
(2012) 06 GAU CK 0026
In the Gauhati High Court
Case No : MAC Application No. 22 of 2009

Smti Basanti Gogoi Buragohain

APPELLANT

Vs

Sri Sushil Kumar Agarwal and Others

RESPONDENT

Date of Decision : 14-06-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 158, 166, 173
Penal Code, 1860 (IPC) — Section 279, 304(A)

Citation : (2013) 1 GLD 5

Hon'ble Judges : S. Talapatra, J

Bench : Single Bench

Advocate : S. Dasgupta, for the Appellant; S.S. Sharma Ms. L. Sarma and Ms. F. Khan, for the Respondent

Final Decision : Allowed

Judgement

S. Talapatra, J.—Heard Mr. S. Dasgupta, learned counsel appearing for the appellant as well as Mr. S.S. Sharma, learned senior counsel appearing for the respondent No. 3. None appears for the respondent Nos. 1 and 2 despite receipt of the notice from this Court. By this appeal filed u/s 173 of the Motor Vehicles Act 1988, the judgment and award dated 02.06.2008 passed by the learned Member, Motor Accident Claims Tribunal, Sivsagar in MACT Case No. 33 of 2005 has been challenged.

2. The essential fact, that would be relevant for appreciating the challenge, can be encapsulated thus:

On 14.12.2004 one Harendra Buragohain while proceeding along the National High Way No. 37 and reached at Betbari Alimur, he was knocked down by a Maruti Van bearing No. AS-23 B-5973 which was found driven in the rash and negligent manner and the said deceased, who was a scooterist, suffered multiple grievous injuries. He was immediately shifted to D.H.L. hospital and therefrom to Astha Hospital at Dibrugarh, where he succumbed to his injuries. The deceased was an assistant teacher in Desang Dhai Ali Higher Secondary School, which is a

Government School, and at the time of his death, the deceased was survived by his wife, claimant-appellant and three daughters, who were impleaded as the proforma opposite parties in the claim petition.

3. On report of the accident as stated, Sivsagar P.S. Case No. 420/2004 u/s 279/304 (A) of IPC was registered against the respondent No. 2, driver of the Maruti Van. Even an accident information report was also filed in the concerned Claims Tribunal u/s 158 of the M.V. Act, 1988. Thereafter the charge-sheet was filed against the respondent No. 2 under Sections 279/304 (A) of the IPC and the trial commenced as per law.

4. After notices from the Claims Tribunal were received by the respondents herein, the respondent Nos. 1 and 2 filed a joint written statement stating, inter alia, that the accident was not due to rash and negligent driving of the motor vehicle, but it occurred due to rash and negligent driving of the scooter by the deceased, who came from the roadside in a high speed and hit the left side of the Maruti Van which was going along the National High Way towards Sivsagar. The O.P. No. 2 took all possible step, precaution and care to avert the accident.

5. Similarly, the respondent No. 3 New India Assurance Co. Ltd. by filing the written statement also took the same plea by stating that the proof of negligence is to be essentially borne in the records so that the owner of the vehicle; or the Insurance Company could be held liable for payment of compensation in the motor accident. The proof of negligence remains lynch pin to recover compensation. Here, there is no proof of negligent driving by the driver of the Maruti Van. Hence, the claimant is not entitled to get any compensation from the Insurance Company. It was further asserted that the accident took place due to negligence on the part of the deceased, who at the relevant time of accident was driving the scooter with rashness and negligently without observing the norms and violating the Motor Vehicles Act and Traffic Rules, the respondent No. 3 asserted.

6. The learned Tribunal after consideration of the rival pleadings formulated the issues, such as,

- (i) Whether the case is maintainable in the present form;
- (ii) Whether the accident took place due to rash and negligent driving of the vehicle by opposite party No. 2 in which husband of the claimant expired; and
- (iii) Whether the claimant is entitled to get compensation, and if so, to what extent and by whom payable? It is interesting to note that no issue was framed whether the accident took place for the rash and negligent driving of the scooterist or not?

7. It appears from the record that only the claimant adduced evidence in support of her claim and none of the respondents adduced any further evidence except the written statement that had been filed in response to the notices those were received from the Tribunal below. The claimant-appellant adduced a huge

number of documents in support of her claim including the service book, salary certificate as issued by the employer, medical records, the proof of age etc.

8. Mr. Dasgupta, learned counsel appearing for the claimant-appellant pointed out that the finding as returned by the Tribunal below is absolutely perverse inasmuch as those are the out come of non-consideration of the evidence as led by the claimant-appellant. The learned counsel, in particular, attacked the finding as returned against the issue No. 2, where it had been held that the claimant-appellant had failed to establish by evidence that the accident in question occurred due to rash and negligent driving of the Maruti Van. After returning such finding against the issue No. 2, the entire claim was dismissed without awarding any amount of compensation.

9. Mr. S.S. Sharma, learned senior counsel appearing for the respondent No. 3 in his usual fairness submits that though the quality of evidence as led by the claimant-appellant is not satisfactory, but at the same time the finding of the learned Tribunal is also shocking in view of the settled position of law. This Court appreciates the role of the learned senior counsel for making such statement for upholding the position of law. This Court has scrutinized the evidence and found that the claimant has brought into the evidence the certified copy of the FIR, Death Certificate, Injury Report etc.

10. C.W. 1, the claimant-appellant herein, stated in the beginning of her deposition, which was filed supported by an affidavit under Order XVIII, Rule 4 of the CPC that on 14.12.2004 at about 1.00 p.m. while my husband was coming from petrol pump at Betbari to his residence at Delehi Gohain Gaon, on the way at Betbari Aslimur on 37 N.H. Way one Maruti Van No. AS-23/B-5973 coming from Dibrugarh to Sivasagar at high speed and driven rashly and negligently by its driver (i.e. the O.P. No. 2 in my claim) knocked my husband's scooter from the backside at right hand side of the mudguard. As a result my husband felt down and sustained grievous multiple injuries and he was immediately shifted to D.H.L. Hospital, Sivasagar. But looking into the critical condition of my husband he was immediately referred to Astha Hospital, at Dibrugarh. But till he reached the Hospital, he succumbed to his injuries and doctor of Astha Hospital, Dibrugarh declared him to be dead." She admitted the Death Certificate as Exbt.-1, Injury Report dated 14.12.2004 as issued by Astha Hospital, Dibrugarh as Exbt.-2, post-mortem Report as Exbt.-3, Certified copy of the FIR dated 14.12.2004 as Exbt.-4, summon issued from SDM, Sivasagar in G.R. Case No. 1017/2004 to Rajen Buragohain as Exbt. 4 (a), the Accident Information Report as Exbt.-5 etc. In addition thereto the Higher Secondary School Leaving Certificate as a proof of age was also admitted in the evidence as Exbt.-6, whereas the salary certificate as on December, 2004: issued by the Headmaster, Desang Dhaiall High School was also admitted as Exbt.-7. She had categorically stated that only for rash and negligent driving of the Maruti Van, her husband was knocked down and subsequently died and there was no negligence on the part of her husband. In the cross-examination on the point of negligence the

respondents projected a question whether the deceased husband of the claimant-appellant was having the driving licence or not.

11. One Rajen Buragohain, who appeared in the Tribunal as C.W. 2, is the eyewitness to the occurrence. He categorically stated at the relevant point of time the offending Maruti vehicle coming from Dibrugarh side at a high speed and driven recklessly and negligently knocked his elder brother's scooter from the back at right hand side of the mudguard. At the relevant point of time his brother was not plying the scooter. He after coming out from a nearby shop was proceeding by pushing his scooter forward and the offending Maruti Van knocked down him. Having so knocked down, he fell down on the road and he sustained grievous multiple injuries. C.W. 2: at the relevant point of time was at a distance of about 100 feet from the actual place of occurrence and witnessed the accident from very close distance. He also stated that the deceased was an assistant teacher in the Desang Dhai Ali High School, Askhoiphutia, Sivasagar. He further stated that at the time of death, his brother had three unmarried daughters besides wife and all are dependent on his income.

12. Another witness, namely, Sri Tileswar Das, was also examined as C.W. 3, who exhibited the Salary Certificate, Acquaintance Register etc. of the said School. It is surprising that despite the overwhelming evidence led by the appellant, the learned Tribunal answered the issue No. 2 in the negative and against the claimant-appellant.

13. No other alternative is left but to interfere those findings as returned by the learned Tribunal as those are absolutely perverse for non-consideration of the legal evidence as brought on record by the claimant-appellant and, hence, those findings are set aside.

14. From appreciation of the evidence, the claimant appellant had established the Issue Nos. 1 and 2. The claim petition u/s 166 of the M.V. Act is maintainable as the death occurred for the rash and negligent driving of the said Maruti Van and without even any contributory negligence on the part of the deceased husband of the claimant-appellant. It has been also well established by evidence that the accident took place due to rash and negligent driving of the respondent No. 2 and the said vehicle was covered by the insurance policy of the respondent No. 3. Since the learned Tribunal returned a nil award, this Court is under obligation to assess the proper compensation for the death of the husband of the claimant-appellant. It is even on record that the deceased was an assistant teacher working in a Government School. It is stated that the deceased was getting gross salary @ Rs. 14,763/- per month and he used to get net emoluments Rs. 13,988/- after statutory deduction.

15. However, as the principles as laid down in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , certain components of the emolument cannot be considered as the income of the deceased. In view of this, the house rent allowance and other statutory allowance at Rs. 500/-, other deduction Rs.

350/-, professional tax Rs. 195/- and income tax Rs. 30/- would be excluded from the said income. As such the monthly income of the deceased is assessed at Rs. 13,988/-. As the deceased is more than 50 years of age, no future prospect is added to the said income. This Court finds that on the income of the deceased there were four dependents. Thus 1/4th from the said income be deducted, i.e., Rs. 3,422/- from the said income. So, a sum of Rs. 10,566/- would be multiplied by 12 for arriving at the annual loss of dependency. Thus, it comes to Rs. 1,23,192/-.

16. Considering all aspects of the matter, a multiplier of 8 would appropriate for calculating the loss of dependency. Thus, it comes to Rs. 9,85,536/-. With the said amount Rs. 10,000/- for loss of consortium (only for claimant-appellant), Rs. 5,000/- for educational expenses and another Rs. 10,000/- for loss of estate be added. Thus, the total compensation comes to Rs. 10,10,536/-. This amount shall carry interest @ 6% per annum from the date of filing of the application till the payment is made. It is made clear that except the compensation as granted as loss of consortium, the remaining of the award would be equally divided among the claimant-appellants and three daughters, i.e., the proforma respondent Nos. 4, 5 and 6 and if anyone of the daughters is found to be minor, her share shall be kept in a fixed deposit term of a nationalized bank till she attains the majority. The respondent No. 3 is directed to pay the entire compensation with interest in the Tribunal within two months from today. This appeal accordingly stands allowed. Send down the lower Court records forthwith.