

(2018) 07 GAU CK 0078
In the Gauhati High Court
Case No : Mac Appeal No. . 137 Of 2017

Reliance General Insurance Co Ltd

APPELLANT

Vs

Mrs Bane Boro And 3 Ors

RESPONDENT

Date of Decision : 20-07-2018

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2018) 07 GAU CK 0078

Hon'ble Judges : KALYAN RAI SURANA, J

Bench : Single Bench

Advocate : K. K. Bhatta, L. Sharma, K. K. Bhattacharjee, J. John, D. Mondal, N. Debnath, R. Hazarika

Final Decision : Dismissed

Judgement

1. Heard Mr. K. K. Bhatta, learned counsel appearing for the appellant.
2. By this appeal under Section 173 of the Motor Vehicles Act, 1988, the appellant has challenged the judgment and award dated 19.02.2014 passed by the learned Member, Motor Accident Claims Tribunal, Nalbari in MAC Case No. 62/2012.
3. The learned counsel appearing for the appellant has pressed all the grounds of appeal and it is submitted that the learned Tribunal had apportioned 70% of the compensation against the appellant by holding the deceased that guilty of contributing to the accident to the extent of the 30%. Therefore, out of the compensation assessed at Rs.32,01,408/-, 70% of such compensation was amounting to Rs.22,40,986/-, which was apportioned against the appellant, is the subject matter of challenge in the present appeal.
4. As per the judgment impugned, it appears that on 15.02.2011, at about 5.30 P.M., the husband of the respondent No. 1 was proceeding towards

Duarkuchi on his motorcycle and at Chiknibari Chowk, the offending truck bearing Registration No. AS-01/AA-9409 came from Rangia side

towards Tamulpur in a rash and negligent manner and dashed against the motorcycle on which the deceased was riding. The deceased had sustained

serious injuries and he was initially treated at Rangia CHC and thereafter, he was referred to Guwahati Medical College and Hospital. However, on

the next date of the accident, the deceased succumbed to his injuries. The police registered Tamulpur P.S. Case No. 41/2011 and the matter was

investigated and in course of investigation, the post-mortem was conducted. It was claimed that the deceased was the sole earning member of the

family. The respondent No. 3, being the owner of the offending truck, had appeared and contested the claim petition and denied any negligence on the

part of the driver of the vehicle. The appellant also contested the case by filing their written statement.

5. The learned Tribunal on the basis of pleadings, framed two issues for trial :

1. Whether the claimants are entitled to get any compensation as prayed for and if so, to what extent and against whom?

2. To what other relief or reliefs, the claimants are entitled?

6. The respondents No. 1 and 2/claimants examined three witnesses including the respondent No. 1 (P.W.1) and the eye witness was examined as

P.W.-2 and the Headmaster of Barbari High School who was examined as P.W.-3 had deposed that the deceased was the Hindi teacher of the said

school drawing the basic salary of Rs.13,440/- and drawing the net salary of Rs.21,988/- per month. The appellant and the other opposite parties in the

claim petition did not give any evidence. On the basis of the evidence on record, specially the accident information report (Ext. 1), death Certificate

(Ext. 2), post-mortem report (Ext. 3), it was held that the deceased had died in the vehicular accident. On the basis of Ext. 4 i.e. the last pay

certificate, it was held that the deceased was earning a basic pay of Rs.13,440/- per month and that he had drawn net salary of Rs.21,988/-.

Accordingly, 30% of his basic pay was added towards future prospects and thus, both the issues decided in favour of the respondents No. 1 and 2 and

the compensation, based on the age of the deceased was computed as follows:-

(i) Annual loss of dependency = Rs.2,28,672/- X 14 (multiplier) = Rs.32,01,408/-

(ii) Funeral expenses = Rs.5,000/-

(iii) Loss of consortium = Rs.10,000/-

(iv) Loss of Estate = Rs.10,000/-

(v) Medical expense = Rs.30,000/-

Total Compensation = Rs.22,85,986/-

Total compensation rounded at Rs.22,86,000/-

7. The learned Tribunal took note of the contributory negligence part of the deceased to take precaution to prevent accident and therefore, 30%

of the compensation was deducted on account of contributory negligence and holding that the offending vehicle was driven in a rash and negligent

manner, in view of the charge sheet submitted against the driver of the vehicle by the police, the liability of 70% of compensation was held

against the owner of the vehicle, which was ordered to be indemnified by the appellant was decided.

8. Challenging the said award, the learned counsel for the appellant has pressed the various grounds of appeal. The basic submission is that the

contributed negligence was ought to have been assessed 50% instead of 30% and the applicable multiplicand on account of addition of 30% income

source, future prospects is also challenged.

9. Upon considering the submissions made by the learned counsel for the appellant, it is seen that the appellant had not adduced any evidence to show

that the contributory negligence of the deceased ought to have been greater than 30% awarded by the learned Tribunal. The learned counsel for the

appellant had not shown the nature of the cross-examination of the witnesses that any effort was made before the learned Tribunal to prove the

negligence of the deceased had more than 30% as held by the learned Tribunal. Moreover, this Court finds that the learned Tribunal had taken note of

the charge-sheet having been submitted against the respondent No. 4 being the driver of the offending vehicle.

10. This Court does not find any infirmity in the impugned judgment passed by the Tribunal holding the appellant liable to pay 70% compensation by

deducting 30% of such compensation on account of contributory negligence of the deceased. It is further seen that the challenge against the

multiplicand is also not sustainable in view of the fact that the learned Tribunal was conservative in adding 30% of income towards future prospects

because for the said purpose, the basic salary was taken into account and not the net salary that was last drawn by the deceased. Therefore, the other major ground of attack to the impugned award is also not found sustainable.

11. Therefore, this Court does not find any merit in this appeal and the same stands dismissed without interfering with the impugned judgment and without issuance of any notice of this appeal on the respondents.

12. With this the appeal fails and is dismissed.

13. The Registry may refund the statutory deposit to the appellant.

14. A copy of this order may be sent to the learned Member, MACT, Nalbari in connection with MAC Case No. 62/2012.