

(2017) 10 GAU CK 0001
In the Gauhati High Court
Case No : 190 of 2012

The Union of India

APPELLANT

Vs

Sayed Fatema Bibi and others

RESPONDENT

Date of Decision : 24-10-2017

Acts Referred:

Indian Penal Code, 1860, Section 304,
Section 279 - Punishment for culpable homicide not
amounting to murder - Rash driving or riding on a public way
Motor Vehicles Act, 19

Citation : (2017) 10 GAU CK 0001

Hon'ble Judges : Kalyan Rai Surana

Bench : SINGLE BENCH

Advocate : S.K. Medhi, D. Das Roy

Final Decision : Dismissed

Judgement

1. Heard Mr. S.K. Medhi, learned Central Govt. counsel for the appellant as well as Mrs. D. Das Roy, learned counsel appearing for the respondents.

2. This is an appeal under Section 173 of the Motor Vehicles Act, 1988. This appeal is directed against the judgment and award dated 20.05.2011 passed by the learned MACT, Kamrup, Guwahati in MAC Case No. 326/2005, by which the respondents No. 1 to 4 were granted compensation to the extent of Rs.4,09,000/- together with interest @ 6% per annum from the date of the filing of the claim petition i.e. 14.03.2005 till payment.

3. The claim case in brief is that one Ainal Ali, who was the husband of the respondent No. 1 and the father of the respondent No. 2, 3 and 4, had suffered motor vehicle accident on 20.01.2005 involving army vehicle bearing No. 2129, stated to be owned by the Red Horn Public School (Opp. Party No. 2 in the claim case). On 20.01.2005, the predecessor-in-interest of the respondents was going to his home from Rangia by riding his bicycle. However, the offending vehicle hit him from behind and as a result of the accident the victim sustained

grievous injury and died on spot. The Respondents had stated that the deceased about aged of 35 years and was earning Rs.6,000/- per month. In the claim case, the Union of India, represented by the Secretary Home Department was Opp. Party No. 1, Red Horn Public School, the owner of vehicle No. 2129, was arrayed as the Opp. Party No. 2, and the Station H.Q. of Red Horn Division Unit No. 271 was arrayed as the Opp. Party No. 3. The said three Opp. Parties filed their joint written statement. Besides taking formal plea like maintainability, it was stated that vehicle No. 2129 did not belong to the army and that the Army vehicle do not have four digits registration number and it was further stated that Red Horn Public School was a private institutional organisation of the Army and they do not use Army vehicle and, as such, it was prayed for dismissal of the claim petition. The said written statement was verified by one Maj. Daljeet Singh.

4. On the basis of pleadings, the following issues were framed by the learned Tribunal:

1. Whether the accident took place due to negligent driving of the driver of the vehicle no. 2129 Unit No.271 Army Vehicle and whether the claimant's husband, Late Ainal Ali, died as a result of the accident?

2. Whether the claimant is entitled to any compensation and if so, from whom it is recoverable?

3. What will be just and proper compensation?

4. Is the claimant is entitled to any other relief?

5. In respect of issue No. 1, the learned Tribunal relied on the evidence of PW-2, Md. Wahidur Rahman, who is the eye witness of the accident. He had deposed that an Army school bus of Red Horn Public School bearing No. 2129 of unit 271 had knocked down the bicyclist. He had also stated that other Army vehicles were following the school bus. He had admitted that the accident occurred due to rash and negligence driving of the offending vehicle. The learned Tribunal had also relied on Ext.1, i.e. the Accident Information Report, which was exhibited by PW-1, Syeda Fatema Bibi. The learned Tribunal had also relied on the evidence of DW-1, Santosh Kumar Shukla, who was then serving as a soldier is 521 ASC Battalion, C/o. 99 APO, Changsari. The said witness had stated that on 20.01.2005, he was driving a protection vehicle of an Army convoy and the school bus was following the convoy, and after moving 3/4 km., the school bus over took the convoy. He deposed that he did not see the accident but he saw the injured person lying on the road side. During his cross examination, DW-1 had stated that the Red Horn Public School belongs to the Army. He also stated that Army vehicle carried students of Red Horn School and the registration number 2129 only belonged to the Army and the tactical number 271 related to their vehicle. He did not know whether the Army authorities had conducted any investigation regarding the case. He had stated that he did not notice the bus number. The learned Tribunal further relied on the Accident Information Report (Ext.1), wherein the Officer- in- Charge of Kamalpur P.S. had recorded in serial

No. 6 that truck No. 2129 unit No. 271 was a Red Horn Public School bus Army vehicle. The learned Tribunal held that the accidental death of the victim had occurred solid due to rash and negligent driving of the Army school bus of Red Horn Public School belonging to the Army and the issue No. 1 was decided in favour of the Respondents/claimants. In respect of the issues No. 2, 3 and 4, as the author of the salary certificate (Ext.3) was not examined, the learned Tribunal assumed the monthly income of the deceased at Rs.3000/- per month instead of Rs.6,000/- as claimed vide Ext.3, and by deducting one- third of the income, the annual loss of dependency was taking to the Rs.24000/- and by applying the multiplier of 16, the total loss of dependency was calculated at Rs.3,84,000/-. The Respondents/ claimants were held to be entitled to compensation as assessed hereunder together with 6% interest as stated hereinbefore:-

a. Loss of dependency: $24000/- \times 16 = \text{Rs.}23,84,000/-$.

b. Funeral Expenses: Rs.5,000/-.

c. Loss of consortium: Rs.20,000/-.

d. Total: Rs.4,09,000/-.

6. The learned CGC has relied on that part of the cross examination of PW-1, where he had deposed that she was not present at the time of the accident and that she did know the name of the school whose vehicle was involved in the accident. He has also relied on the part of the cross examination of PW-2, where he had stated that the deceased was hit by a bus bearing No. 2129, Unit 271 and that he knew that the vehicle was a school bus, but he did not know the name of the school. It is submitted that without ascertaining as to who was the owner of the vehicle involved in the accident, the award was not sustainable on facts and in law. It is further submitted that assuming that an Army vehicle was involved in the accident, the claim petition was bad for non-joinder of necessary parties because the Armed Forces is under the Ministry of Defence and not under the Ministry of Home and therefore, the claim petition was liable to be dismissed. It is further submitted that no FIR was proved by any witnesses and therefore, the compensation could not have been awarded against the appellant.

7. Per-contra, the learned counsel appearing for the respondents/ claimants has submitted that the witnesses including DW-1 had clearly admitted in his cross examination that the vehicle bearing 2129 number only belonged to Army vehicles and tactical No. 271 relates to army vehicle. The said witness had also admitted in his evidence- on- affidavit that the school bus of Red Horn Public School which is involved in the alleged accident did not belong to their unit i.e. 521 ASC Battalion, C/o. 99 APO, Changsari. It is also submitted that as per Ext.1, i.e. the Accident Information Report dated 04.06.2005, the bus involved in the accident was Red Horn Public School (Army Vehicle). As regards arraying of Union of India, represented by The Secretary Home Department, Delhi, as Opp. Party No.1 in the claim petition, the learned counsel for the respondents has

placed on record a certified copy of the claim petition of the case of MAC Case No. 1966/2009 as well as the judgment and award dated 09.03.2017 passed by the learned MACT No. 1, Guwahati, in the said case, where the Opp. Party No. 1 was the Union of India, represented by the Secretary to the Govt. of India, Home Department. In the said case, an award of Rs.13,23,500/- along with 6% interest was awarded by the Motor Accident Claims Tribunal No.1, Guwahati. As per the certified copy of a court attendance dated 09.08.2017 filed in the said case by the learned CGC, the awarded sum of Rs.19,45,545/- was deposited before the learned Tribunal by the Union of India vide cheque No. 202994 dated 31.07.2017 payable at S.B.I., Missamari Cantonment, Sonitpur. By relying on the said payment, it is submitted that in the present case in hand, all the three Opp. Parties had not only filed their joint written statement but they had examined only one DW to prove their defence and, as such, the appellant, i.e. Union of India, having participated in the proceeding, cannot be permitted to raise the plea of non-joinder of necessary party because the Union of India was a necessary party and on receipt of notice, the Army had contested the case and that in another accident case, being MAC Case No. 1966/2009, although the Union of India was represented by the same authority, i.e. Secretary to the Govt. of India, Home Department, which is same as in the cause title as in the present case, the full compensation amount was deposited by the appellant and, as such, the appellant cannot be permitted to take a different stand in this case.

8. Considered the argument advanced by the both sides and perused the LCR. It is noted with concern that the Opp. Parties in the present case are - (1) Union of India, represented by the Secretary Home Department, (2) Red Horn Public School, the owner of vehicle No. 2129, and (3) Station H.Q., Red Horn Division Unit No. 271. However, the sole appellant herein is the Union of India, represented by the Commanded 521 ASC Battalion, C/o. 99 APO. Therefore, it appears that none of the Opposite Parties in the claim petition i.e. MAC Case No. 326/2005 had preferred any appeal against the said judgment and award. Moreover, the present appellant had not taken any leave of this court to file an appeal. The appellant has not made any statement in the memo of appeal as to how right to file an appeal had accrued upon them or that how they can prefer the appeal on behalf of the three Opp. Parties in the claim petition.

9. As per the evidence of DW-1, had admitted in his cross examination that Red Horn School belongs to the Army. He had also admitted that Army vehicle carried the students of Red Horn School and that 2129 number only belong to army vehicles. As per the statements made in the claim petition as well as from the statements made by PW-1 and PW-2, it was nobody's case that vehicle of 521, ASC Battalion, C/o. 99 APO was involved in the accident, but their case was that School Bus of Red Horn Public School was the offending vehicle. In paragraph 1 of the present memo of appeal it is stated, inter-alia, that "... the Opposite Party/ claimant alleged that on 20.7.2005 at about 1.55 pm the Army vehicle 2129 Unit No. 271 knocked down the husband of the claimant from behind causing death to him. The opposite party/ claimant also alleged that vehicle No.

B.A. No. 96D- 102129XLY 3 Ton Shaktiman of 521 ASC Battalion is involved in death of Anial Ali ..." On perusal of the learned Tribunal's record, the said statement is not found either in the claim petition or in the evidence of PW-1 and PW-2. The Accident Information Report (Ext.1) also contains no such statement as mentioned in para-1 of the present Memo of Appeal.

10. A perusal of LCR shows that the learned Tribunal had issued a notice dated 28.04.2005 to the Officer- in- Charge, Kamalpur P.S., to submit

(i) Police Information Report in Form No. 54 and (ii) seizure list of Kamalpur P.S. Case No. 14/2005. On receipt of the same, at the back-page of the said notice, the Officer- In- Charge of Kamalpur P.S. had informed the learned Tribunal in writing as follows -

"... that after the incident the involving Veh. No. 2129 Unit No. 271 Red Horn Public School (Army Veh.) left towards Baihata Chariali side before reaching police at P.O. After reporting the case vide Kamalpur P.S. case No. 14/2005 u/s. 279/304 (A) IPC letter was sent to C.O. Station H.Q. Red Horn Division Unit 271 Camp Changsari to produce the said involving vehicle along with driver but they could not produce. Therefore, the seizure list of said Veh. & any it's related documents could not be prepared, so that the seizure list in connection with the above reference case unable to produce before your Honourable Court. The MAC form No. 54 duly filled up and enclosed herewith and obliged."

Therefore, in this case, it is on record that the Army did not co-operate with the police investigation. It is the specific case of the police as per entries made in Accident Information Report (Ext.1) that the vehicle belonged to Red Horn Public School. Therefore, on receipt of notice from the police as well as from the Motor Accident Claims Tribunal, (1) the Union of India (OP No.1), (2) the Red Horn Public School (OP No.2), and (3) the Station H.Q., Red Horn Division Unit No. 271 (OP No. 3) did not deny the involvement of their vehicle in the accident.

11. The Union of India who is the master of Opp. Parties No. 2 and 3 in the claim case had exercised their wisdom to give defence evidence through a driver of 521 ASC Battalion, against whom no allegation at all was made in the claim petition, therefore, the appellant had done so their own risk. This is the case where none of the opposite parties in the MAC Case No. 326/2005 had given any evidence in support of their defence. The DW-1 did tender in evidence any document showing that he was authorised to depose on behalf of any of the opposite party therein. Therefore, in this case all the three opposite parties in the said MAC Case No. 326/2005 are found to have not given any evidence in support of their defence.

12. In view of the discussions above, this Court holds that the appellant herein, being not a party in MAC Case No. 326/2005 cannot maintain the present appeal in the name of Union of India, represented by the Commandant, 521 ASC Battalion, C/o. 99 APO. The present appeal suffers from the defect of non-joinder of all the three Opposite Parties in MAC Case No. 326/2005. Moreover, all the

three Opposite Parties in MAC Case No. 326/2005 had accepted the impugned award without any demur. As per the impugned judgment and award, the specific direction to pay the awarded compensation and interest thereon is directed against the Opposite Parties No. 2 and 3, viz., Red Horn Public School and Station H.Q., Red Horn Division. Therefore, in the absence of any statement in this memo of appeal that the appellant is in any way concerned with the Opposite Party No. 2 and 3 in MAC Case No. 326/2005, this appeal is dismissed as being not maintainable as no award had been passed against the Union of India, represented by the Commandant, 521 ASC Battalion, C/o. 99 APO and it is also not the case of the appellant that the 521 ASC Battalion is the owner/master of Opposite Parties No. 2 and 3, viz., Red Horn Public School and Station H.Q., Red Horn Division.

13. Accordingly, this appeal is dismissed with cost of Rs.7,000/- (Rupees Seven thousand only) towards fees for the Counsel engaged by the respondents. At present there are four MACT in Guwahati. Therefore, the appellant is now directed to deposit the said cost before the Motor Accident Claims Tribunal No.1, Kamrup (M), Guwahati, within a period of 1 (one) month from today, failing which the same shall be recovered as per law by the said learned tribunal. Consequently, the judgment and award dated 20.05.2011 passed by the learned MACT, Kamrup, Guwahati in MAC Case No. 326/2005 is upheld.

14. Let the LCR be returned forthwith to the learned Motor Accident Claims Tribunal No.1, Kamrup (M), Guwahati. However, liberty is granted to transfer the record to the appropriate tribunal, if required.

15. It is further provided that if the balance compensation is not deposited by the Opp. Parties No.2 and 3 within one month from today, the respondents/claimants shall be at liberty to enforce the award in accordance with law.