

(2018) 10 GAU CK 0018
In the Gauhati High Court
Case No : Mac Appeal No. 135 Of 2013

**Oriental Insurance Co. Ltd @APPELLANT@Hash Mrs. Rwimwnthi
Basumatary**

Date of Decision : 05-10-2018

Acts Referred:

Citation : (2018) 10 GAU CK 0018

Hon'ble Judges : Rumi Kumari Phukan, J

Bench : Single Bench

Advocate : S Dutta, I A Talukdar, M U Mahamud

Final Decision : Dismissed

Judgement

Rumi Kumari Phukan, J.

1. Heard the submission of learned counsel for appellant Mr. S Dutta and learned counsel for the Respondents Mr. I A Talukdar & Mr. M U

Mahmud, learned counsel for the owner/respondent.

2. This claim petition was preferred by Mrs. Rwimwnthi Basumatary, claiming compensation u/s 166 of M.V Act for the death of her son Kamal

Basumatary in the motor vehicle accident on 30.6.2005.

3. The case of the claimant in brief is that on 30.6.2005, the deceased Kamal Basumatary who was a handyman in the vehicle No. As-01/A-9088

(truck) proceeding towards at about 12.30 P.M, the said vehicle met with an accident at Chandpur on the road due to rash and negligent driving of the

vehicle by the driver. The injured Kamal Basumatary was immediately admitted to RNB Civil Hospital, Kokrajhar for his treatment but he succumbed

to his injuries there. He was aged about 21 years old and was earning Rs. 3,000/- per month as handyman. It is further stated that the offending

vehicle No. AS-01/A-9088 (Truck) was duly insured with Insurance Policy by The

Oriental Insurance Co. Ltd. and on the date of accident the vehicle was under coverage of Insurance Policy. Hence, this claim case has been filed by the claimant for getting compensation of Rs. 5,00,000/-.

4. The learned Tribunal issued notice to the owner, driver and the insurer of the vehicle and in turn all of them contested the case by filing their written statement. The owner and driver in their written statement have submitted that the accident took place due to sudden lock of the steering which was mechanical defect and the vehicle was duly insured with the Oriental Insurance Co. Ltd. at the time of accident and as such the compensation, if any, is to be indemnified by the Insurance Company. In their written statement, it is admitted by the owner of the vehicle that the deceased was the handyman of the truck as referred in para 4 of the claim petition.

5. The Oriental Insurance Company in their written statement has however contended that deceased Kamal Basumatary was not a handyman of the truck at the time of accident as he was the passenger of the offending vehicle of the truck which is a goods carrying vehicle. It is stated that at the time of accident, the said vehicle was carrying as many as 100 persons to attend the meeting at Kajal Gaon and carrying passengers in goods vehicle is itself a violation of policy condition of the Insurance Company, so the claimant is not entitled to get any compensation.

6. Upon the pleadings necessary issues were framed by the learned Tribunal and after examining the evidence adduced by both sides, the Tribunal come to a findings that the accident occurred due to the fault of the aforesaid truck and the deceased was the handyman of the aforesaid truck and as the vehicle was duly insured at the time of accident with the appellant/Insurance Company, so they are directed to pay the award amounting to Rs.

3,70,000/- to the claimant as compensation. The monthly income of the deceased as handyman was taken as Rs. 3,000/- per month and after deducting 1/3rd personal expenses and multiplier as per the schedule, adding with another amount for funeral expenses and loss of estate etc., the amount of compensation was calculated.

7. The present appeal has been preferred by the Insurance Company solely on the ground that the learned Trial Court has erred in awarding compensation to the claimant as the deceased was travelling in the said vehicle as a gratuitous passenger and there is no policy coverage in regard to

the accident towards such gratuitous passenger. The quantum of compensation however not challenged.

8. I have heard the submission of learned counsel for the appellant Mr. Dutta as well as the learned counsel for the respondents Mr. Talukdar for the claimant/respondent and Mr. M U Mahmud for the respondent/owner of the vehicle.

9. According to the learned counsel for the appellant as per the FIR produced by the respondents indicate that the offending vehicle which met with

an accident carrying 100 passengers and one of died and there is no mention that the said person was handyman of the vehicle, so it can be safely

hold that deceased was also a passenger not a handyman as claimed by the claimant. Relying on decision of (2009) 2 SCC 75 it contends that as the

FIR is a part of the claim petition so the same is admissible in evidence and the claimant in the case, also cannot be permitted to resort to another facts

in the claim petition.

10. Vehemently opposing such contention, the learned counsel for both the respondents have pointed towards the pleadings as well as evidence on

record which clearly stated that the deceased was handyman of the aforesaid vehicle, not a gratuitous passenger which has been amply proved by

requisite witness by the claimant and as such the same cannot be refuted by the appellant/Insurance Company by relying on FIR which was not filed

by the claimant but by police officer on a derivative knowledge who is not a eye witness to the occurrence. further, the owner and driver of the

offending vehicle specifically admitted the aforesaid facts that the deceased was the handyman of the offending vehicle at the time of accident and so

there cannot be denial part on the part of Insurance Company who have no personal knowledge of the occurrence.

11. The learned counsel Mr. Mahamud appearing for the owner of the vehicle has also admitted the aforesaid aspect that deceased was a handyman

of the offending vehicle at the relevant time. Equally the learned counsel for the respondent has also submitted that a plea of the appellant which is

based on assumption and presumption without any definite evidence cannot prevail over the positive evidence of the claimant's side as well as the

admission of the owner of the vehicle.

12. In pursuance of the submission this Court gone through the evidence in the

LCR and the pleadings between the parties. The witnesses of the claimant three in number specifically proved that the deceased was working as a handyman in the vehicle and he was also proceeding in the vehicle along with other passenger and he was known to them being a person of same locality. Their evidence remained un-rebutted in cross examination. On the other hand, the appellant has examined two witnesses in support of the plea that the vehicle was a goods vehicle, on the day of occurrence it carried 100 passengers and deceased was also a passenger which they came to know during the course of their investigation and the other witnesses said that the Insurance Company's policy does not cover the act of carrying passengers in the goods vehicle and deceased was one of the passengers.

Obviously, the said witnesses are not eye witness to the occurrence and they did not record the statement of injured and other witnesses, during their investigation. It is evident that the plea taken by the appellant cannot be substantiated by direct evidence but it was a matter of inference which cannot take place of proof. The learned Tribunal however in its judgment has not properly discussed about the written statement given by the owner of the vehicle admitting the fact that the deceased was a handyman of the vehicle which also got support from the other evidence on record. Even if the owner did not adduce evidence on the said aspect but his admission remained on record which is again supported by the other evidence on record.

The Insurance Company raised the disputed question of facts which they have no personal knowledge but owner and driver of the offending vehicle has set at rest the said aspects.

13. As a corollary of the findings and discussions above, appeal is devoid of merit and accordingly dismissed. The appellant is directed to deposit the award before the Tribunal within a period of 6 (six) weeks from today and claimant can withdraw the same on due identification.