
(2011) 11 GAU CK 0066
In the Gauhati High Court
Case No : MAC No. 16 of 2011

Smti Swarnabala Debbarma and Another	APPELLANT
Vs	
Shri Goutam Saha and Others	RESPONDENT

Date of Decision : 16-11-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 166
Penal Code, 1860 (IPC) — Section 304, 326

Citation : (2012) ACJ 2524 : (2012) 1 GLD 349 : (2012) 3 TAC 825

Hon'ble Judges : P.K. Musahary, J

Bench : Single Bench

Advocate : S.K. Das, for the Appellant; H. Das, for the respondent Nos. 1 and 2 and Mr. S.M. Ali, for the respondent No. 3, for the Respondent

Judgement

P.K. Musahary, J.—Heard Mr. S.K. Das, learned counsel for the appellant and Mr. H. Das, learned counsel for the respondents No. 2 and 3 and Mr. Ali, learned counsel for the respondent No. 3. This appeal is directed against the judgment and order dated 7.12.10 passed by the learned Member, MACT in TS (MAC) Case No. 12 (Court No. 2), West Tripura, Agartala rejecting the claim of the appellants herein for compensation due to death of Rabindra Debbarma.

2. The case of the appellants, in brief, is that on 07.06.94 while Ratan Oebbarma, Rabindra Debbarma and other passengers were proceeding towards Agartala from Sibolsingh in a Bus bearing registration No. TRS-766 through Mohanpur Ramchandraghat road, on their way they requested the driver of the bus not to proceed further along Subolsingh Mohanpur road as the road was infested by extremists and there was every possibility of attack by the extremists on public vehicle. They requested the driver of the said vehicle to proceed towards Agartala through Ramchandraghat - Teliamura road instead of Subolsingh Mohanpur road but the driver did not pay any heed and proceeded through Subolsingh Mohanpur road and continued to proceed towards Agartala through the said road and since the bus reached a place between Subolsingh-

Hejamara, some tribal extremists stopped the bus, entered into it, and started assaulting Rabindra Debbarma and other passengers by means of sharp weapons. They also shot at Rabindra Debbarma and Ratan Debbarma. Immediately after the incident, Rabindra Debbarma was taken to G.B. Hospital, Agartala where he succumbed to his injuries. The appellants/claimants being the legal heirs of the deceased, who died in the vehicular accident, filed application claiming compensation to the tune of Rs. 14,52,000/-. In connection with the aforesaid accident a case being Sidhai P.S. Case No. 75/94 was registered u/s 326/304, IPC.

3. At the time of hearing, the learned counsel for the appellants submits that one Ratan Debbarma who was also travelling in the same vehicle was killed in the said incident and his legal heirs also filed claim petition u/s 166 of the M.V. Act claiming compensation to the tune of Rs. 20,4000/- for his death due to said vehicular accident. The said case was registered as TS (MAC) No. 11/95 before the learned Member, MACT, West Tripura, Agartala, (Court No. 3). The said claim petition was accepted vide judgment dated 17.4.07 passed by the learned Member, MACT awarding compensation of Rs. 2,23,000/- including cost of funeral and loss of consortium. In the said case the learned Tribunal came to a conclusion that the

act of killing of Ratan Debbarma in the bus originally unintended and the same was caused in furtherance of felonious act and Ratan was killed because of the negligence on the part of the driver, and therefore, it is an accident within the meaning of the Motor Vehicles Act. It is further revealed that at the relevant point of time there was abnormal situation in the State of Tripura and during the said period the owner as well as driver of the vehicles are required to take extra care so that no untoward incident happened arising out of the use of motor vehicles. But in the instant case, it is evident from the evidence available on record that driver in fact, did not pay any heed to the request of the passengers not to proceed further and the accident occurred due to sheer negligence on the part of the driver. There is also evidence that Ratan Debbarma had been killed inside the bus and it is evident from the evidence on record that necessary care required to be taken by the driver, that too, in the abnormal situation providing during that period was not taken which resulted in killing of Ratan Debbarma while the vehicle was in use. In Samir Chandra (supra) the Apex Court held that conductor and driver of the bus are required to take care of the passengers travelling in it and if such care is not taken, it amounts to negligence and, therefore, the compensation is payable under the Motor Vehicles Act for the death or bodily injury of the passengers travelling in it. In the said case, the Apex Court held that an abnormal situation was prevailing during the period when bomb blasted inside the vehicle, the owner and the driver are to take care by carrying police escort, having not done so, they are liable for compensation under Act. The said decision is applicable in the instant case.

Having regard to the facts and circumstances of the case and legal position of

law, I am of the view that the petitioners have been able to prove that Ratan Debbarma died on 7.6.94 arising out of the use of the motor vehicle and bearing No. TRS-766 (bus) and I answer this issue accordingly.

4. But in the present impugned judgment and order, the other learned Member of the Tribunal has deferred from the aforesaid views--conclusions and decided the issue in the negative by taking view that--

.....to establish this case, there must be a close proximity between use of the motor vehicle and the cause of death of the deceased and there also must be nexus between use of the motor vehicle and the cause of the death of the victim. In the present case, the cause of death of the victim was bullet injuries and there was no motor vehicle accident at all. Since the deceased was just driving with the vehicle in question when he received bullet injuries inflicted by the extremists only for that reason I cannot term the death of the deceased has occurred for arising out of the use of the motor vehicle. So, I find, no reason at all to hold that the death of the deceased was a result of motor vehicle accident. Simply for reasons that at the time of receiving injuries the victim and others were traveling with the vehicle. Besides the petitioner side could not collect any cogent and solid evidence that due to rash and negligent driving of the driver of the vehicle there was an accident where Rabindra Debbarma succumbed to his injuries out of use of motor vehicle. It is established that the husband of the petitioner who was murdered by the extremists at the motion of the vehicle in question but the victim did not succumb to his injuries due to road traffic accident. Accordingly, suffice it to say that the claim of the petitioners cannot come into play under the purview of Motor Vehicle Act.

5. The claim of the present appellants/claimants has been rejected by the learned Member, MACT on the ground that death of Rabindra Debbarma did not occur due to motor vehicle accident. This Court is required to consider and decide as to whether in the attending facts and circumstances of the case, the death of the deceased Rabindra Debbarma could be said to have occurred due to murder or accident due to use of vehicle. On the other words, can a murder be termed as vehicular accident in any given case? The guiding principle has been laid down in Smt. Rita Devi and Others Vs. New India Assurance Co. Ltd. and Another, . Paragraph 10 of the said judgment is reproduced for ready reference.

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 ferocious 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 is a murder of 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,

6. Following the principle laid down therein a Division Bench of this Court in Premomay Basu Vs. On the Death of Sudip Purkayastha, his Legal heirs and Others, , it was held that "when on account of a particular prevailing situation, an extra care is required to be taken before or while using a vehicle at a public place and when, in such a grave situation if the owner or driver, as the case may be, does not take required care and on account of commission or failure of the owner or driver to take such care, an injury is caused, to, or death takes place of, a passenger, such injury or death must be held to have been caused on account of accident arising out of use of the vehicle and such accident would justify the claim for compensation under the M.V. Act. The facts of the aforesaid case are similar to the facts of the present case. In the above referred case, the claimant/ husband boarded a jeep for going to Teliamura from Taidubazar (in the State of Tripura). There were other passengers in the said jeep. The said road was infested by the extremists and there was possibility of attack by the extremists on public vehicles passing over the road in the said area and there was panic at the relevant period of time on, account of extremist activities and it was, usually considered "unsafe to undertake journey through the said road. The husband of the claimant, (since deceased) and other passengers present in" the vehicle requested the driver of the vehicle to take different road to avoid possible attack by the extremists. The said driver did not pay any heed and as a result, the said vehicle was fired upon and in such firing the claimant's husband received bullet injuries and expired. The wife of the deceased applied for compensation. The learned Tribunal taking the view that the death was not caused on account of use of vehicle, rejected the claim. On appeal preferred against such rejection of claim, a learned Division Bench of this Court based on Rita Devi's case (supra) took the view as stated earlier.

7. There is another case similar to the present case in Oriental Insurance Co. Ltd. Vs. Dongkholam and Others, where a bus proceeding from, Athibung to Dimapur with 40/45 passengers was ambushed by the miscreants while the bus was passing through a disturbed area before Kiyovi village. Some persons coming from opposite direction stopped the bus and informed the driver that they had definite information of the presence of some armed people who may attack the passengers and asked the driver not to go ahead. Some passengers of the bus also demanded not to proceed further but the driver did not pay any heed. The bus was stopped by some persons and fired upon indiscriminately killing 30 passengers. On claim petition filed by the legal representatives of the deceased, compensation was awarded. The Insurance Company, against the said award, preferred appeal before this Court on the ground that the death of the deceased passenger was not accidental arising out of use of the motor vehicle but purely a murder. This Court considered the said appeal in the light of the judgment in Rita Devi's case (supra) and dismissed the same. In paragraph 22 this aspect was discussed and held as under:--

22. In the instant cases from the aforesaid discussion of evidence on record it is amply clear that no care was taken by the driver for safety of the passenger travelling in the vehicle and the driver in fact did not pay any heed to the warning given by some persons and also to the demand of the passengers not to proceed further. Because the driver had proceeded further, the passengers travelling in the said bus were killed arising out of the use of the motor vehicle. Had the driver not proceeded further and paid heed to such warning and demand the said accident could have been avoided. Therefore, negligence of the driver was duly proved. From the evidence as discussed above it is also clear that it was an unintended and unforeseen injurious occurrence and the same was not caused in furtherance of any other felonious act and, therefore, it is an accident within the meaning of Motor Vehicle Act, 1988. The claimants are, therefore, entitled to compensation under the provisions of the said Act.

8. The fact that the driver proceeded through the extremists infested area in spite of the request of some of the passengers not to proceed further and to divert the vehicle through different road has been proved. Also the fact that some of the passengers including Rabindra Debbarma was shot by the extremists in the said bus is also found proved. In such case the view taken by the learned Tribunal that the cause of death of the victim was bullet injuries and there was no motor vehicle accident is not at all acceptable and tenable under the law settled by Apex Court and by this Court in various cases as mentioned above. There is no other view that can be taken, on the face of the aforesaid facts and evidence on record, except that the deceased was killed in vehicular accident. The evidence on record does not appear that the dominant intention of the extremist was to attack and kill the deceased. The extremists stopped the vehicle and killed Rabindra Debbarma and Ratan Debbarma by opening fire on them. Several passengers received injuries due to assault by the extremists. Had it been a case, or found from the evidence, that the extremists had dominant intention to attack and kill only the aforesaid persons in bus, it would not have come within the meaning of death in vehicular accident and in that case, the legal heirs of the deceased would not have been entitled to compensation.

9. In view of the above, I set aside the impugned judgment and order dated 7.12.10 passed by the learned Member, MACT Court No. 2, West Tripura, Agartala. The matter is remanded to the learned Tribunal for fixing the quantum of compensation to be paid to the appellants/claimants with interest in vogue from the date of filing of the claim. The Tribunal shall not allow the parties to adduce further evidence. It shall take into consideration the relevant factor for awarding the compensation in accordance with law and pass fresh judgment and order within a period of 30 days from the date of receipt of a certified copy of this order. With the above observations and direction this appeal stands disposed of.