
(2016) 03 GAU CK 0053
In the Gauhati High Court
Case No : MAC App. 124/2010

New India Assurance Co. Ltd.

APPELLANT

Vs

Purnima Singha and Others

RESPONDENT

Date of Decision : 28-03-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 158, Section 163 (A), Section 163(A), Section 163A, Section 163-A, Section 166, Section 167, Section 173
Penal Code, 1860 (IPC) — Section 302
Workmens Compensation Act, 1923 — Section 3

Citation : (2016) 2 AnWR 242 : (2016) 3 GauLJ 230 : (2016) 4 GauLR 734 :
(2016) 2 GauLT 862 : (2016) 3 TAC 829

Hon'ble Judges : Suman Shyam, J.

Bench : Single Bench

Advocate : M. Choudhury, Advocate, for the Appellant; P.K. Deka, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Suman Shyam, J.—1. Heard Ms. M. Choudhury, learned counsel appearing for the appellant. Also heard Mr. P.K. Deka, learned counsel appearing for the respondents/claimants. This appeal filed under Section 173 of the Motor Vehicle (M.V.) Act, 1988 is directed against the judgement and award dated 13/02/2009 passed by the learned Member, Motor Accident Claim Tribunal, Hailakandi in connection with MAC Case No. 97/2006 whereby and whereunder the learned Tribunal had awarded a sum of Rs. 4,87,000/- to the claimant as compensation on account of death of the husband of the claimant No. 1 late Thorbal Singha.

2. The brief factual background of the case, emerging from the record, is that the husband of the claimant No. 1, viz. Thorbal Singha was employed as a Driver under the respondent No. 5, i.e. the owner of a truck bearing registration No. AS-25-C/9161. The said truck was used as a public carrier. When the truck was carrying the load of salt from Guwahati to Silchar, the driver of the vehicle i.e. the husband of the claimant No. 1 was apparently attacked by some unknown

persons on the way while the truck was parked near a road side petrol pump at Umling on 16/09/2005. In the said incident, the driver Thorbal Singha sustained grievous injuries on his face and was strangled to death. The incident could be detected only in the late hours on 16/09/2005, whereafter, the Police at the Nangpoh Police Station, Meghalaya, had registered a case under Section 302 of the IPC. Post-mortem examination was conducted on the dead body of Thorbal Singha, which had also confirmed that the death had occurred due to strangulation. It is the case of the claimants that the deceased Thorbal Singha was an experienced driver having more than 12 years of professional experience and on the date of the death he was earning a salary of Rs. 4,000/- per month besides a daily allowance of Rs. 100/- per day in connection with his employment under the respondent No. 5. On such basis, the claimants had lodged the claim petition under section 163A of the M.V. Act, 1988 praying for awarding compensation for an amount of Rs. 7,37,500/- on account of death of late Thorbal Singha.

3. The respondent No. 5 herein i.e. the owner of the vehicle was impleaded as OP No. 1 who did not appear before the learned Tribunal despite receipt of notice of the case as a result of which the matter proceeded ex-parte against the owner of the vehicle.

4. The appellant insurance company, impleaded as OP No. 2 in the claim petition, had, however, appeared and contested the case both on facts as well as law points by filing a written statement. The claim of the claimants had been primarily resisted by the appellant on the ground that the incident that had allegedly taken place on 16/09/2005 leading to the death of the husband of the claimant No. 1 is not an accident involving the vehicle within the meaning of the M.V. Act, 1988. As such, no compensation was payable by the Insurer Company. The appellant had also denied that there was any valid insurance policy indemnifying the owner of the vehicle and therefore, the claimants were put to strictest proof in respect thereof.

5. During the course of trial, the claimants side had lead evidence bringing on record the Police report (Ext-1), death certificate issued by the hospital (Ext-2), post-mortem report (Ext-3), salary certificate issued by the owner (Ext-4) as well as insurance policy document besides all other relevant documents establishing the fact that there was a valid insurance policy which was covering the case of the claimant.

6. Upon examination of the materials available on record, the learned Tribunal had come to a conclusion that the claimants had succeeded in establishing that the deceased Thorbal Singha had died in an accident that had occurred on 16/09/2005 while he was driving the truck from Guwahati to Silchar. It was also established that the deceased Thorbal Singha was employed as a Driver under the respondent No. 5/O.P. No. 1 earning a salary of Rs. 4,000/- per month besides a daily allowance of Rs. 100/-.

7. By relying upon the decision of the Hon''ble Supreme Court rendered in the case of Rita Devi (Smt.) and others v. New India Assurance Company Ltd. reported in , (2000) 5 SCC 113, the learned Tribunal had held that the principles of law evolved by the Apex Court in the aforesaid decision would be applicable in the case of the claimants, thereby concluding that the claimants were entitled to receive compensation in the matter. Considering the beneficial object of the Act of 1988 as well as the facts and circumstances of the case, the learned Tribunal had awarded a sum of Rs. 4,87,000/- as compensation by taking the monthly income of the deceased to be Rs. 7,000/- per month and his age to be 45 years at the time of his death.

8. Assailing the impugned judgment and award, Ms. Choudhury submits that the materials on record would go to show that there was no accident that had taken place involving the vehicle in question. As such, it is not a case wherein the insurance company would have any liability to compensate the victim's family since it has not been established that the deceased Thorbal Singha had died in an accident involving the use of the vehicle. The learned counsel further submits that the decision in the case of Rita Devi (Supra) would not be attracted in the facts and circumstances of the present case, inasmuch as, there is nothing on record to indicate as to under what circumstances and with what motive the deceased person was attacked by the unknown miscreants. By referring to another decision of this court in the case of National Insurance Co. Ltd. v. Kasheni and others reported in (2005) 3 GLT 407, Ms. Choudhury submits that since there is no proximate relationship between the use of the motor vehicle and the accident resulting into death of the deceased person, hence, the insurance company would not have any liability in this case to pay compensation to the claimants.

9. The other grounds on which the impugned judgment and award has been assailed by the appellant is that the claim petition having been filed under Section 163(A) of the M.V. Act, 1988, the amount of compensation was strictly payable as per the structured formula contained in schedule II of the act. The learned counsel for the appellant submits that the Schedule II of the Act envisages annual income only up to the extent of Rs. 40,000/-. Since the annual income of the deceased person had been accepted to be more than Rs. 40,000/- per months, hence, the learned Tribunal did not have any jurisdiction to entertain the claim petition or to award the amount of compensation in a claim petition filed under section 163(A) of the Act of 1988.

10. Mr. Deka, learned counsel appearing for the respondent/claimants, on the other hand submits that the case of the claimants is squarely covered by the decision of the Apex Court rendered in the case of Rita Devi (Supra) and hence, the learned Tribunal has rightly awarded the compensation on correct appreciation of the law declared by the Hon''ble Apex Court. Mr. Deka further submits that since there is no dispute regarding the circumstances and the cause of death of the deceased husband of the claimant No. 1 and considering the fact

that there was sufficient evidence to establish the age and the earnings of the deceased Thorbal Singha, hence, the learned Tribunal did not commit any error in awarding the amount of compensation in the facts of the case.

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

12. From an examination of the pleaded stand taken by the parties as well as the material available on record it appears that the claimants have been able to establish the fact that Thorbal Singha was an employee under the respondent No. 5/O.P. No. 1 as a driver in respect of the truck bearing No. AS-25-C/9161 and his monthly salary was Rs. 4,000/- besides a daily allowance of Rs. 100/-. The aforesaid fact stood duly established from the testimony of the claimants witness as well as the Ext. 4 salary certificate issued by the owner of the vehicle. It is also the established position of fact that the deceased had died in an accident that had taken place while he was driving the truck from Guwahati to Silchar in course of his employment. Such being the position, the present is a case which is covered under Section 3 of the Workmen's Compensation Act, 1923 whereby the owner of the vehicle would have a statutory liability to compensate for the death caused to Thorbal Singha during the course of his employment.

13. It is settled law that once it is established that there was an employer-employee relationship between the owner and the victim and the death or injury had occurred during the course of employment of the employee, the owner would be liable to compensate the victim and/or the family as per the provisions contained in the W.C. act, 1923. The Insurance Company merely stands to indemnify the owner if the claim is covered under a valid insurance policy.

14. As has been noted hereinbefore, there is no dispute about the fact that there was a valid insurance policy issued by the appellant covering the instant case and nothing could be shown to indicate that there was any violation of the terms and conditions of the insurance policy. It is also not in dispute that the husband of the claimant No. 1 had died in course of his employment as a truck driver under the respondent No. 5. The appellant insurance company has not questioned the quantum of compensation awarded by the learned tribunal. The aforesaid facts having been established on the basis of cogent evidence brought on record, the insurance company would be liable to make payment of the compensation which is actually due and payable by the respondent No. 5/OP No. 1 owner. In such view of the matter, the question as to whether the death of Thorbal Singha had occurred due to the accident, out of the "use of the vehicle" within the meaning of M.V. Act 1988 or not would be inconsequential in the facts and circumstances of the case.

15. In the case of Rita Devi (Supra), it was a case where an auto-rickshaw was reportedly stolen and later on the dead body of the driver was recovered by the

Police on the next day, although the auto-rickshaw was never recovered. The question that fell for consideration of the Apex Court was as to whether the incident that had lead to the death of the driver of the auto-rickshaw could be said to be one arising out of the use of the vehicle deemed to be covered by the insurance policy. While dealing with the said question, the Apex Court had observed as follows:--

"10. The question, therefore, is can a murder be an accident in any given case? There is no doubt that murder, as it is understood, in the common parlance is a felonious act where death is caused with intent and the perpetrators of that act normally have a motive against the victim for such killing. But there are also instances where murder can be by accident on a given set of facts. The difference between a murder which is not an accident and a murder which is an accident, depends on the proximity of the cause of such murder. In our opinion, if the dominant intention of the Act of felony is to kill any particular person then such killing is not an accidental murder but is a murder simplicitor, while if the cause of murder or act of murder was originally not intended and the same was caused in furtherance of any other felonious act then such murder is an accidental murder."

16. In the present case, there is nothing to indicate that the death of Thorbal Singha was due to any personal enmity or was a preplanned act of murder. What is evident from the materials on record is that the deceased Thorbal Singh's presence in the scene of the incident in the aforesaid date and time was incidental to his employment as a driver of the truck. As such, but for his employment as a driver of the truck there would not have any possibility of the victim being present at the scene of the crime which had lead to loss of his life. Therefore, viewed from that angle also I have no hesitation in holding that the principle laid down in the case of Rita Devi (Supra) would be squarely applicable in the facts of the present case.

17. In the case of Kasheni (supra) relied upon by the learned counsel for the appellant, the facts situation in that case was completely different. In the case of Kasheni (Supra), the Division Bench of this Court had observed that the son was killed by unknown miscreants while he was travelling in an auto-rickshaw. However, the evidence on record suggested that there was a personal enmity between assailants and the son of the claimant whereby the deceased was targeted by the assailants and, therefore, the act of felony was held to be an act of murder. In the said case, this Court had further observed that the claimant had not succeeded in proving that the death of her son was caused by or was out of the use of the motor vehicle so as to confer power and jurisdiction to the learned Tribunal to award compensation. Therefore, the said decision would not have any application in the facts of the present case.

18. Coming to the next question raised by the learned counsel for the appellant suggesting a limited jurisdiction of the Tribunal to grant compensation under Section 163-A of the Act of 1988, it would be relevant to mention herein that

although the claimant's case was covered under the provisions of the W.C. Act, 1923, yet the claimants had chosen to institute the claim petition under Section 163-A of the M.V. Act, 1988. Section 163-A of the Act, 1988 reads as follows:--

"163A. Special provisions as to payment of compensation on structured formula basis.--

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule."

19. A perusal of Section 167 of the M.V. Act goes to show that in cases which are covered under the W.C. Act, 1923 as well as the M.V. Act of 1988, the claimant would have the option to proceed under either of the two Acts but not under both. While dealing with the law on the aforesaid subject, the Hon"ble Supreme Court had made the following observations in the case of Sanjeev Kumar Samrat v. National Insurance Company Limited reported in , (2014) 14 SCC 243:--

"20. At this stage, we may usefully refer to Section 167 of the Act which reads as follows:--

"167. Option regarding claims for compensation in certain cases.-

Notwithstanding anything contained in the Workmen's Compensation Act, 1923 (8 of 1923) where the death of, or bodily injury to, any person gives rise to a claim for compensation under this Act and also under the Workmen's Compensation Act, 1923, the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but not under both."

From the aforesaid provision, it is quite vivid that where a death or bodily injury to any person gives rise to a claim under the Act as well as under the 1923 Act, the said person is entitled to compensation under either of the Acts, but not under both."

From the above observation of the Apex Court, it is abundantly clear that in the

facts of the present case, the claimants had the option either to lodge a claim petition under the W.C. Act 1923 or to prefer the instant claim petition under the M.V. Act of 1988.

20. The learned counsel for the appellant has relied upon a decision of the Supreme Court in the case of Deepal Girishbhai Soni and others v. United India Insurance Co. Ltd. Baroda reported in , (2004) 5 SCC 385 to contend that the present is a case where the claimants ought to have lodged the claim petition under Section 166 of the Act of 1988. Since the same has not been done and rather the claim petition has been filed under Section 163-A, hence the amount of compensation has to be limited to such sum taking the annual income to be Rs. 40,000/- per annum as per the structured formula provided in the Second Schedule of the M.V. Act, 1988.

21. Dealing with the issue of jurisdiction of the Tribunal to award compensation in claim cases, the Hon''ble Apex Court has observed in the case of Nagappa v. Gurudayal Singh and others reported in , (2003) 2 SCC 274, that -

"7. Firstly, under the provisions of Motor Vehicles Act, 1988, (hereinafter referred to as "the MV Act") there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In an appropriate case where from the evidence brought on record if Tribunal/court considers that claimant is entitled to get more compensation than claimed, the Tribunal may pass such award. Only embargo is it should be "Just" compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable from the evidence. This would be clear by reference to the relevant provisions of the M.V. Act. Section 166 provides that an application for compensation arising out of an accident involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both, could be made (a) by the person who has sustained the injury; or (b) by the owner of the property; or (c) where death has resulted from the accident, by al or any of the legal representatives of the deceased; or (d) by any agent duly authorised by the person injured or al or any of the legal representatives of the deceased, as the case may be. Under the proviso to sub-section (1), al the legal representatives of the deceased who have not joined as the claimants are to be impleaded as respondents to the application for compensation. Other important part of the said Section is sub-section (4) which provides that "the Claims Tribunal shall treat any report of accidents forwarded to it under sub- section (6) of Section 158 as an application for compensation under this Act." Hence, Claims Tribunal in appropriate case can treat the report forwarded to it as an application for compensation even though no such claim is made or no specified amount is claimed."

22. From the above decision of the Apex Court, it is thus clear that the Tribunal would have the jurisdiction to award compensation in accordance with the provisions of the W.C. Act, 1923 even in an application filed under Section 163-A of the act of 1988. The Tribunal would have the jurisdiction to award

compensation that is found to be just and reasonable in the facts and circumstances of the case. Therefore, the jurisdiction to award "just" compensation would not be restricted merely because the claim petition had been filed under section 163 (A) of the Act of 1988. Having regard to the beneficial object of the both the Acts, mere mentioning of in-appropriate provision of the Act cannot be a ground to defeat the claim if the same is otherwise found to be good on merit. Since the present claim has been held to be one covered under the W.C. Act, 1923 and considering the fact that the need for proving rash and negligent driving would not arise in the facts of the case, hence, it is held that the learned Tribunal had the jurisdiction vested under the law to consider the claim petition on merit and award just compensation as may be warranted in the facts and circumstances of the case.

23. In the case of Dipal Girishbhai Soni (Supra), the question that arose for determination of the Apex Court was as to whether the claimant having availed an award under Section 163-A of the Act, can still maintain a separate petition under Section 166. While answering the aforesaid question, the Hon"ble Apex Court has held that Section 163-A was enacted for granting of immediate relief to be paid at a structured formula not only having regard to the age of the victim and his income but also the other relevant factors. The advantage of filing a petition under Section 163-A would be that the claimant in such cases would not be required to prove and establish negligence on the part of the offending vehicle. In the said decision it was observed that since the remedy for payment of compensation under Section 163-A and 166 is final and independent of each other, the claimant cannot pursue remedies under both the aforesaid provisions, which, however, is not the case in hand. Therefore, the reliance placed by the learned counsel for the appellant on the aforesaid decision of the Apex Court would be of no assistance to her in the facts of the present case. As such, I do not find force in the arguments advanced by Ms. Choudhury, on the aforesaid point.

24. For the foregoing reasons, the appeal is held to be devoid of any merit and is hereby dismissed.

There would be no order as to costs.

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