A.F. 33/96 is preferred by the insurer, M.A.P. 47/97 is preferred by the owner of the offending vehicle, Tanker No. NLA-3813.

2. Few basic facts may now be noted.

The deceased Bidyadhar Doley, a resident of Bhitore Bogori Gaon under Dhakuakhana Police Station of the district of North Lakhimpur was on his usual business trip to Tinsukia. He was a vendor of silk cloth. On 2.2.95 he was travelling from Dibrugarh to Jagun by bus No. AMB-218 belonging to Shyamlal Dutta and driven by Anjan Paik and insured with M/s. Oriental Insurance Co. Around 10 A.M. at a place called Tingrai Chah Pathar, within the jurisdiction of Digboi Police Station, an Oil Tanker No. NLA-3813, owned by M/s. Shashi Transport Service and driven by Man Singh Boraik, admittedly insured with M/s.

New India Assurance Co. Ltd dashed against the bus from behind as it was being rashly and negligently driven by the driver. As a result of the impact of this dash Bidyadhar suffered grievous injuries and eventually succumbed to the injuries. His age at the time of the accidental death was 35 years having an income of Rs. 3,000 to 4,000/- per month. The claimant Respondent, his son, claimed Rs. 3 lakhs as compensation. As has been noted by the Tribunal, the driver and owner of the bus did not contest the case. The owner driver of the tanker contested the claim raising the pleas of maintainability due to want of cause of action, limitation and non-joinder of parties etc.

3. The Tribunal on the basis of the pleadings framed the following issues:

i) Is the case maintainable?

ii) Whether the deceased died due to rash and negligent driving of this driver?

iii) Whether the Petitioner is entitled to any compensation and if so from whom and to what extent?

iv) To what any other relief or reliefs the Petitioner is entitled?

4. The claimant Respondent examined himself with two witnesses. The learned Member even while coming to the conclusion that the total amount of compensation comes to Rs. 4,92,000/-, yet awarded only Rs. 3,00,000/- as claimed by the Petitioner. Aggrieved by the same, both the owner and the insurer have preferred these appeals.

5. While Appellant insurer's contention is that the Tribunal erred in law in applying a multiplier higher than 18 contrary to what has been laid down by the Supreme Court in U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, Reliance has also been placed on Achutananda Baidya Vs. Prafulla Kumar Gayen and others, for invoking Article 227 of the Constitution. On the other hand, placing reliance on a judgment of the Supreme Court as reported in Skandia Insurance Co. Ltd. Vs. Kokilaben Chandradan and Others, and Urmilla Pandey and others Vs. Khalil Ahmad and others, counsel for the owner contended that the liability to pay compensation should have been fixed with the insurer alone, the owner should not have been fastened with the liability of payment of compensation. A mere reading of Section 110B of the Motor Vehicles Act would reveal how fallacious the submission is. The judgments relied upon the learned Counsel for the owner Appellant are not authorities for the proposition that the owner of an insured offending vehicle cannot be fastened with the liability of paying compensation. The language of Section 110B is wide enough, covered not only the owner but the driver of the vehicle as well along with the insurer if the vehicle is insured. Now coming to the appeal preferred by the insurer, the judgment relied upon was admittedly not made available to the learned Judge although it was delivered before the award was made but it was not reported till the date of delivery of the judgment by the Tribunal in the instant case. The learned Judge cannot therefore be blamed for not considering

the case. No doubt, the higher multiplier as propounded by the Supreme Court is 18, but in the instant case, the learned Member of the Tribunal having calculated the total amount of compensation payable as Rs. 4,92,000/- has awarded only Rs. 3,00,000/- as claimed by the claimant Respondent. So it is a matter of pure academics, even if the multiplier as suggested by the learned Counsel is applied, it is not going to make any material difference. The Tribunal having calculated the amount of compensation to the tune of Rs. 4,92,000/- has awarded only Rs. 3,00,000/- as claimed by the claimant Respondent. In such circumstances no interference is called for. Both these appeals are liable to be dismissed, they are accordingly dismissed with costs, counsel fee of Rs. 2,000/-.