
(2023) 02 GAU CK 0058
In the Gauhati High Court
Case No : MAC App. No. 829 Of 2018

Oriental Insurance Co. Ltd	Vs	APPELLANT
Lipika Mondal Barman And 8 Ors		RESPONDENT

Date of Decision : 23-02-2023

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 166

Citation : (2023) 02 GAU CK 0058

Hon'ble Judges : Arun Dev Choudhury, J

Bench : Single Bench

Advocate : M Choudhury, Ia Talukdar, R Goswami, M Bora

Final Decision : Dismissed

Judgement

1. Heard Ms. M Choudhury, learned counsel for the appellant. Also heard Mr. IA Talukdar, learned counsel for the respondent Nos. 1 to 4, Mr. R Goswami, learned counsel for the respondent No. 7 and Ms. M Bora, learned counsel for the respondent No. 9.

2. The present appeal is filed assailing the judgement and award dated 29.09.2015 passed in MAC Case No. 1/2015 by the learned Motor Accident Claims Tribunal, Kokrajhar.

3. The brief fact leading to filing of the present appeal can be summerized as follows:

I. The claimant No. 1 is the wife, claimant No. 2 is the mother and claimant Nos. 3 and 4 are the minor daughter and son of the deceased Manik Chandra Barman, who died in a motor vehicular accident.

II. The claimants by filing the connected claim petition under Section 166 of the MV Act, 1988 claims that Manik Chandra Barman sustained grievous injury on 02.08.2014 at about 1.30 p.m. and later expired due to such injury.

III. It is also the claim of the claimants that at the time of accident, the deceased

was driving a motorcycle bearing registration No. AS-16 A-7446. According to the claimants the offending vehicle hit the motor cycle from behind.

4. All the opposite parties i.e. the owner, driver of the offending vehicle and the Insurance Company of both the vehicles filed written statements. The Oriental Insurance Company under which the offending vehicle was registered has denied their liabilities. The United India Insurance Company Limited, under whom the motor cycle was insured, also denied their liability.

5. The claimants examined three witnesses including herself to prove her claim. The Oriental Insurance Company Limited examined none, however, they cross-examined the witnesses of the claimants. The United India Insurance Company though filed written statement but had not led any evidence to improve of their pleadings.

6. After examination of the witnesses and evidences, the learned court below came to a conclusion that the deceased sustained injury when he was hit by the offending vehicle, driven in a rash and negligent manner and out of such injury the deceased succumbed to death. The learned Tribunal also came to a conclusion that the driver of the offending vehicle was at fault.

7. Upon such conclusion, the learned Tribunal below awarded the compensation of Rs. 27,17,121/-. Being aggrieved, the Oriental Insurance Company Limited, insurer of the offending vehicle has approached this court by filing the present appeal.

8. Though, some grounds are taken in the appeal memo, the only ground argued to challenge the impugned judgment is that two vehicles were involved and both the vehicles were insured, however, the learned Tribunal below ignoring such fact fastened the liability only on the appellant Insurance Company ignoring that there was contributory negligent on the part of the deceased who was riding the motor cycle.

9. Since the only one point has been urged, let this court now examine the evidences available on record to see whether there is any contributory negligence on the part of the deceased and therefore, the other Insurance Company under whom the motor cycle was insured is also liable for payment of damages and compensation to the claimant.

10. The appellant Oriental Insurance Company filed two written statements, one is in respect of application under Section 140 MV Act and other under Section 166 of MV Act. In the written statement filed under Section 140 of the MV Act following stand was taken regarding involvement of two vehicles:

"That, as there is involvement of two vehicles, hence the question of Interim Relief this answering Opposite Party alone under Section 140 of M.V. Act does not arise."

11. The written statement filed under Section 166 of MV Act, there is no pleading

whatsoever regarding any contributory negligence on the part of the deceased, who was driving the motor cycle. The appellant Oriental Insurance Company did not lead any evidence in support of their pleadings.

12. On perusal of the cross-examination of three witnesses of the claimants, it is clear that there is no cross-examination regarding any contributory negligence on the part of the deceased and there is not even any suggestion to that effect i.e. suggesting any contributory negligence on the part of the deceased.

13. It is well settled that when a person, who either contributes or is the author of an accident would be liable for his contribution to the accident having taken place. It is equally well settled that the burden of proof for contributory negligence on the part of the deceased has to be discharged by the opponent who alleges the same.

14. In the present case it is the duty of the appellant Insurance Company to discharge such burden as they have taken point of contributory negligence on the part of the deceased. As discussed hereinabove, only stating at paragraph 3 in the written statement filed under Section 140 MV Act that there is involvement of two vehicles, hence the question of interim relief does not arise, cannot be said to be a pleading alleging negligence contributed by the deceased in the accident. Even if this court assumes that such pleading can be treated as a pleading of contributory negligence, the appellant Insurance Company has not laid any evidence in support of such pleading. While cross-examining the claimants' witnesses the appellant had not even whispered or suggested that there was any contributory negligence on the part of the deceased.

15. Therefore, in view of the above, this court is of the opinion that this appeal lacks merit and accordingly same is dismissed.

16. The statutory deposit made before this court be returned to the Insurance Company after proper verification.

17. It is submitted that 50% of the awarded amount deposited before this court, had already been withdrawn by the claimants. Rest amount due shall be paid in term of the impugned judgment within a period of six weeks along with the accrued interest.

18. It is needless to say that if any amount had been paid to the claimants, same may be deducted while satisfying the award.