
(2018) 11 GAU CK 0033
In the Gauhati High Court
Case No : MACApp. 135 of 2017

Suratan Nessa

APPELLANT

Vs

Amrit Agarwala And 6 Ors

RESPONDENT

Date of Decision : 28-11-2018

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2018) 11 GAU CK 0033

Hon'ble Judges : Ajit Borthakur, J

Bench : Single Bench

Advocate : S K Das, S Thakuria

Final Decision : Allowed

Judgement

1. Heard Ms. S. B. Choudhury, learned counsel for the claimant/appellant. Also heard Ms. M. Choudhury, learned counsel for the respondents No. 4

& 5; as well as Mr. K. Bhattacharjee, learned counsel for the respondents No. 6 & 7. None appeared for the respondents No. 1 & 3. As per order,

dated 22.11.2017, the name of respondent No. 2, Md. Nurul Islam was struck-off.

2. This appeal under Section 173 of the Motor Vehicles Act, 1988(for short â??MV Actâ??), is directed against the judgment & award, dated

08.02.2017, passed by the learned Member, Motor Accident Claims Tribunal(for short, â??MACTâ??), Nagaon, Assam, in M.A.C. Case No. 189/14,

praying for enhancement of the award so far the claimant/appellant, the mother of the deceased is concerned.

3. The claimant/appellant, herein, is the mother of the deceased Imdad Hussain Choudhury. Her case, in a nutshell, is that, on 06.01.2014, at about

6.30PM, while the deceased Imdad Hussain Choudhury was travelling by a vehicle bearing Regn. No. AS-01/MA-6876(premier Rio LX) as

occupants which was driven in a moderate speed and when the said vehicle reached Rangaloo Gamariati on NH-36, suddenly, the driver of the said vehicle dashed against another vehicle bearing Regn. No. AS-01/J-5415(Oil Tanker), which was parked negligently in the middle of the road, without any parking lights such as reflectors/blinkers/indicators, and not even a line of stones piled around it to clearly indicate its stationary position. As a result of the accident, Imdad Hussain Choudhury succumbed to his injuries on the spot along with the driver of the Premier Rio LX and one of his colleagues. It is alleged that the said accident took place due to rash and negligent driving of the driver of the offending vehicle i.e. Oil Tanker. The Opposite Parties No. 4 & 5, United India Insurance Co. Ltd., insurer of both Oil Tanker and premier Rio, in their written statement, contended that there is no cause of action for the petition and that the claim petition is bad for non-joinder of necessary parties. They further contended that the deceased person had no driving license at that relevant point of time and hence, the company is not liable to imdenify the owner. The insurance company further denied the age, income, occupation of the deceased as alleged in the claim petition. Upon pleadings of both sides, the issues necessary for adjudication of the case were framed, as under:

1. Whether the claim petition is maintainable?
 2. Whether the accident occurred due to rash and negligent driving of the driver of vehicle Nos. AS-01/J-5415(Oil Tanker) and AS-01/MA-6876(Rio)?
 3. Whether the claimant is entitled for compensation? If so, what relief/releifs, the claimant is entitled to?
 4. To what amount, the claimant is entitled to and who will be liable to pay the amount?
4. Ms. Choudhury, learned counsel for the claimant/appellant, submits that the respondent No. 6/the wife of the deceased is a Government officer, working as a Junior Inspector, Cooperative Societies, whereas the claimant/appellant, who was the mother of the deceased, had been totally dependent upon the deceased's income. According to Ms. Choudhury, the learned Tribunal ought to have awarded compensation to the appellant mother at least Rs. 10,00,000/- as she was completely dependent on the deceased son by adjusting the award granted to the respondent No. 6, who is

a government officer.

5. The learned counsel for the respondents simply contend that the question involves in this appeal relates to apportionment of the awarded amount amongst the legal heirs of the deceased.

6. I have given my due consideration to the arguments advanced by the learned counsel for both sides. Perused the records.

7. The short question that falls for consideration in the instant appeal, is whether the apportionment of the awarded amount between the appellant

mother and the respondent No. 6/wife of the deceased, made by the learned Tribunal was unjustified and if so, whether the amount awarded to the

appellant is liable to be enhanced? The answer to this question rests on the dependency of the appellant on the deceased's income. It is well-

settled that the wife, mother and minor sons and unmarried daughters, etc., who are dependent on the deceased, are entitled to damages in case of

death in motor vehicular accident to the extent of their dependency.

8. In the instant case, at the time of the death, the deceased was working as C.D.P.O., under the ICDS Project of the Department of Social Welfare,

Government of Assam, and his wife/the respondent No. 6 is a Junior Inspector of Cooperative Societies. At the time of death, the deceased also left

behind 2(two) minor daughters, aged about 7(seven) years and 6(six) months respectively.

9. The evidence of the appellant(PW-3), aged about 67 years, shows that she and her husband Nur Hussain Choudhury(since deceased) were

absolutely dependent on their deceased son's income. After death of her son, she has become financially crippled. After the death of her husband

on 27.01.2016, she has been running from pillar to post for her survival along with severe old-age health problems, mental agony, etc., due to death of

her husband and son. It is, however, noticed that PW-3 has not produced any medical evidence to show that she has been suffering from any kind of

old-age ailments. Be that as it may, the claimant wife and her minor daughters, who are not settled in life, are entitled to compensation.

10. In the instant case, the other claimant wife of the deceased is in a permanent government job and therefore, she, who is a young lady aged about

34 years, has an assured regular income as salary, with scope even for pensionary benefits in due course and on the other hand, her minor daughters

are given adequate share of the awarded amount keeping in consideration of their future need. There is no denial that the claimant appellant is a senior citizen, who is stated to be aged about 67 years, with no permanent income source of income to meet her daily need to maintain protection of lonely life at old age. Therefore, this Court is of the considered opinion that some modifications in the apportionment of the awarded amount may be made balancing the rights and need of both the appellant mother and the respondent No. 6/the wife of the deceased, that is, the daughter-in-law of the present appellant.

11. Accordingly, the amount of Rs. 5,00,000/-(Rupees Five Lakhs) apportioned in favour of the claimant/appellant/mother of the deceased, is

enhanced to Rs. 7,00,000/-(Rupees Seven Lakhs), that is, by adding an additional amount of Rs. 2,00,000/-(Rupees Two Lakhs), proportionately

reducing the aforesaid amount apportioned in favour of the respondent No. 6/ wife of the deceased.

12. The learned Tribunal shall make necessary arrangements for payment on apportionment of the awarded amount, as modified above.

13. Appeal stands allowed in terms of the above.

14. Send down the records to the learned Tribunal immediately.