

(2019) 08 GAU CK 0072

In the Gauhati High Court

Case No : Motor Accident Appeal No. 56 Of 2016, Miscellaneous Case No. 66 Of 2016

Oriental Insurance Co. Ltd

APPELLANT

Vs

Junu Baishya And 6 Ors

RESPONDENT

Date of Decision : 27-08-2019

Acts Referred:

Citation : (2019) 08 GAU CK 0072

Hon'ble Judges : Nelson Sailo, J

Bench : Single Bench

Advocate : M Choudhury, A Gohainr, S Dutta, T Das

Final Decision : Disposed Off

Judgement

1. Heard Mr. S. Dutta, the learned counsel for the appellant as well as Mr. A. Gohain, the learned counsel for the respondent Nos. 1 to 3 (claimants).
2. This is an appeal against the Judgment and Order dated 12.03.2013 passed by the learned Member, Motor Accident Claims Tribunal No. 2, Kamrup (Guwahati) in MAC Case No. 1646/2006, whereby, the respondents claimants have been awarded a sum of Rs. 8,81,500/- alongwith interest @ 9% per annum from the date of filing the claim till realization as compensation for the death of the deceased Sh. Ajoy Kumar Baishya, who is the husband of the respondent No. 1 and the father of the respondent Nos. 2 and 3. The main ground of challenge by the appellant insurance company is that the deceased died due to hepatic failure/ liver failure after about 7 months from the date of the accident and therefore, his death is not attributable to the motor accident on the basis of which, claim for compensation was being made. It is the case of the appellant that although the post mortem report of the deceased speaks about some injuries which were ante-mortem and consistent with vehicular accident but however, the opinion or evidence of the treating Doctor was not led by the claimants to establish that the deceased died due to the motor vehicular accident. As such, the appellant contends that the Judgment and Order of the

Tribunal is misconceived and erroneous. Being aggrieved thus, the appellant is before this Court.

3. Brief facts of the case is that on 21.05.2006, the deceased Ajoy Kumar Baishya was travelling by an Auto rickshaw from Baihata side towards Guwahati. On reaching Saraighat Bridge, one truck bearing Registration No. ML- 10/5084 coming from the opposite direction dashed against the Auto rickshaw from the front side and as a result, the deceased sustained grievous injuries on his head and a fracture on his right leg, hip joint and other parts of his body. He was taken to Sanjeebani Hospital, Maligaon and thereafter on the next day, he was shifted to Guwahati Medical College Hospital (GMCH) and was treated as indoor patient w.e.f. 22.05.2006 to 18.07.2006. As a result, the deceased filed a claim application before the Tribunal claiming compensation for the injuries sustained by him. However, he expired on 25.01.2007 and therefore his legal heirs i.e. his wife and two daughters amended the claim as a death case. Consequently, the Tribunal vide Judgment and Order dated 12.03.2013 disposed of the claim by awarding compensation to the claimants as already mentioned hereinabove.

4. Mr. S. Dutta, the learned counsel for the appellant submits that from the Post-Mortem examination report exhibited as Exhibit-2 by the claimants, it was opined that death was caused due to hepatic failure. The injuries were ante-mortem and consistent with vehicular accident. However, the opinion of the treating orthopedic Doctor was found to be essential and accordingly, a remark to this effect was made in the said report. Despite this, the learned Tribunal came to a conclusive finding that the injured died due to the injury sustained by him in the motor vehicular accident. As such, the finding of the Tribunal is only misconceived and erroneous and liable to be interfered with. He further submits that the discharged certificate exhibited by the claimants as Exhibit-4 does not indicate that the injury sustained by the deceased was due to a motor vehicular accident. By referring to Exhibit-5 (17) and 5 (18), the learned counsel submits that the same only shows that the deceased was having kidney and liver problem. Although, such examination was done during the time of his hospitalization but nevertheless, it shows that the deceased was having kidney and liver problem even at that time. He further submits that there are no documents or evidence to connect that the kidney and liver problem are attributable to the injuries sustained by the deceased in the motor vehicular accident. He also submits that after the deceased was discharged from the hospital on 18.07.2006, there are no documents to show that he continued taking medical treatment so as to connect the cause of his death on 25.01.2007 to be due to the motor vehicular accident. Under the circumstance, he submits that the impugned Judgment and Order being erroneous and misconceived, the same should be set aside and quashed.

5. Mr. A. Gohain, the learned counsel appearing for the respondents claimants, on the other hand, submits that the deceased was working as a Constable Operator under the Assam Police Radio Organisation with a monthly salary of Rs.

7463/-. On that fateful day, i.e. on 21.05.2006, while he was travelling in an Auto Rickshaw, the offending truck coming from the opposite direction dashed against the Auto and as a result of which, the deceased sustained grievous injury on his person, which included fracture and dislocation of right hip and also undisplaced tibial plateau fracture of his right leg. He was initially taken to Sanjeebani Hospital at Maligaon but thereafter, shifted to GMCH the next day for his treatment. The deceased was hospitalized w.e.f. 22.05.2006 to 18.07.2006 i.e. for a total period of 59 days. On being discharged on 18.07.2006, he was advised to revisit the Orthopedic OPD after four weeks. Referring to the discharged certificate, marked as Exhibit-4, the learned counsel submits that the nature of injury sustained by the deceased has clearly been mentioned. As advised, the deceased revisited the hospital on 21.08.2006, on which date, X-ray of his leg as well as other test were performed. The deceased on account of injury therefore filed a claim before the Tribunal but subsequently, expired on 25.01.2007.

6. Referring to the Post-Mortem examination report, the learned counsel submits that it has been clearly indicated that injuries were ante-mortem and consistent with vehicular accident, which only goes to show that the death of a deceased is clearly attributed to a motor vehicular accident. The learned counsel further submits that the evidence of the defendant witness No. 1, i.e. the Investigating Officer who conducted into the matter would also go to show that the deceased met with an accident at Saraighat while travelling in an Auto when the Auto was hit by a truck. He submits that as per the said deposition of DW-I, the deceased sustained injuries in the accident and he was taken to Sanjeebani Hospital whereafter, he was referred to the GMCH. Subsequently, he expired and his dead body was sent for Post-Mortem examination. He therefore submits that there cannot be any manner of doubt that the death of the deceased was due to a motor vehicular accident which occurred on 21.05.2006. In support of his submission, the learned counsel relies upon the following decisions:-

1) Smt. Hilaria Malong Wife of Late Thomas Amsong Vs. Md. Sajahan Ali Son of Md. Abdul Khalek & Ors, 2017 0 Supreme (Gau) 954.

2) Union of India (UOI) and Another Vs. Bholirai, 2011 (4) GLR 380.

7. I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record including the record requisitioned from the Tribunal.

8. As may be seen, the main ground of challenge of the impugned Judgment and Order by the appellant insurance company is that the death of the deceased cannot be related with the accident. The motor vehicular accident occurred on 21.05.2006 and the deceased expired after about 7 months from the date of the accident i.e. on 25.01.2007. Therefore, this appears to be the sole ground to be considered in this appeal. Amongst the documents exhibited before the Tribunal, it may be seen from the exhibit-4 i.e. the discharge certificate issued by the

GMCH that the deceased was diagnosed with central fracture dislocation of his right hip due to alleged fall on 21.05.2006 with undisplaced tibial plateau fracture of his right leg. Accordingly, the deceased was treated for his injury. The said exhibit further indicates that he was required to revisit the Orthopaedic OPD after four weeks. As advised, he revisited the hospital on 21.08.2006, wherein some X-ray were done as advised. It may be noticed that besides this, there are no documents exhibited by the claimants to show that he was being treated for the injury he suffered in the accident till he expired on 25.01.2007. The post-mortem report exhibited as exhibit-2 contains an opinion to the effect that death was due to hepatic failure. In addition to this, injuries were found ante-mortem and consistent with the vehicular accident. But however, it was remarked that the opinion of the treating Orthopaedic Doctor was essential. It is further noticed that the deposition of the defence witness No. 1, who was the Investigating Officer reveals that the deceased met with a motor vehicular accident on 21.05.2006 and he took him to Sanjeebani Hospital whereafter, the injured was referred to GMCH. Therefore, in so far as the cause of the injury is concerned, it only appears that the same was caused due to the motor vehicular accident that happened on 21.05.2006. However, in so far as the cause of the death of the deceased is concerned, i.e. after about 7 months from the date of the accident, there appears to be non-conclusive evidence to show that he expired due to the motor vehicular accident.

9. This Court in the case of *Union of India and Another Vs. Bhola Rai*, 2011 ACJ 2603 relied upon the Apex Court decision in *Bimla Devi Vs. Himachal RTC*, reported in (2009) SCC 13 530 held that claimants before the Motor Accident Tribunal are merely to establish their case on the touchstone of preponderance of probability and the standards of proof beyond the reasonable doubt cannot be applied. There is no argument with the fact that the deceased met with a motor vehicular accident but as already mentioned hereinabove, the cause of his death after about 7 months from the date of accident admittedly from the material available on records cannot be connected to the accident. Similarly, the case of *Smt. Hilaria Malong (Supra)* will not render any assistance to the respondents/claimants since even this case pertains to the casual connection between injury and the death of the victim. This is because this Court as already mentioned above has found that from the discharge of the deceased upto the time of his death, the claimants have not been able to show any documents to establish that there was a subsisting treatment for the injury caused due to the accident. I therefore find merit in the appeal. While coming to such finding, it is noticed that during the pendency of the appeal, the appellant was directed to deposit 50% of the awarded amount and the same has already been disbursed to the respondents claimants. Having regard to the fact that prior to the amendment of the claim, the deceased himself had submitted a claim for injury and therefore, under such circumstance, I find that the ends of justice will be served if the amount of compensation already withdrawn by the respondents claimants be not recovered for them. It is ordered accordingly. The impugned judgment and award

stands interfered for the remaining amount which has not yet been paid.

10. The appeal accordingly stands disposed of in the above terms.

11. The appellant will be at liberty to withdraw the statutory deposit of Rs. 25,000/-which was deposited at the time of filing of the appeal as per the usual procedure. Registry to send back the LCR.