
(2007) 02 GAU CK 0055
In the Gauhati High Court

Niyati Majumder and Others

APPELLANT

Vs

National Insurance Co. and Another

RESPONDENT

Date of Decision : 22-02-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 163, 163A, 165, 166, 167

Citation : (2009) 4 GLR 430 : (2007) 2 GLT 983

Hon'ble Judges : T.N.K. Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

T.N.K. Singh, J.—Unsuccessful claimants preferred the present appeal under Sub-section (1) of Section 173 of the Motor Vehicles Act, 1988 against the judgment and order dated 31.7.1998 dismissing the case of T.S. (MAC) No. 328 of 1997 filed by the claimants-appellants before the Motor Accident Claims Tribunal, West Tripura, Agartala.

2. Heard Mr. S. Deb, learned senior counsel assisted by Mr. A. Das, learned Counsel appearing for the appellants as well as Mr. P. Gautam, learned Counsel for the respondents.

3. A core question i.e., whether the deceased Manik Majumder (husband of the appellant No. 1, brother of the appellant No. 2 and the son of the appellant No. 3) died due to an accident on 2.7.1997 arising out of use of the motor vehicle insured with the respondent No. 1 i.e., National Insurance Co. Ltd., Agartala Branch, 42, Akhaura Road, Agartala or not is required to be answered in the present appeal. In order to decide this core question it would be required to understand the respective cases of the parties in the present appeal.

4. One Shri Bhanu Reang, son of Bilwa Roy Reang, Santir Bazar, South Tripura, Bagafa lodged a report to the O.C., Manpathar Out Post, Santirbazar, South Tripura that vehicle i.e., Commander Zeep bearing No. TR-03-2119 was going to Udaipur by taking passenger from Santirbazar. On the way the extremists

attacked the Manubazar Gramin Bank and there was firing from all side. The driver lost control of the vehicle and the vehicle collided with nearby earth of the road. As a result the passengers as well as the driver were injured and the vehicle suffered heavy damage. Therefore, prayed for proper justice on investigation of the incident. On receipt of the report, a case being Santirbazar P.S. Case No. 43/97 dated 2.7.1997 was registered.

5. Manik Majumder was coming to his place of posting at Takma Charra from his house in the said vehicle i.e., Commander Jeep bearing No. TR-03-2119 and at that time some extremists tried to stop the vehicle. On seeing the extremists, the driver of the vehicle all of a sudden had taken high speed and failed to control the vehicle as a result the vehicle dashed and over leaped to the tilla land in the left side of Santir Bazar, Udaipur Road. In the said accident Manik Majumder and other passengers of the vehicle were injured and also the extremists fired upon the vehicle, which was overleaped on the left side of the Santirbazar. The deceased Manik Majumder also received bullet injury. Manik Majumder was taken to Tripura Sundari Hospital, Udaipur for treatment and the doctor of that hospital declared him dead. It is the admitted case of both the parties that the said vehicle of Commander Jeep bearing registration No. T.R. 03-2119 is insured with the respondent No. 1, National Insurance Co. Ltd.

6. The appellants filed an application u/s 166 of the Motor Vehicle Act, 1988 for granting compensation to the appellants for the death of Manik Majumder in the said accident before the Motor Accident Claims Tribunal, West Tripura, Agartala and it had been registered as Case No. T.S. (MAC) 328/97. In that claim application, the appellants specifically mentioned that the said accident was due to rash and negligent driving of the driver of the said offending vehicle i.e., Commander Jeep bearing registration No. T.R. 03-2119 and if the driver stop the vehicle on the signal of the extremists the offending vehicle would not meet an accident and the extremists must not have fired on the vehicle. The respondent No. 1 also filed the written statement in the said Case No. T.S. (MAC) 328/97 stating that the said suit T.S. (MAC) 328/97 is not maintainable in its present form and also that the claim has to prove that the vehicle is involved in the alleged accident and failing which the claim case of the appellants is liable to be rejected and dismissed. The learned trial Court framed the following four issues:

1. Whether Manik Majumder died in a motor accident occurred on 2.7.97 at about 11.30 a.m. at near the market of Birchandra Manu on Santirbazar Udaipur Road?
2. Whether said accident occurred due to rash and negligent driving of the driver of vehicle TR.-03-2119 (Commander Jeep)?
3. If so, what should be the amount of compensation?
4. Who will be liable to pay compensation to the claimant ?
7. In support of the case of the appellants, 2 PWs viz. namely PW-1 Smti. Niyati

Majumder and the PW-2, Smti Sova Roy were examined. PW-2 Smti. Sova Roy stated as follows:

On 2.7.1997 at around 10 a.m. I myself and my younger brother Manik Majumder started for going to Takma Cherra by availing Jeep No. TR-03-2119. On the way at Manubazar some tribal extremists having fire arms with them gave signal to stop our vehicle. Out of fear the aforesaid jeep driver did not stop the vehicle and gave excessive speed in driving the vehicle. For that reason he lost control over the vehicle and it dashed violently against a tilla and thereby the vehicle was capsized. After accident, extremists opened gun-fire.

In that accident I myself and other also sustained minor injuries. But my said brother sustained severe injuries. Thereafter my said brother was taken to Udaipur Hospital where he died on the same day. Said accident occurred due to rash and negligent driving on the part of the aforesaid jeep driver.

8. The statement of PW-2 Smti. Sova Roy was not shaken in the cross-examination.

9. The respondents did not adduce any evidence in support of their case. From the statement of PW-2 it is clear that on the way to Manubazar some tribal extremists having arms with them gave signal to stop the vehicle i.e., the offending vehicle but the driver of the offending vehicle did not stop the vehicle and drove the vehicle at the high speed and as a result he lost control of the vehicle and dashed against the tilla. After the accident the extremists opened fire and Manik Majumder also suffered bullet injuries.

10. The learned Tribunal, by the impugned judgment and order had decided the issue Nos. 1 and 2 in favour of the respondents and come to a finding that Manik Majumder died due to bullet injuries and in other words the cause of death of Manik Majumder was not on account of accident arising out of the use of the offending vehicle. After coming to such finding the learned Tribunal, by the impugned judgment and order dismissed the Case T.S. (MAC) 328 of 1997.

11. The type of accidents/or/incidents for which application for compensation u/s 166 of the Motor Vehicle Act could be filed are mentioned in the section itself. For deciding the core question involved in the present appeal Section 163A of the Motor Vehicle Act is also relevant. Accordingly, for ready reference the relevant portion of the Section 163A, Section 165 and Section 166 of the Motor Vehicle Act are quoted hereunder:

163 A. 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 authorized 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. Explanation -- For the purposes of this Sub-section, "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923 (8 of 1923).

165. Claims Tribunals (1) A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (hereafter in this Chapter referred to as Claims Tribunal) for such area as may be specified in the notification 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, or damages to any property of a third party so arising, or both.

166. Application for compensation - (1) An application for compensation arising out of an accident of the nature specified in Sub-section (1) of Section 165 may 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 all or any of the legal representatives of the deceased; or
- (d) by any agent duly authorized by the person injured or all or any of the legal representatives of the deceased, as the case may be. Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application."

12. The Apex Court in a case arising from this Court i.e., *Rita Devi and Ors. v. New India Assurance Co. Ltd. and Anr.* reported in (2005) 5 SCC 113 had discussed the expression "death due to accident arising out of the use of motor vehicle", in the context of application for compensation u/s 163 and 167 of the Motor Vehicle Act. The fact in that case was that the driver of the Auto Rickshaw while driving the autorickshaw was kidnapped and murdered by the miscreants for snatching the autorickshaw. The Apex Court held that the murder of the autorickshaw driver was due to an accident arising out of the use of the motor vehicle i.e., autorickshaw. The fact of the case is spelt out in para 6 of the judgment and the findings are in the para No. 6, 7, 9, 10, 11, 14 and 18 which are quoted hereunder:

6. On behalf of the appellants, Shri Anurabh Chowdhury contends that the deceased was employed to drive the autorickshaw for ferrying passengers on hire and on the fateful day the autorickshaw was parked at the rickshaw-stand at Dimapur and at about 5 to 6 p.m. some unknown passengers had engaged the said autorickshaw for their journey towards Singrijan area and thereafter nothing was known of the driver or rickshaw. It is only on the next day that the authorities were able to recover the body of the deceased and the autorickshaw

in question was never traced till date. The owner of the autorickshaw has, therefore, been compensated by the Insurance Company for the loss of the said autorickshaw, therefore, the murder of the deceased Dasarath Singh squarely comes within the word "death" due to accident arising out of the use of motor vehicle found in Section 163A(1) of the Act. Consequently, the Tribunal was justified in awarding the compensation claimed by the appellants....

7. As pointed out by the learned Counsel for the appellants, the Motor Vehicles Act does not define the word "accident". However, Section 163A of the Motor Vehicles Act provides for payment of compensation for the death or injury suffered in a motor vehicle accident on a structured formula basis in Section 163A of the Act. Sub-section (1) of the said section says that: (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 authorized 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.

9. A conjoint reading of the above two Sub-sections of Section 163A shows that a victim or his heirs are entitled to claim from the owner/insurance company a compensation for death or permanent disablement suffered due to accident arising out of the use of the motor vehicle (emphasis supplied), without having to prove wrongful act or neglect or default of anyone. Thus it is clear, if it is established by the claimants that the death or disablement was caused due to an accident arising out of the use of motor vehicle then they will be entitled for payment of compensation. In the present case, the contention of the Insurance Company which was accepted by the High Court is that the death of the deceased (Dasarath Singh) was not caused by an accident arising out of the use of motor vehicle. Therefore, we will have to examine the actual legal import of the words "death due to accident arising out of the use of motor vehicle".

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 felonious act which 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 simpliciter, 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."

11. In *Challis v. London and South Western Rly. Co.*, the Court of Appeal held where an engine driver while driving a train under a bridge was killed by a stone

willfully dropped on the train by a boy from the bridge, that his injuries were caused by an accident. In the said case, the Court rejecting an argument that the said incident cannot be treated as an accident held : The accident which befell the deceased was, as it appears to me, one which was incidental to his employment as an engine driver, in other words it arose out of his employment. The argument for the respondents really involves the reading into the Act of a proviso to the effect that an accident shall not be deemed to be within the Act, if it arose from the mischievous act of a person not in the service of the employer. I see no reason to suppose that the legislature intended so to limit the operation of the Act. The result is the same to the engine driver, from whatever cause the accident happened; and it does not appear to me to be any answer to the claim for indemnification under the Act to say that the accident was caused by some person who acted mischievously."

14. Applying the principles laid down in the above cases to the facts of the case in hand, we find that the deceased, a driver of the autorickshaw, was duty bound to have accepted the demand of fare-paying passengers to transport them to the place of their destination. During the course of this duty, if the passengers had decided to commit an act of felony of stealing the autorickshaw and in the course of achieving the said object of stealing the autorickshaw, they had to eliminate the driver of the autorickshaw then it cannot but be said that the death so caused to the driver of the autorickshaw was an accidental murder. The stealing of the autorickshaw was the object of the felony and the murder that was caused in the said process of stealing the autorickshaw is only incidental to the act of stealing of the autorickshaw. Therefore, it has to be said that on the facts and circumstances of this case the death of the deceased (Dasarath Singh) was caused accidentally in the process of committing theft of the autorickshaw.

18. In the instant case, as we have noticed the facts, we have no hesitation in coming to the conclusion that the murder of the deceased (Dasarath Singh) was due to an accident arising out of the use of motor vehicle. Therefore, the trial Court rightly came to the conclusion that the claimants were entitled for compensation as claimed by them and the High Court was wrong in coming to the conclusion that the death of Dasarath Singh was not caused by an accident involving the use of motor vehicle.

13. The ratio laid down in Rita Devi and Ors. (supra) had been followed by this Court (Division Bench) in Bipal Bashi Das reported in 2005 (3) GLT 407. The fact of the case in Bipal Bashi Das (supra) is also similar with that of the present appeal and it is also a case arising from a motor accident in the State of Tripura. The fact in that case is that the driver of the offending vehicle, inspite of request made by the passengers not to ply the vehicle i.e., the jeep through Amarapur - Teliamura Road as it was infested by extremists and there was a possibility of extremists's attack on the vehicle passing over the said road, drove the jeep through the said road in a very high speed. While driving that route some extremists started firing him at the vehicle as a result of the said firing the

claimant husband sustained bullet injuries and when he was brought to Teliamura Hospital he was declared dead. This Court (Division Bench) in Bipal Bashi Das (supra) held that:

16. From a careful reading of the above observations made in the case of Samir Chanda (supra), it is abundantly clear that when on account of a particular prevailing situation, an extra care is required to be taken before or while using a vehicle at a public place and when, in such a grave situation, if the owner of the driver, as the case may be, does not take the required care and on account of the omission or failure of the owner or driver to take such care, an injury is caused to, or death takes place of a passenger, such injury or death must be held to have been caused on account of accident arising out of the use of the vehicle and such an accident would justify claim for compensation under the M.V. Act.

14. The learned Counsel appearing for the respondents by referring to the decision of the Apex Court in Muralidhar Sarangi v. The New India Assurance Co. Ltd. As reported in 2000 AIR SCW 694 submits that as the death of Manik Majumder was not on account of any accident arising out of the use of the offending vehicle the claim application was not maintainable. We may refer to the decision of the Apex Court in Radhakrishna Agarwal and Others Vs. State of Bihar and Others, wherein it has been held that a judgment is to be understood in the context of the fact of the particular case.

15. Keeping in view of the ratio laid down in Radhakrishna Agarwal and Ors. (supra) it would be required to see the decision of the Apex Court in Muralidhar Sarangi (supra). The fact in that case is that the owner of the vehicle claimed for the damage caused to his vehicle by the extremists and the question of accident due to rash and negligent driving the vehicle for which owner claim compensation did not arise in that case. Such in a situation, the fact of the case in Muralidhar Sarangi (supra) are diametrically difference from the fact of the present case and as such the decision of the Apex Court in Muralidhar Sarangi (supra) will not support the case of the respondents in the present case.

16. For the reasons discussed above, this Court is the considered view that the proximate cause of the accident of the offending vehicle i.e., Commander Jeep bearing No. T.R. 03-2119 on 2.7.97 was due to driving the offending vehicle at high speed by the driver inspite of signal from the alleged extremists to stop the vehicle and firing to the vehicle by the extremists is incidental to the motor accident and as a result thereof bullet injuries to Manik Majumder. Issue Nos. 1 and 2 quoted above, in Case No. T.S. (MACT) No. 328 of 1997 are decided in favour of the present appellant as a result thereof the impugned judgment and order dated 31.7.1998 passed in Case No. T.S. (MACT) 328/97 is hereby set aside.

17. Title Suit (MACT) 328/97 is remanded back to the learned Tribunal with the direction to obtain evidence if necessary on the question of amount of compensation payable to the claim (appellants) and then pass any appropriate

order so as to enable the claimant (appellants) to receive the compensation.

With the above observations and directions the appeal stands allowed. No order as to cost. Send down the records to the learned Tribunal.