

(2004) 11 GAU CK 0010
In the Gauhati High Court
Case No : F.A. No. 51 of 1998

Purnima Bhattacharjee and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 19-11-2004

Acts Referred:

Motor Vehicles Act, 1988 — Section 161, 166, 171
Penal Code, 1860 (IPC) — Section 279, 338

Citation : (2006) GLT 324 Supp

Hon'ble Judges : Biplab Kumar Sharma, J; A.B. Pal, J

Bench : Division Bench

Advocate : A. Gon Choudhury, for the Appellant; K. Bhattacharjee, for the Respondent

Judgement

B.K. Sharma, J.—This appeal u/s 171 of the Motor Vehicles Act, 1988 is directed against the judgment dated 7.1.98 passed by the learned Member, MACT, West Tripura, Agartala in case No. TS (MAC) of 1993 rejecting the claim of the claimant/Appellant for awarding compensation on account of death of her husband due to the motor accident caused by the vehicle belonging to the Respondents.

2. We have heard Mr. A. Gon Choudhury, learned Counsel for the Appellant and Mr. K. Bhattacharjee, learned Sr. CGSC for the Respondents.

3. As against the case of the claimant/Appellant that on the fateful day i.e. 6.4.93, the accident involving the vehicle (Jeep) bearing registration No. TRA 2131 belonging to the Respondents occurred at Siddhi Ashram, Agartala-Bishalgarh road, it is the complete denial on the part of the Respondents that the said vehicle belonging to them was at all involved in the said accident. According to the Appellant, the said vehicle belonging to the Respondents knocked down her husband due to rash and negligent driving. Immediately after the accident, her husband was taken to GB Hospital, Agartala where he was admitted and treated. Unfortunately, he died on 14.4.93 succumbing to the injuries sustained

by him due to the said accident. A police case vide Amtali P.S. Case No. 5(4)/93 u/s 279/338 IPC was registered against the driver of the vehicle.

4. As narrated in the claim petition the deceased husband of the claimant was a Government employee and was aged about 35 years at the time of his death. He left behind his claimant/Appellant wife and a minor son, aged about 8 years. The claimant filed a claim petition u/s 166 of the MV Act for awarding compensation to the tune of Rs. 6,00,000/- on account of death of her husband due to the aforesaid accident. As stated above, it was a complete denial on the part of the Respondents that their said vehicle was at all involved in the said accident. According to them, the vehicle was away from Tripura to Mizoram and thus there was no question of involvement of the said vehicle in the accident.

5. The learned Member, MACT (hereinafter referred to as the Tribunal) by the impugned judgment dated 7.1.98 rejected the claim of the claimant holding that the claimant failed to prove the involvement of the aforesaid vehicle bearing registration No. TRA-2131, in the aforesaid accident.

6. Documents were filed and the parties before the Tribunal examined witnesses. Initially, there was a judgment of the Tribunal awarding compensation of Rs. 1,92,000/-. However, the said award being ex-parte without any service of notice on the Respondents, the award was set aside on appeal by this Court in MAF No. 24/95 and the matter was remanded back to the Tribunal. Upon such remand, the Tribunal again took up the matter and the following issues were framed for decision:

(i) Did Pabitra Bhattacharjee die of motor accident on 6.4.93 at about 10 a.m. at Siddhi Ashram due to rash and negligent driving of TRA-2131 (Jeep)?

(ii) Is the claimant-Petitioners entitled to any compensation?

(iii) If so, what should be the amount of compensation and who is liable to pay it?

7. The claimant/Appellant examined two witnesses and the Respondents also examined two witnesses. The foundation of the case of the claimant/Appellant relating to involvement of the aforesaid vehicle of the Respondents in the accident lay on the FIR filed by one Sri Anil Chandra Das of Siddhi Ashram, Agartala, Tripura. The FIR dated 8.4.93, which was filed after two days of the accident indicated the aforesaid vehicle to be involved in the aforesaid accident. However, the informant who lodged the FIR was not examined to prove the FIR. The claimant and her witness deposed only on the basis of the said FIR so far as the involvement of the said vehicle is concerned. The claimant was not an eyewitness. The PW-2, who deposed in favour of the claimant, although, mentioned about the said vehicle bearing registration No. TRA 2131 but in her cross-examination, she stated that she did not know how to read and write. She also stated that she did not read English. She stated that she could come to know about the involvement of the said vehicle through the discussions among the people at the site.

8. As against the aforesaid evidence of the claimant/Appellant, the Respondents led evidence through two of its officers, who on production of documents/exhibits could prove that the vehicle was away from Tripura to Mizoram. Thus it was the case of the Respondents that there was no question of involvement of the vehicle in the aforesaid accident. Nothing could be brought in cross-examination of the said two witnesses to dislodge the said evidence led by them on behalf of the Respondents. It is on evidence that the criminal case registered in respect of the said accident resulted in final report stating that the allegation of involvement of the vehicle was not established. The final report was exhibited as Exhibit-C. The DW-2, one Sri R.K. Tiwari, made a categorical statement in his cross-examination that one Sri L. Babu was the driver of the vehicle and that the vehicle was away to Mizoram on the date of the accident and even before that. The DW-2 also stated in the same manner and nothing could be brought out in cross-examination.

9. On the basis of the materials/evidences available on records, the Tribunal found the same to have conclusively established that the vehicle did not move out of the garage during the intervening period from 5.4.93 to 7.4.93. The Tribunal also found that in the event of the vehicle entering Agartala there would have been entry in the Register in question. Thus when the claimant could not establish the very involvement of the vehicle in the accident, the Tribunal had no option than to hold that the vehicle was not involved in the accident. It is on evidence that some persons in the locality shifted the husband of the claimant to hospital, when he was injured due to the said accident. The claimant/Appellant did not examine either the first informant or the said persons whose whereabouts were very much available on record. On the basis of the evidences on record elaborately discussed by the Tribunal, there was nothing to prove that the vehicle in question was the one with the registration No. TRA 2131.

10. We have gone through the evidences on record and have assessed the same independently of the assessment made by the Tribunal. Upon such assessment and evaluation as discussed above, we do not find anything to suggest that the involvement of the said vehicle is established in any manner. This being the position, we do not find any infirmity in the judgment of the learned Tribunal.

11. For the foregoing reasons and discussions, we do not find any merit in this appeal and the same stands dismissed leaving the parties to bear their own costs.

12. Before parting with the case records, we place on record that in view of the aforesaid findings of ours as well as the findings recorded by the Tribunal, the instant case comes within the purview of Section 161 of the Motor Vehicles Act, 1988. As per the said provision of the Act, the claimant/Appellant will be entitled to make appropriate application before the competent authority for awarding compensation, it being a case of hit and run motor accident. If such an application is made by the claimant/Appellant before the competent authority, the said authority shall pass appropriate order with utmost expedition so that the claimant/Appellant, who has lost her husband gets compensation, howsoever,

meager the same may be compared to her claim made in the claim petition before the Tribunal.

13. Subject to the above observations, the appeal stands dismissed, leaving the parties to bear their own costs.