
(2022) 04 GAU CK 0045
In the Gauhati High Court
Case No : MACApp. No. 250 Of 2015

Suniti Singha And 2 Ors

APPELLANT

Vs

New India Assurance Co. Ltd. And 2 Ors

RESPONDENT

Date of Decision : 28-04-2022

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2022) 04 GAU CK 0045

Hon'ble Judges : Parthivjyoti Saikia, J

Bench : Single Bench

Advocate : H Das

Final Decision : Allowed

Judgement

1. Heard Mr. H. Das, learned counsel representing the appellants as well as Mr. A. Dutta, learned counsel appearing for the respondents.
2. This is an appeal under Section 173 of the Motor Vehicles Act, 1988 (as amended) against the Judgment and Award dated 13.07.2015 passed by the MACT, Hailakandi in MAC Case No. 33/2012.
3. On 10.11.2011 at about 7 a.m. the husband of the appellant was riding a motor cycle bearing Regd. No. AS-24/3271 on the PWD road. When he reached Malinchera, Kalibari, one TATA Nano vehicle bearing Regd. No. AS-01-AP-2233, which was coming from the same direction as the said motor cycle, hit the motor cycle from the back side. The husband of the appellant succumbed to his injuries on 06.12.2011. Therefore, the claim petition was filed before the tribunal seeking compensation.
4. The insurance company/respondent contested the claim by filing the written statement. The respondent denied the involvement of the TATA Nano vehicle in the said accident.
5. The owner and driver of the TATA Nano vehicle also contested the case by

filing separate written statements. They denied involvement of the TATA Nano vehicle in the connected accident.

6. On the basis of the pleadings, the Tribunal framed three issues and they are as follows:

(i) Whether the alleged accident occurred involving TATA Nano vehicle of OP No.2 bearing Regd. No. AS-01/AP-2233?

(ii) Whether the claimants are entitled to get any compensation and if so, to what extent and against whom?

(iii) To what other relief/reliefs?

7. During the hearing, the appellant examined 4(four) witnesses and the respondent/insurance company examined 1(one) witness.

8. On the basis of the evidence on record, the tribunal held that the appellants are not entitled to any compensation and therefore, dismissed the claim petition.

9. I have gone through the impugned judgment. I have also heard the learned counsels for both sides.

10. The driver of the TATA Nano vehicle namely Ribul Barbhuiyan admitted that the TATA Nano vehicle bearing Regd. No. AS-01-AP-2233 was involved in the accident. On the other hand, the OP No.2 Pushpa Singha has claimed that she never engaged Ribul Barbhuiyan to drive her vehicle. She also claimed that her TATA Nano vehicle was never involved in the said accident dated 10.11.2011 which took place at Malichera. She further claimed that her vehicle is a self driven one and she has no knowledge about the said accident.

11. The respondent/insurance company has claimed in evidence that the investigator of the company discovered that the TATA Nano vehicle No. AS-01-AP-2233 was never involved in the accident.

12. The tribunal accepted the evidence of the insurance company and held that the insurance company is not liable to pay any compensation.

13. I have given my anxious consideration to the submissions made by the learned counsels of both sides.

14. In a claim case before a tribunal the claimant is not required to prove in the scale of beyond reasonable doubt. In a motor accident claim case before a tribunal, the claimant has to prove the case in the scale of preponderance of probability.

15. The provisions of the Motor Vehicle Act, 1988, relating to payment of compensation to the legal heirs of a deceased who dies in a motor accident, are beneficial legislation. Therefore, in such cases high degree of proof is not required.

16. This Court is of the opinion that the appellant has proved the case with mere preponderance of probability. Therefore, the learned tribunal wrongly oriented itself and arrived at erroneous findings.

17. Therefore, the appeal is allowed and the impugned judgment is set aside.

18. The case is remanded to the tribunal for passing a fresh judgment on all issues. The tribunal shall endeavor to dispose of the case within two months of receiving this order.

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