

(2012) 09 GAU CK 0089
In the Gauhati High Court
Case No : MAC Appeal No. 37 of 2010

Oriental Insurance Company Ltd.	Vs	APPELLANT
Bimal Singh Bey and Another		RESPONDENT

Date of Decision : 28-09-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 165

Citation : (2013) 2 GLT 884

Hon'ble Judges : Subhasis Talapatra, J

Bench : Single Bench

Advocate : S. Dutta, Ms. M. Choudhury, Mr. R. Kaur and Mr. D. Baroah, for the Appellant; A.C. Das, R.K. Dey, B. Chanda and Mr. R. Dev, for the Respondent

Judgement

Subhasis Talapatra, J.—This is an appeal by the Oriental Insurance Company Ltd. against the judgment and award dated 27.02.2007 passed by the Motor Accident Claims Tribunal, Hojai in MAC Case No. 142 of 2006. The findings as returned by the Tribunal as regards the accident that occurred on 17.10.2005 when a group of extremists intercepted the vehicle and killed the passengers carried in the vehicle No. AS-09-4743, death of one Aphu Patorpi, wife of the claimant and the insurance coverage of the said vehicle by the appellant are not in dispute by either of the parties or in the appeal. As such those findings stand affirmed without requiring any further appraisal.

2. The questions that has been raised in the appeal may be encapsulated as:

- (i) Whether the said accident occurred arising out of the use of the motor vehicle or
- (ii) Whether the claim is maintainable in view of the fact that the Government has made ex gratia payment of Rs. 3,00,000/- for death of the wife of the claimant?

3. Mr. S. Dutta, learned counsel appearing for the appellant submitted that from a cursory glance at the pleadings as incorporated in the claim petition, it would

be apparent that there is no pleading regarding negligence of the driver of the vehicle bearing registration No. AS-09/4743 (bus) nor the cause of the death is proximate to any accident arising out of the use of the motor vehicle. What the claimants stated that when the vehicle reached the village Presala, the extremists restrained the vehicle and killed most of the passengers by gun, daggers and with other dangerous weapons.

4. Mr. S. Dutta, learned counsel appearing for the appellant submitted that the claimant while deposing in the Tribunal also did not lay any further statement to prove that the said death from the accident was proximate to the use of the motor vehicle.

5. Mr. S. Dutta, learned counsel appearing for the appellant further submitted that there is no material to show the dominant intention of the extremists was not to kill the passengers out of any enmity and as such this accident cannot come within the purview of the motor accident as illustrated u/s 165 of the Motor Vehicles Act, 1988. In addition thereto Mr. S. Dutta, learned counsel further submitted that the Government has given the claimant a sum of Rs. 3,00,000/- for death of her husband and as such the claim cannot be maintained for death. The public institutions cannot be made to make payment twice as compensation for the same accident or incident. The Tribunal has framed the following issues for purpose of adjudicating the claim and to take the inquiry to its logical end:

(i) Whether the offending vehicle No. AS-09-4743(Bus) was being driven rashly and negligently at the time of the accident and due to that accident the claimant's wife Amphu Patorpi died?

(ii) Whether the claimant is entitled to get any compensation and from whom?

(iii) To what relief or reliefs the parties are entitled to?

6. In the backdrop of the case, the inquiry ought to have been directed to determine the dominant intention of the extremists in view of the principle as laid down in Smt. Rita Devi and Others Vs. New India Assurance Co. Ltd. and Another, where the apex Court held as under:

10. The question, therefore is, can a murder be an accident in any given case? There is no doubt that "murder", as it is understood, in the common parlance is a felonious act where death is caused with intent and the perpetrators of that act normally have a motive against the victim for such killing. But there are also instances where murder can be by accident on a given set of facts. The difference between a "murder" which is not an accident and a "murder" which is an accident, depends on the proximity of the cause of such murder. In our opinion, if the dominant intention of the Act of felony is to kill any particular person then such killing is not an accidental murder but it is a murder simpliciter, while if the cause of murder or act of murder was originally not intended and the same was caused in furtherance of any other felonious act then such murder is an accidental murder.

Even this Court adopted this principle in National Insurance Co. Ltd. Vs. Kasheni and Others, . But no issue was framed in this regard for inquiry. Accordingly the claimant also did not adduce such evidence to bare the dominant intention. This Court is of the opinion that since the entire inquiry has been lost in the lurch, the impugned judgment is liable to be set aside. Unless the dominant intention as referred is determined, the said accident cannot be treated within the usual parlance of the accident for the use of the motor vehicle.

7. In view of this, the impugned judgment and order is set aside and the claim petition is remitted back to the Tribunal for proceeding afresh on framing an issue as under:

Whether the dominant intention of the extremist was to kill the passengers or was if related to the vehicle for purpose of ceasing the movements of the vehicle?

8. The claimant and others shall be allowed to adduce fresh evidence after framing of the issue as regards the dominant intention of the killing. The entire exercise of inquiry and assessing the compensation, if so required, shall be completed within a period of 6(six) months from the date of the receipt of the LCRs from this Court.

9. It is pertinent to mention that the Tribunal shall also decide the issue whether the claimant is entitled to get further compensation in view of his receiving an ex gratia compensation to the extent of Rs. 3,00,000/- from the Government of Assam as raised by the appellant. With this observation and direction, this appeal is allowed to the extent as indicated above. However, there shall be no order as to costs.

Send down the LCRs forthwith.