
(2018) 03 GAU CK 0033
In the Gauhati High Court
Case No : MACApp. 9 of 2009

TOMINA BEGUM DEKA

APPELLANT

Vs

JATIN DUARAH

RESPONDENT

Date of Decision : 14-03-2018

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2018) 03 GAU CK 0033

Hon'ble Judges : KALYAN RAI SURANA

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. Heard Ms. N. Rai, learned counsel of the appellant. Also heard Mr. B. K. Purkayastha, learned Counsel appeared for the respondent no. 3, namely,

United India Insurance Co. Ltd., as well as Ms. S. Roy, learned Counsel appearing for the respondent no. 5, namely, National Company Ltd.

2. By this appeal under Section 173 of the Motor Vehicles Act, 1988 the appellant has challenged judgment and order dated 24/01/2007, passed by the

learned Motor Accident Claims Tribunal, Dibrugarh in MACT Case no. 72/2003, whereby the claim petition was dismissed, inter-alia, on the ground

that the appellant could not prove her relationship with the deceased, Putul Deka, whom she claimed to be her husband.

3. In the claim petition it was projected that the deceased was a driver of vehicle bearing no. AS-01-D-1440 on 06/04/2001. While he was driving the

said vehicle, at about 2.30 AM, another vehicle bearing registration no. AS-23-A-8017, collided with his vehicle, causing his death. The respective

owners and the insurers of the both vehicles were made parties to the claim petition.

4. By filing the claim petition which was as MACT Case no. 72/2003, the appellant prayed for compensation of Rs.5,97,672/- (Rupees five lakh ninety seven thousand six hundred and seventy two only).

5. Both the insurers i.e. respondent no. 3 and 5 herein had contested the claim by filing their respective written statement, denying the claim. By

further taking the usual pleas they had challenged the locus standi of the appellant to file the claim and she was put to strict proof of her claim.

6. The learned Tribunal on the basis of the pleadings, framed the following five issues for trial:

- i. Whether the claim petition is maintainable in law & facts?
- ii. Whether the claimant's husband died in a motor vehicle accident?
- iii. Whether insurance policy of the vehicles were valid at the time of accident?
- iv. Whether the claimant is entitled to the amount claim as compensation?
- v. What other relief/reliefs are entitled by the claimant?

7. The appellant examined herself as PW-1 and no witness was examined by the respondents no. 3 and 5. On considering the evidence on record, the

learned Tribunal decided the issues no. 1 and 3 in the positive and in favour of the appellant. However, in respect of issues no. 2 and 4, considering the

evidence of the appellant, specifically her cross-examination, it was held that the appellant had failed to prove that she was the married wife of the

deceased or that she was the legal heir of the deceased and accordingly, the claim petition is dismissed.

8. Assailing the said order and the finding recording in respect of the issues no. 2 and 4, the learned counsel for the appellant has submitted that the

evidence of the appellant that she was a married wife of the deceased was not controverted by any counter evidence and it is submitted that even in

the absence of any document, the learned Tribunal ought to have accepted that the appellant was the wife of the deceased. Moreover, the learned

Tribunal ought to have taken a note that no other person(s) had either presented any claim, nor any person had come forward to contest her claim as a

bona fide legal representative of the husband of the appellant. Therefore, the learned Tribunal ought to have taken cognizance of the fact that she was

the mother of a male child borne out of the wedlock with the deceased, whom she had married in Kamakhya Temple. It is further submitted that

instead of dismissing the claim on the ground that the appellant was not able to prove the relationship between the appellant and the deceased, the learned Tribunal ought to have provided adequate opportunity to the appellant to prove her marriage.

9. It is further submitted that the claim ought to have been allowed in view of the fact that as the Motor Vehicles Act, 1988 was a social legislation, the learned Tribunal ought to have directed the police to submit a report. Therefore, the learned counsel for the appellant has prayed for allowing this appeal and to direct the respondents no. 3 and 5 herein to pay the compensation in favour of the appellant.

10. Both the learned counsel appeared for the respondents no. 3 and 5 have referred to the cross examination of the appellant and the findings

recorded by the learned Tribunal on issue no. 2, wherein the learned Tribunal had taken note of the evidence that the appellant was a resident of

Dibrugarh and she had alleged that she was married on 10th Bohag of the year 2000 at Kamakhya Temple yet, she had never visited the house of her

husband at Hengrabari, Guwahati. The appellant had also admitted that she had no document issued by the temple authority regarding solemnizing of

her marriage with the deceased and that she was having no document or relating to the birth of her child/son. The learned Tribunal had also taken note

that respondent no. 4, the owner of the Vehicle, where the deceased was working had also turned up to the support the contention of the appellant

that she was married to the deceased. Hence, it is submitted that no infirmity was found in the judgment by the learned Tribunal.

11. Having considering the submission made by the learned Counsel of both sides and on perusal of the records, the only question that arises for

decision in this appeal is that whether there is any infirmity in the impugned judgment whereby the claim petition of the appellant was dismissed.

12. In this case, it is seen that it is stated that in the cross examination of the appellant that she had not visited the house of her husband either at

Nalbari or at Hengrabari, Guwahati, and that she was not even present at the time of funeral of her husband. The absence of the appellant or her

minor son at the time of funeral of the deceased Putul Deka appears to be very questionable. In the opinion of this court, this is a circumstance which

is working against the appellant because it is not conceivable that the appellant who was stated to be married with the deceased on 10th of Bohag of

the year 2000 (which would approximately be in last week of April 2000) was having a one year old child in her arms as on the date of accident on 06/06/2001, yet she has not associated herself or her son with the funeral of her husband and thereby, she had deprived the child of an onerous duty to perform the last rites of his alleged father and that too in the absence of any allegation that she was prevented by any other friends or family members of the deceased, is sufficient for this court to infer that there existed no relationship between the appellant and the deceased in the absence of any explanation in her evidence as to why she and the minor child did not attend the funeral of the deceased.

13. In view of the above discussion, this court does not find any infirmity with the decision of the learned Tribunal on the issues no. 2 and 4, by which the learned Tribunal did not acknowledge any relationship between the appellant and the deceased resulting in dismissing of the claim petition of the appellant. Hence, the point of determination which has arisen for consideration in this appeal is answered in the negative and against the appellant by holding that appellant did not succeeded to establish her relationship as wife of the deceased. Hence, the impugned judgment does not suffer from any infirmity.

14. Accordingly, this appeal fails and the appeal stands dismissed. The impugned judgment and order dated 24/01/2007, passed by the learned Motor

Accident Claims Tribunal, Dibrugarh in MACT Case no. 72/2003 is hereby upheld. The parties are left to bear their own cost.

15. Let the LCR be returned back.