

(2022) 08 GAU CK 0042
In the Gauhati High Court
Case No : MACApp. No. 259, 260 Of 2021

Oriental Insurance Company Limited	Vs	APPELLANT
Niharendra Narayan Baruah And 4 Ors		RESPONDENT

Date of Decision : 24-08-2022

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2022) 08 GAU CK 0042

Hon'ble Judges : Arun Dev Choudhury, J

Bench : Single Bench

Advocate : M. Choudhury, M. Khan

Final Decision : Dismissed

Judgement

Heard Ms. M. Choudhury, learned counsel for the appellant /Insurance Company. Also heard Mr. Khan, learned counsel for the respondent/claimants.

1. The Accident:-

The case of the claimant respondent is that on 16.01.2015 while his sister-in-law/ mother was coming from Manikpur towards her home in the vehicle bearing registration No. AS-19/G-4224 (Bolero) along with her husband Jayanta Narayan Baruah who was the owner cum driver of the said Bolero and while it reached at Hapachara under Bongaigaon Police station, another vehicle bearing registration No. WB-57/B-4589 (Truck) was coming from opposite direction in a rash and negligent driving knocked down the Bolero Car and as a result her mother died on the spot.

2. The Claim and Award:.

The claim petition was filed by the claimants Sri Roahn Baruah and Sri Nilim Baruah under Section 166 of MV Act, 1988 seeking compensation at Rs. 32,81,000/- from the opposite parties for the death of their mother Mina Kumari Baruah due to the vehicular accident occurred on 16.01.2015 at about 06:45

P.M. at Hapachara under Bongaigaon district.

After perusal of the materials available on record, the learned Tribunal directed the opposite party No. 1(b), the Oriental Insurance Co. Ltd. to make payment of Rs. 36,65,606/- along with interest @ 6% per annum from the date of filing the claim petition till the date of its realization.

3. Stand of the respondents Insurance Company before the learned Tribunal:

The insurance company i.e. Oriental Insurance Co. Ltd. filed their written statements inter-alia taking the usual plea like lack of cause of action, non-compliance of statutory provision of insurance law, principles of waiver, acquiescence and estoppels, non-joinder of necessary party etc. etc. The insurance company further took a stand that the claimant is to prove the accident and a specific plea was also taken that the accident had not taken place due to rash and negligent driving of the driver of Truck (WB-57/B-4589) rather for the rash and negligent driving of the driver of the Bolero car.

4. Stand of the Driver and the Owner of the vehicle bearing Registration No. WB-57/B-4589 (Truck) in question:-

The driver and the owner of the truck contested the claims by filing written statements. Over and above usual plea, a stand was taken that the opposite party No. 3 (driver) was not driving the vehicle in rash and negligent manner and therefore, the opposite party No. 2 (owner) is not liable to pay compensation. They further contended that as the offending vehicle was duly insured with the opposite party No. 1(a) and as the driver was having valid driving license at the time of incident, in the event, it was held that the claimants are entitled for compensation, the same need to be paid by the Insurance Company.

5. The Issues:-

The learned Tribunal below framed the following issues for determination:-

- i. Whether the claimant No. 1's sister-in-law Mina Kumari Baruah died in motor vehicle accident occurred on 16.01.2015 at Hapachara, 31 N.H.Way due to rash and negligent of the driver of vehicle No. AS-19/G-4224 and WB-57/B-4589?
- ii. Whether the claimants are entitled to get compensation, if so, to what extent and by whom it is payable?

6. The Evidences:-

The claimants examined three witnesses, namely: Sri Rohan Baruah as PW-1, was traveling in the vehicle (Bolero) and also got injured in the accident and one Akhtar Ali as PW-2 who claimed to be an independent eye witness to the accident and was a bye-passer who was travelling in a bi-cycle by the said of National Highway 31 when the accident occurred and Sri Tapash Poddar, the Income Tax Inspector as PW-3.

The claimants also exhibited certain documents such as Police Report (Exhibit-1),

certified copy of Ajahar/FIR (Exhibit-2), MVI Report (Exhibit-3), Seizure List (Exhibit-4), Post Mortem Report of deceased (Exhibit-5), copy of income tax return of Mina Kumari Baruah, (Exhibit-6), Copy of B.A pass certificate (Exhibit-7) and Copy of bill of income tax (Exhibit-8).

The Insurance Company examined one Investigating Officer namely Ajit Kr. Roy as DW-1 who investigated the accident case on the basis of F.I.R. lodged in this connection.

The Insurance Company exhibited the FIR as Exhibit-A and the Final Report as Exhibit-B by way of which the Investigating Officer (DW-1) submitted a Final Report which reflects that there was no fault on the part of the driver of the Truck in the accident.

7. Taking note of the materials available on record including the exhibits and the deposition of the witnesses, the learned Tribunal below held that there was motor vehicle accident on 16.01.2015 at Hapachara due to rash and negligent driving of the driver of vehicle bearing No. WB-57/B-4589 (Truck) causing death of Mina Kumari Baruah. Accordingly, relying on judgment of the Hon'ble Apex Court in the case of Pranay Sethi reported in AIR 2017 SC 5157 and Megma General Insurance Co. Ltd. -Vs- Nanu Ram reported in (2018) 18 SCC 130, awarded the following amounts:-

SL.NO.

HEADS

AMOUNT

1.

Annual Income

Rs. 3,08,194/-

2.

Income after add of 20% Future Prospect

Rs. 3,85,243/- (3,08,194+25%)

3.

Income after 1/3rd less towards personal expenses

Rs. 2,56,829/-

(3,85,243 - 1,28,414)

4.

Compensation after multiplier '14' used

Rs. 35,95,606/- (2,56,829 x 14)

5.

Loss of consortium

Rs. 40,000/-

6.

Loss of estate

Rs. 15,000/-

7.

Funeral expenses

Rs. 15,000/-

Total Compensation (4+5+6+7)

Rs. 36,65,606/-

8. Being aggrieved the present appeals are filed before this Court by the Insurance Company namely Oriental Insurance Company Ltd. in which the offending vehicle Truck was insured.

9. Argument advanced by the learned counsel for the Insurance Company:-

I. Ms. M. Choudhury, learned counsel for the appellant/Insurance Company submits that the learned Tribunal below has illegally discarded the evidence of DW-1, the Investigation Officer of the Bangaigaon P.S. Case No. 37/2015, who investigated the accident in question and after due investigation and having satisfied, Closure Report was filed as during investigation it came to light that there was no rash and negligent driving on the part of the Truck (No. WB-57/B-4589), rather there was rash and negligent driving on the part of the driver of the Bolero. That being the position, the learned Tribunal below ought not to have fastened the liabilities with the Insurance Company.

II. As the claim petition was filed under the provision of Section 166 of the MV Act, 1988, the onus to prove that the accident took place due to rash and negligent driving of the Truck (No. WB-57/B-4589) was upon the claimants however, the claimants had measurably failed to discharge such burden.

III. The PW-1, Sri Rohan Baruah, the injured witness is an interested witness and therefore, his deposition should have been discarded. The others witness i.e. PW-2 who stated to have witnessed the accident, Akhtar Ali is not an eye witness and he is also a known person of deceased Jayanta Narayan Baruah. Therefore, the learned Tribunal below ought to have been accepted such deposition.

10. Argument of the learned counsel for the respondents/claimants:-

The learned counsel for the respondents/claimants submits the following:-

I. From the cross-examination of DW-1, it was clear that while making the investigation, the said Investigating Officer has not examined any eye witness to the incident inasmuch and the Final Report has been mechanically submitted, for reasons other than the bonafide.

II. The principle of proof in criminal case and proof in a case under MV Act are different and the outcome of a criminal case cannot and should not influence the decision of the Tribunal which exercises its power under a beneficial legislation.

III. The accounts of PW-1 who was eye witness and sitting in the vehicle which met with the accident is the best person to depict the actual account of the accident and same has been deposed by the said PW-1. The Insurance Company failed to dislodge his statement during cross-examination.

IV. Over and above, the PW-2, the independent witness who was a bye-passer and no way connected to the claimants witnessed the accident and in no unambiguity, he deposed that due to rash and negligent driving of the Truck, the accident occurred and such evidence remain unshaken during cross-examination and therefore, the learned Tribunal below has rightly made his conclude.

11. I have given anxious consideration to the submissions made by the learned counsel for the parties. Perused the materials available on record, including the deposition of the witness.

12. Ms. M. Choudhury, learned counsel for the appellants basically harps on the Final Report and the deposition of the DW-1 who was the Investigating Officer in connection with the case being Bongaigaon P.S. Case 37/2015.

The said DW-1, in his cross-examination deposed that he went to the place of occurrence immediately after receipt of information, the Bolero car was fully damaged and was stuck with the front part of the Truck. He further deposed that before he reached the place of occurrence, people already sent some of the injured to the hospital and the DW-1 took others to the hospital. The accident took place on 16.01.2015 and he submitted Final Report on 28.02.2015. He further deposed that during investigation he did not record the statement of the eye witnesses. The statement of injured and survived witness namely Rohan Baruah and Nilim Baruah were not recorded. He further admitted that he has not examined Akhtar Ali (PW-2). He also deposed that he cannot say who told him that accident took place because of the fault of the driver of the Bolero Car. He also deposed that he did not record the statement of any eye witnesses.

The aforesaid DW-1 in his examination-in-chief also deposed that during the investigation, he found that the Bolero Car coming from Manikpur side after crossing Rakhalubi Tiniali knocked down one Mustt. Emona Bewa and thereafter, a little ahead knocked the Truck bearing registration No. WB-57/D-4589. However, during cross-examination he admitted that he did not receive any Ejahar from Mustt. Emona Bewa and also had not recorded her statement. He also admitted that Mustt. Emona Bewa did not see the occurrence.

13. The law is well settled that principles of proof of any criminal case are not attracted in case of a proceeding under MV Act (AIR 2011 SC 1504 in the case of Parmeshwari –Vs- Amir Chand and Ors). It is also equally well settled that strict principle of proof in criminal case are not attracted (AIR 2019 SC 994).

14. In a recent case, the Hon'ble Apex Court dealing with an issue of standard of proof in M.V. claim cases in Janabai & Ors –Vs- ICICI Lombard General Insurance Co. Ltd. reported in 2022 SCC Online SC 994 held at Para 10 as follows:-

"We find that the rule of evidence to prove charges in a criminal trial cannot be used while deciding an application under Section 166 of the Motor Vehicles Act, 1988 which is summary in nature. There is no reason to doubt the veracity of the statement of appellant No. 1 who suffered injuries in the accident. The application under the Act has to be decided on the basis of evidence led before it and not on the basis of evidence which should have been or could have been led in a criminal trial. We find that the entire approach of the High Court is clearly not sustainable".

15. In the aforesaid factual backdrop and the legal proposition, now let this Court consider the value of evidence of DW-1 inasmuch the value of the Final Report which depicts that there was no rash and negligent driving on the part of the offending vehicle (Truck).

16. The evidence of DW-1 more particularly his cross-examination clearly reflects that he has not examined any witness during his investigation, who witnessed the actual accident. He even did not examine the eye witness namely Rohan Baruah and Nilim Baruah who were inside the vehicle (Bolero). Though he depicted a story that prior to the accident, the driver of the Bolero met with another accident by knocking down one Mustt. Emona Bewa, during cross examination he has admitted that he has not examined said Mustt. Emona Bewa nor did Mustt. Emona Bew filed any information before the police regarding such accident, which knocked her down.

17. In view of the aforesaid material and the legal proposition, this Court unhasitantly hold that only on the basis of the finding of a Investigating Officer in a criminal investigation regarding rash and negligent driving, it cannot be held in a proceeding under MV Act that, there was no rash and negligent driving on the part of the offending vehicle ignoring the evidences and material available on record in the proceeding on the MV Act. Therefore, the contention of Ms. M. Choudhury, learned counsel for the appellant that the learned Tribunal below ought to have relied on the evidence of DW-1 and the Closure Report while deciding the issue of rash and negligent driving, is rejected.

18. This Court is in agreement with the submission advanced by the learned counsel for the appellant that onus of proof in a claim proceeding under Section 166 of MV Act, is upon the claimant, however, the standard of proof of such fact cannot be "beyond reasonable doubt" but same should be under the standard of "preponderance of probability". That being so, now let this Court examine the

deposition of PW-1, the injured eye witness to the accident and PW-2 the independent person who witnessed the accident while coming in a bi-cycle.

19. PW-1 (Rohan Baruah) in his examination-in-chief clearly described how the accident took place and he deposed that the accident occurred due to rash and negligent driving of the offending vehicle (Truck).

During cross-examination he deposed that he was sitting in the front seat of the vehicle. In the cross-examination, he further deposed that the Bolero car was driving in a normal speed. He denied the suggestion Bolero Car was driven in a high speed and hit the truck. He further deposed that the police had not taken his statement during investigation.

Thus it is clear that not only his evidence regarding rash and negligent driving of the driver of the offending vehicle (Truck) was unshaken but also it was reaffirmed during cross-examination that there was no fault on the part of the Bolero.

20. The PW-2 (Akhtar Ali) in his examination-in-chief deposed that on the fateful day he was coming from Rakhaldubi towards home at Balajani by riding his bi-cycle and when he reached at Hapachara 31 National Highway, he saw the vehicle bearing No. AS-19/G-4224 (Bolero) was suddenly knocked down by the vehicle bearing registration No. WB-57/B-4589 (Truck) from opposite direction which was coming from North-Salmara towards Rakhaldubi in rash and negligent manner, as a result of which, four occupants of the Bolero vehicle died on the spot and other two sustained grievous injuries on their persons and immediately they were admitted at Lower Assam Hospital, Bongaigaon. He also deposed that the accident occurred due to rash and negligent driving of the driver of the vehicle (Truck).

During his cross-examination he reaffirmed that he had seen the accident and the police had not examined him. He further reaffirmed that the Bolero was driving in a slow speed in its side. He denied the suggestion that he had not witnessed the accident.

21. Thus in view of the aforesaid deposition of the PW-1 and PW-2, who were the eye witnesses and which remained unshaken clearly establishes that there was rash and negligent driving on the part of the offending vehicle (Truck).

22. In view of the aforesaid, this Court finds no reason to interfere with the decision of the learned Tribunal below and accordingly this appeal is dismissed.

23. Send back the Case Record.