
(2009) 05 GAU CK 0031
In the Gauhati High Court

Oriental Insurance Co. Ltd.	Vs	APPELLANT
Cicilia Marbaniang and Others		RESPONDENT

Date of Decision : 19-05-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 279, 304A, 337

Citation : (2010) ACJ 1742

Hon'ble Judges : U.B. Saha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

U.B. Saha, J.—This appeal has been filed by the appellant Oriental Insurance Co. Ltd. against the judgment and award dated 19.8.2008 passed by the learned Member, Motor Accidents Claims Tribunal, Shillong (hereinafter referred to as "the Tribunal") in M.A.C. Case No. 60 of 2006. By the impugned judgment and award the learned Tribunal awarded an amount of Rs. 4,23,100 as compensation along with interest at the rate of 8 per cent per annum from the date of filing of the claim petition till payment of the same to the claimant-respondent due to death of her husband late Dren Dakhar in a vehicular accident.

2. The aforesaid appeal is filed by the appellant insurance company mainly on two grounds, firstly the fixation of quantum of award is without any acceptable evidence and secondly, the learned Tribunal passed the impugned award on the basis of an income certificate issued by an unauthorised person.

3. Brief facts of the case are as follows:

The late husband of claimant-respondent, a pedestrian was said to have been hit by a night super bus No. AS 01-5719 on 23.8.2006 at about 10.30 a.m. at Jaiaw Langsning on Guwahati-Shillong Road. Just after the accident he was taken to Civil Hospital, Shillong where he succumbed to his injuries at about 6 p.m. on the same day. A police case was registered regarding the aforesaid accident being Lumdiengiri P.S. Case No. 104 (8) of 2006 under Sections 279/337/304-A, Indian

Penal Code against the driver of the aforesaid vehicle (night super bus).

The claimant-respondent, wife of the deceased filed a claim petition before the learned Tribunal against the driver, owner and insurer of the aforesaid vehicle seeking compensation of Rs. 9,65,000 for the loss suffered by her.

4. The owner and the insurer appeared before learned Tribunal as opposite parties, but the driver failed to appear before the learned Tribunal in spite of receipt of the notice. Both the owner and the insurer filed their respective written statements and challenged the claim of the claimant-respondent. Though the O.P. owner filed his written statement, but ultimately failed to contest the case and on an application by the appellant O.P. insurance company u/s 170 of the Motor Vehicles Act, the learned Tribunal vide its order dated 29.3.2007 allowed the appellant O.P. insurance company to take the defence as available to the owner.

5. On the basis of the pleadings of the parties, the learned Tribunal framed the following issues:

(a) Whether the instant claim case as filed by the claimant is maintainable in its present form?

(b) Whether the accident was caused due to rash and negligent driving of the driver of the bus No. AS 01-5719, or was it caused due to the fault and contributory negligence of the deceased himself?

(c) Whether the driver of the bus No. AS 01-5719 had a valid and effective licence at the time of accident?

(d) Whether the OP/Oriental Insurance Co. Ltd. is liable to indemnify owner of the bus No. AS 01-5719 and pay compensation to the claimant?

(e) What amount, if any, is the claimant entitled to as compensation?

6. The claimant-respondent in support of her claim examined three witnesses including herself as CW 1 and two others as CW 2 and CW 3 while the O.P. appellant insurance company declined to adduce any evidence.

7. The claimant-respondent as CW 1 stated in her deposition that her deceased husband died in an accident which took place on 23.8.2006 at about 10.30 a.m. at Jaiaw Langsning on Guwahati-Shillong Road. The number of the vehicle involved in the accident was AS 01-5719, which was a night super bus (Tata) and at the relevant time he was aged about 46 years and used to earn daily sometimes Rs. 100 to Rs. 200 per day and his monthly income was Rs. 4,000 to Rs. 4,500. She also proved the certificate issued by the Headman (CW 2) of her village, which was marked as Exh. 1, death certificate of her deceased husband, Exh. 2 and F.I.R. as well as extract copy of the police report, Exh. 3 where the number and name of the driver of the offending vehicle as well as the material fact relating to negligence were recorded.

8. CW 2, the Headman of the village in which the claimant-respondent and her deceased husband resides/had been residing is also not an eyewitness of the accident. But he issued one certificate regarding the income of the deceased husband of the claimant-respondent.

9. CW 3, S.I. S. Lawphniaw, who investigated the criminal case relating to the accident of the deceased husband of the claimant-respondent in his deposition stated that on being informed he went to the spot about five minutes after the accident, but by that time, the offending bus was removed to a place near the Mahavira Park, while the deceased was removed to Civil Hospital, Shillong. He stated that the cause of the alleged accident was rash and negligent driving of the vehicle by the driver.

10. In his cross, CW 3 stated that he did not see the accident, but he examined two eyewitnesses, who have proved that the said accident was caused due to rash and negligent driving of the said vehicle by the driver. Though he examined two eyewitnesses, but he could not state the names of those eyewitnesses before the learned Tribunal. The first information report relating to the aforesaid criminal case was identified by him and it was also exhibited by the learned Tribunal.

11. The learned Tribunal considering evidence of CWs and the submission of the learned Counsel for the parties opined that the claimant-respondent has been able to prove negligence as the F.I.R. is very explicit about the cause of the said accident, particularly when CW 3, I/O of the case has corroborated the evidence of the claimant-respondent so far it relates to negligence of the driver of the offending vehicle. Learned Tribunal also opined that at the relevant time the driver of the said vehicle had a valid and effective driving licence. As the learned Tribunal held that the husband of the claimant-respondent died due to vehicular accident caused by the aforesaid vehicle, which was insured with the appellant insurance company, the appellant insurance company is liable to pay the compensation.

12. While calculating the amount of compensation, the learned Tribunal took note of the income of the deceased husband of the claimant-respondent as Rs. 150 per day meaning thereby his monthly income was considered as Rs. 3,900 for 26 days excluding four holidays. His (deceased) contribution to the family was assessed at Rs. 2,600 per month or annually Rs. 31,200. As the age of the deceased husband of the claimant-respondent was 46 years at the time of accident, the learned Tribunal has taken multiplier 13 for computation of just compensation. Thus the amount came to Rs. 4,05,600. To this, the learned Tribunal added Rs. 5,000 as funeral expenses, Rs. 10,000 towards loss of consortium and Rs. 2,500 for loss to estate. After calculation, total amount came to Rs. 4,23,100. Appellant insurance company was directed to pay the aforesaid amount after deducting Rs. 50,000 already received by claimant-respondent as interim relief. The appellant insurance company was further directed to pay interest at the rate of 8 per cent per annum on the amount from the date of filing

the claim petition till payment of the same to the claimant-respondent.

13. Being aggrieved by the aforesaid judgment and award, the appellant insurance company has filed the instant appeal.

14. Heard Mr. V.K. Jindal, the learned senior counsel, assisted by Mr. S. Jindal, learned Counsel appearing for appellant insurance company and Mr. H.K. Nath, learned Counsel for respondent-claimant.

15. Mr. Jindal, learned senior counsel would contend that the impugned judgment and award is liable to be set aside firstly on the ground that the quantum of award fixed by the learned Tribunal is not based on any acceptable evidence and secondly, the learned Tribunal gave its finding and passed the award on a claim petition where even the claimant did not plead regarding the negligence of the driver of the alleged offending vehicle, which is sine qua non for passing an award on a claim petition under the Motor Vehicles Act. He also contended that there was no evidence before learned Tribunal regarding the negligence of the driver of the offending vehicle. In support of his contention, he referred to the judgments of the Apex Court in the case of The Oriental Insurance Company Limited Vs. Meena Variyal and Others, and in the case of National Insurance Co. Ltd. Vs. Geeta Bhat and Others,

16. He finally contended that the evidence of the investigating officer of the criminal case, i.e., the case of the accident cannot be relied upon unless the material particulars are given in his statement. In support of his aforesaid contention, he referred to the decision of the Division Bench of this Court in the case of New India Assurance Co. Ltd. Vs. Phelishsa Bakai and Others,

17. Per contra, Mr. Nath, the learned Counsel for claimant-respondent submits that the cases relied on by learned senior counsel for the appellant insurance company have no application in the instant case as the facts of those cases are totally different from the case in hand. He submits that the evidence of the witnesses in a motor accident claim case should not be scrutinized in a manner as is done in a civil suit or a criminal case as in the civil case the rule is preponderance of probability and in a criminal case the rule is proof beyond reasonable doubt. He finally submits that in a motor accident claim the strict proof of negligence is not called for. But the presumption relating to negligence can be noticed from the documents of criminal case relating to the accident including the evidence of the I/O.

18. Having heard the learned Counsel for the parties and after going through the records available before this Court, this Court is unable to accept the submissions of Mr. Nath, learned Counsel for respondent-claimant wholly so far the evidence of the I/O is concerned as the Division Bench of this Court in Phelishsa Bakai's case 2007 ACJ 2388 (Gauhati), specifically held that evidence of investigating officer relating to an accident due to rash and negligent driving of the vehicle is nothing but a conclusion or opinion and such a conclusion or opinion cannot be relied on in absence of any other material or particulars or data furnished by the

said investigating officer. In the instant case, CW 3, the I/O had specifically stated that he was not the witness of the alleged accident. He only examined two eyewitnesses. Though the I/O was not the witness of the actual occurrence of accident, but he examined two eyewitnesses and gathered knowledge about the alleged accident and negligence of the driver of the offending vehicle from the evidence of those witnesses. Therefore, his entire evidence cannot be brushed aside when he also corroborated the evidence of CW 1, the claimant-respondent who stated that her husband died due to a vehicular accident, particularly by the offending vehicle No. AS 01-5719 (night super bus). More so, Sub-section (6) of Section 158 of the Motor Vehicles Act also casts a duty on the officer-in-charge of the police station to forward a copy of the first information report regarding any vehicular accident involving death or bodily injury of any person within 30 days from the date of recording of information or as the case may be to the Claims Tribunal having jurisdiction and a copy thereof to the concerned insurer and Sub-section (4) of Section 166 also casts a duty on the Tribunal to treat such a report of accident as forwarded to it as an application for compensation under the Act meaning thereby even if no claim petition is filed u/s 166 (1) of the Act either by the injured or by the legal representatives of the deceased or any agent duly authorised by the person injured or of any of the legal representatives of the deceased then also the learned Tribunal can treat the report forwarded before it as per Sub-section (6) of Section 158 of the Act as an application for compensation. In that event also the evidence of the investigating officer has to be given importance as his statement is mainly based on the report where the materials relating to the alleged accident as well as the negligence of whom the accident occurred are available. Not only that as per Sub-section (1) of Section 169 of the Act, entire inquiry by the learned Tribunal is summary in nature. In the instant case, when the I/O of the case came before the Tribunal and stated that there was negligence on the part of the driver of offending vehicle and he inferred that position by way of investigation, the Tribunal has rightly believed the statement of the I/O, i.e., CW 3. More so, unless the rules framed by the statute specify the nature of pleading, it is not necessary in a summary trial to plead the details of the accident and the negligence of the person due to whom the accident occurred. It is informed by the Bar that no rule is framed by the State of Meghalaya as authorised by the statute specifying the nature of pleadings in the claim petition u/s 166 of the Act. If the evidence of negligence is available either from the evidence of the witnesses or from the report then that will suffice the purpose. In the instant case, the negligence of the driver of the offending vehicle is available from the police report as well as from the statement of the I/O of the case, i.e., CW 3. Hence, it cannot be said that the evidence of I/O cannot be relied upon as contended by Mr. Jindal, learned senior counsel for the appellant insurance company. Furthermore, on a plain reading of the case of The Oriental Insurance Company Limited Vs. Meena Variyal and Others, , it appears that the fact of that case is totally different from the case in hand as in that case though another employee of the owner of the offending vehicle was driving the vehicle at the time of accident, but there was no finding on his

negligence. But in the instant case, the learned Tribunal recorded the finding relating to the negligence of the driver of the offending vehicle (night super bus) on the basis of the evidence of the claimant-respondent and the I/O of the case (CW 3). In para 12 of National Insurance Co. Ltd. Vs. Geeta Bhat and Others, the Supreme Court referred the judgment of Meena Variyal (supra) and as such it is not necessary for this Court to discuss the case of Geeta Bhat (supra) for decision of this case. Hence, the aforesaid cases cannot be treated as precedent as it is settled by this time that one additional or different fact can make the world of difference between conclusions in two different cases even when the principles are applied in each case of similar facts. [See The Regional Manager and Another Vs. Pawan Kumar Dubey, and Gangadhar Behera and Others Vs. State of Orissa,

19. It is the admitted position that the O.P. appellant insurance company as well as the owner O.P. did not adduce any evidence before learned Tribunal. According to this Court, the income certificate issued by CW 2, the village Headman, on the basis of which the learned Tribunal assessed the income of the deceased, cannot be treated as a proper income certificate as he is neither authorised by law to issue such certificate nor he is the employer of the deceased, husband of claimant-respondent. In this situation, the court has to consider what should be the real daily income of a water carrier to slaughter houses like the deceased. As there was no valid document before the learned Tribunal in support of the income of the deceased husband of the claimant-respondent, the income should be calculated considering the daily wages of a day labourer. Nowadays, a daily labourer's income is not less than Rs. 100 per day even some times it is more than Rs. 150 per day. If the minimum per day income of the deceased is considered as Rs. 100 then the monthly income of the deceased comes to Rs. 3,000. As such his contribution to his family was Rs. 2,000 per month deducting 1/3rd of total income as personal expenses. As he died at the age of 46 years, the suitable multiplier would be 13 for computation of just compensation. Therefore, the amount of compensation comes to Rs. 3,12,000 (Rs. 2,000 x 12 x 13). To this the other amount awarded by the learned Tribunal towards funeral expenses, loss of consortium and loss to the estate be added. Thus, the total amount of compensation comes to Rs. 3,29,500 (Rs. 3,12,000 + Rs. 5,000 + Rs. 10,000 + Rs. 2,500). From this amount Rs. 50,000 which the claimant-respondent has already received as interim relief be deducted. Therefore, the appellant insurance company is liable to pay Rs. 2,79,500 along with interest at the rate of 8 per cent per annum from the date of filing the claim petition till the payment is made to the claimant-respondent.

20. It is submitted by the learned Counsel for the appellant insurance company that the appellant insurance company has already deposited Rs. 25,000 as statutory deposit and half of compensation amount awarded by the learned Tribunal before the Registry of this Court. Therefore, the appellant insurance company shall deposit the rest of the amount after adjustment before the learned Tribunal within 2 months from today. The claimant-respondent is at

liberty to withdraw the amount already deposited by the appellant insurance company before the Registry of this Court on proper identification.

21. The appeal is partly allowed with the modification of the impugned judgment and award to the extent indicated above.