



GAHC010141892011



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : MACApp./83/2011

NATIONAL INSURANCE CO. LTD.,
HAVING ITS REGISTERED OFFICE AT 3, MIDDLETON STREET, KOLKATTA
AND ONE OF THE REGIONAL OFFICE AT G.S. ROAD, BHANGAGARH,
GUWAHATI, ASSAM.

VERSUS

SMTI. DIPTEE CHOUDHURY and 3 ORS,
W/O LATE ASHUTOSH CHOUDHURI

2:MISS ROSE CHOUDHURY

MINOR DAUGHTER OF LATE MANTOSH CHOUDHURY.

3:SMTI BORNALI CHOUDHURY

W/O LATE MANTOSH CHOUDHURY.

4:SIB SANKAR ROY

S/O ANANDI ROY
VILL. FATASIL AMBARI
NEAR PWD OFFICE
P.O. AMBARI
BHARALUMUKH
GUWAHATI
ASSAM

Advocate for the Petitioner : MR.S S SHARMA, MS. A BIYANI,MR.R K BHATRA,MR A
SAIKIA,MR.V SHARMA

Advocate for the Respondent : MR.M KALITA,



**BEFORE
HONOURABLE MR. JUSTICE BUDI HABUNG**

:: JUDGMENT AND ORDER ::

[CAV]

Date : 24-02-2025

Heard Mr. R.K. Bhatra assisted by Ms. A. Biyani, learned counsels for the appellant. No one appears on behalf of the respondents.

2. By an order dated 30.05.2022, this court made an observation that if the respondents remain absent, the matter shall proceed ex-parte against the respondents/claimants. This is an old case of 2011. About 14 years have gone by since filing of this appeal. Trial court record have received long back. Notice was duly received by the respondents. Earlier, they were represented by advocate by filing vakalatnama. However, the matter remained pending for non-representation of the respondents. This Court is of the opinion that the matter cannot be kept pending for an indefinite period for non-representation of the parties even after received of notice. According the matter was taken up for hearing.

3. The present appeal has been filed under Section 173 of the Motor Vehicle Act, 1988, assailing the judgment and award dated 08.07.2009, passed by the learned Member, Motor Accident Claims Tribunal, Biswanath Chariali, Sonitpur, in MAC case No. 02/2008, awarding an amount of Rs. 14,05,000/- with 5% interest from the date of filing of the claim petition till payment.



4. The fact leading to the filing of this appeal in brief is that on 19.09.2007, one Mantosh Choudhuri, son of respondent no. 1, father of respondent no. 2 and husband of respondent no. 3 was proceeding to his father-in-law's house at Bihpuria, by his motorcycle bearing registration No. AR-01-B/2464. While he reached near Madhabpur, one woman with a minor girl suddenly crossed the NH-52 from behind the standing truck. The truck was bearing Registration No. AS-01-B/0804, and it was parked at the middle of the road. At that moment the deceased Mantosh Choudhuri, in order to save the woman dashed against the said standing truck, due to which he died on the spot. It is the case of the claimants that there was no reflector, indicator or even a stone placed behind the truck to indicate its stationary position. The further case of the respondents/claimants is that, after the accident a case was registered vide Bihpuria PS case No. 249/07, under section 273/304(A) IPC. According to the claimants, the offending vehicle was duly insured with the appellant, National Insurance Co. Ltd. and it had the valid insurance coverage at the time of the accident. The contention of the claimants before the Tribunal was that the deceased was working as a school teacher and earned Rs. 8,056/- per month. The claimants, therefore, claimed Rs. 16,50,000/- as compensation on account of the death of the deceased Mantosh Choudhuri due to the vehicular accident.

5. The opposite party/appellant contested the case by filing written statement, and stated that the accident took place not because of the negligence of the offending vehicle, but because of contributory negligence of the deceased. The owner of the offending vehicle in his



written statement stated that the vehicle was driven by his driver Rajib Kumar with valid driving license. The vehicle was returning from North Lakhimpur on 16.09.2007. However, on the way, the truck's tyre got burst out on NH-52 near Dholpur. As a result, the vehicle was parked in the extreme left side of the NH-52. According to the opposite party, since the next day was Biswakarma Puja, they could not supply new tyre from Guwahati. Therefore, he instructed the driver to keep the vehicle safe on NH-52 with the handyman. It is further stated that the motorcyclist knocked a mile-post and lost his life. The further contention of the truck owner was that the vehicle was duly insured with the Insurance Company at the time of the accident.

6. Based on the pleadings of the parties, the learned Tribunal framed three issues:

- (I) Whether the alleged accident occurred due to rash and negligent driving of the driver of the offending vehicle?
- (ii) Whether the claimants are entitled to get any compensation, if so, to what extent and from whom?
- (iii) To what other relief/reliefs, the claimants are entitled to in law and equity?

7. Upon conclusion of the trial, the learned Tribunal came to the conclusion that the claimant is entitled to a compensation of Rs. 18,00,000/- (Rupees eighteen lakhs). It also found that there was a



contributory negligence on the part of the deceased. The contributory negligence of the deceased is calculated at 25%. Therefore, after deducting 25% from Rs. 18,00,000/- (Rupees eighteen lakhs), the total amount came at Rs. 13,50,000/- (Rupees thirteen lakhs fifty thousand). The claimant is also entitled to get Rs. 10,000/- as pain and sufferings due to the death of the deceased; Rs. 40,000/- (rupees forty thousand) as loss of consortium; and Rs. 5,000/- (rupees five thousand) for funeral expenses. Therefore, the total amount of Rs. 14,05,000/- (Rupees fourteen lakhs five thousand) (i.e., $\text{Rs.13,50,000} + \text{Rs.10,000} + \text{Rs.40,000} + \text{Rs.5,000} = \text{Rs.14,05,000/-}$) on different head is awarded to the claimants.

8. The tribunal also came into the conclusion that the appellant, National Insurance Co. Ltd. is liable to pay the compensation amount of Rs. 14,05,000/- (Rupees fourteen lakhs five thousand) to the claimants, and directed the appellant/ National Insurance Co. Ltd to pay the compensation amount to the claimants with 5% interest from the date of filing of the claim petition as per terms prescribed.

9. Being aggrieved, the appellant filed this appeal on the following grounds:

- (i) The evidence shows that the deceased, while driving Motor-cycle registration no. AR-01-B-2464, attempted to overtake the stationary truck no. AS-01-B-0804, (insured by the appellant). Upon noticing an oncoming vehicle, he moved towards the truck and collided with it. No negligence can be attributed to the stationary truck; thus, it should not be deemed the offending vehicle.



- (ii) The accidental death of the Motorcyclist was due to his negligent and rash driving in the broad daylight, not the stationary truck. The deceased was at fault, this fact was overlooked by the Tribunal, which wrongfully assigned 75% of the compensation liability to the appellant.
- (iii) The F.I.R clearly indicates that the deceased was at fault, as he unexpectedly overlooked the stationary truck and collided with it while trying to avoid an oncoming vehicle on the national Highway. Therefore, the tribunal's decision to hold the insurer of truck No. AS-01-B-0804 (the appellant) responsible 75% of the compensation is perverse.
- (iv) There is no evidence to support the claim that the deceased's monthly salary was Rs.15,000. Therefore, calculating compensation based on this salary is excessive and should be revised downward.
- (v) The evidence clearly indicates that the accident resulted from the deceased's negligence. Thus, the insurer of the other vehicle should be completely exonerated, or at least 50% of the negligence should be attributed to the deceased, warranting a proportional reduction in the award for his contributory negligence.
- (vi) The Tribunal failed to consider that neither the driver of the offending vehicle nor the owner/insurer of the



motorcycle was involved in the proceedings. Consequently, the case could not properly proceed, making the impugned award liable to be set aside.

(vii) That award of Rs. 40,000/- for loss of consortium lacks any basis or justification. The Tribunal should have realistically assessed this amount but failed to do so.

10. For the reasons stated above, the learned counsel for the appellant prays that at least 50% of the awarded amount be reduced by taking into account the contributory negligence of the deceased.

11. In support of his claim, the learned counsel for the appellant has cited the following judgments of the Hon'ble Supreme Court;

(i) ***Bijoy Kumar Dugar Vs. Bidya Dhar Dutta and Ors*** reported in **(2006) 3 SCC 242**. The relevant paragraph is reproduced herein below:

“12. Adverting to the next contention of the claimants, no doubt the High Court has not dealt with the point in issue. However, we have noticed the reasoning and finding of the MACT recorded under Issue No.2. It is the evidence of Rajesh Kumar Gupta-P.W.2 who was travelling in the Maruti car along with the deceased Raj Kumar Dugar on the day of the accident that he also suffered some injuries in the said accident. He stated that while coming from Digboi, the Maruti car being driven by the deceased met with an accident at a place near Kharjan Pol. Before the accident, Raj Kumar Dugar noticed a passenger bus coming from the opposite direction and the movement of the bus was not normal as it was coming in a zigzag manner. The Maruti car being driven by the deceased Raj Kumar Dugar and the offending bus had a head-on collision. The MACT has not accepted the evidence of P.W. 2 to prove that the driver of the offending bus was driving the vehicle in abnormal speed. If the bus was being



driven by the driver abnormally in a zigzag manner, as P.W. 2 wanted to believe the Court, it was, but natural, as a prudent man for the deceased to have taken due care and precaution to avoid head-on collision when he had already seen the bus from a long distance coming from the opposite direction. It was head- on collision in which both the vehicles were damaged and unfortunately, Raj Kumar Dugar died on the spot. The MACT, in our view, has rightly observed that had it been the knocking on one side of the car, the negligence or rashness could have been wholly fastened or attributable to the driver of the bus, but when the vehicles had a head-on collision, the drivers of both the vehicles should be held responsible to have contributed equally to the accident. The finding on this issue is a finding of fact and we do not find any cogent and convincing reason to disagree with the well-reasoned order of the MACT on this point. The MACT has awarded interest at the rate of 10% per annum on the amount of compensation from the date of filing of the claim application till the date of payment. It is a discretionary relief granted by the MACT and, in our view, the discretion exercised by the MACT cannot be said to be inadequate and inappropriate.”

- (ii) ***T.N. State Transport Corpn. Ltd Vs. S. Rajapriya and Ors*** reported in ***(2005) 6 SCC 236***. The relevant paragraph is reproduced herein below:

“17. Considering the age of the deceased and the principles indicated above, the appropriate multiplier would be 12 and not 16 as adopted by the Tribunal and affirmed by the High Court. By applying multiplier 12, amount of compensation is fixed at Rs.4,50,000/- (in round figures). The Tribunal has fixed interest @ 9% per annum from the date of the claim petition. Taking note of the prevailing rate of interest in bank deposits, the same is fixed at 7.5% per annum. It is stated that a sum of Rs.4,00,000/- has been deposited pursuant to the order dated 22.3.2004. The balance amount shall be deposited with the Tribunal within four weeks from today. Out of the total deposit 90% of the amount shall be kept in fixed deposit in the name of widow (respondent no.1), minor child (respondent no.2) and the mother (respondent no.3) in



the proportion of 35%, 40% and 15% respectively. Rest 10% shall be paid in cash equally to the widow and the mother. Fixed deposits shall be made initially for a period of five years and no withdrawal permitted and only monthly interest will be paid, so far as the fixed deposits in the names of the widow and the mother are concerned. So far as the minor child is concerned, fixed deposit shall be made initially for a period of five years and shall be renewed till the child attains majority. The monthly interest on the deposit shall also be released to the mother as the guardian of the minor."

12. I have heard the submission made by the learned counsel for the appellant and have also considered the citations relied upon by the counsel, along with the documents on record.

13. The record indicates that the accident occurred on 19.09.2007 at 6:30 PM on NH-52 near Madhabpur, and the FIR was filed by the wife of the deceased. The FIR is reproduced below:

"With due respect I want to state that on 19/09/07 at about 6.30 evening my husband Sri Montosh Choudhury was driving his motor cycle (No-AR-01B/2464) towards Bihpuria. On the way at Nawgaya near Narayanpur a truck (AS-01B-0804) was negligently stopped by the driver on the NH 52, when my husband wants to cross the truck suddenly a vehicle appear from the opposite side and my husband unable to cross the truck and hit the truck, as a result he died on the spot. I was engaged myself on the funeral works of my husband so I am late to file the FIR.

All the statements made above are true according to my belief.

It is there for pray for necessary action."

14. However, in her deposition, she has given a different version of statement and stated that his deceased husband was hit by the truck as a result of which he died on the spot. The same is reproduced



below:

*“My husband Montosh Choudhury died on 19/09/2007, in a motor accident near Narayanpur. On that day he was going to my mother's home at Bihpuria from his home at Jinjia. He was riding a motor cycle. On NH-52 near Madhabpur, my husband **was hit by a truck and as a result he died on the spot.** I don't know how the accident occurred. It will be in the evening at 6.30 or 7.00 PM. My husband was working as a teacher in Binapani L.P. school. At the time of the accident his monthly income was above 8000/(eight thousand), I have filed a case in the Lakhimpur Court on his death, and I will withdraw it on the date. I don't want to continue with that case. So, I have come here and sign the claim petition. At the time of his death, my husband left me with our two years old girl child and his mother. In my school certificate my name was recorded as Beauti Rani Dey. That was my name. I was called as Beauti Rani at my home. Ex-4 is my Birth Certificate. My name is Beauti Rani Dey alias Bornali Rani Choudhury and I have submitted an affidavit for that purpose before the court. Ex-5 is my affidavit and Ex5(1) & 5(2) are my signatures. This name is given me by my mother-in-law. I am claiming compensation for my child and my mother-in-law. My husband will get 16,000/Salary at the time of retirement. We have claim for Rs 16,50,000/as compensation.”*

15. The opposite party No. 1, the owner of the offending vehicle, contended in his written statement that the accident occurred not due of the negligence of the offending vehicle, but because of the contributory negligence of the deceased. The owner stated that his vehicle was being driven by driver, Rajib Kumar, who held valid driving license. On 16.09.2007, while returning from North Lakhimpur, a tyre suddenly burst out on NH-52 near Dholpur. Consequently, the vehicle was parked on the extreme left side of NH-52, and the driver informed him of the situation. According to the opposite party No.1, since the following day was Biswakarma Puja, they were unable to procure a new tyre from Guwahati. However, he entrusted the driver to keep the vehicle safe on NH-52 with the handyman. The opposite party No.1



further stated that the motorcyclist hit a milepost and lost his life. However, this statement is not substantiated by any evidence.

16. From the evidence on record, it appears that the claimant is inconsistent in her stand regarding the death of her husband in the alleged accident. Her deposition contrasts with the statement made in the FIR. Under these circumstances, the claimant's contention cannot be fully relied upon to conclude that the opposite party/appellant is entirely liable for negligence.

17. From the rival submission and the record, it seems that the offending vehicle was parked on the left side of NH-52 on the day of the accident due to a punctured tyre. CW-2 and CW-3, residents of the locality, are eyewitnesses to the accident. According to them, the offending vehicle was parked on the road for about three days. They deposed that at the time of incident, the deceased was riding his motorcycle slowly when suddenly an old man with a child crossed the road. In an attempt to avoid them, the deceased swerved his motorcycle towards the stationary truck and collided with it. Consequently, the deceased died on the spot.

18. It appears that based on the statements of the eye witnesses, the claimants lodged the FIR claiming that the deceased lost his life while trying to save the woman by dashed against the standing truck. Both the CW-1 and CW-2, deposed that there were no reflectors, indicators or even a line of stones or tree branches to indicate the stationary position of the vehicle. These clearly shows that the truck was parked casually as if it were parked on a parking place, and not on National highway. The accident information Report and post-mortem



Report confirmed the occurrence of the accident and the death of the deceased.

19. The record reveals that although the CWs were cross-examined by the learned Counsel for the opposite party No.3, their evidence could not be discredited. The contention of the learned counsel for the appellant is that since the offending vehicle was stationary, the deceased should have been aware of its presence and could have taken precaution while crossing. However, having not taken care in that regard while attempting to cross the vehicle lead to the collision with the truck. Therefore, there is contributory negligence on the part of the deceased.

20. However, it appears that the accident took place in the evening around 6.30 PM. It was neither broad day light nor completely dark; it was dusk, making visibility limited. Had the stationary truck been moved quickly, the incident might have been avoided. Alternatively, had the driver activated the parking lights or displayed any other sign indicating that the vehicle was stationary, the deceased could have been more cautious in his driving, potentially preventing the accident. However, no indication of the truck's parked status was provided by the driver, which contributed to the occurrence of the accident. Therefore, it can be concluded that there was a negligence on the part of the truck owner and contributory negligence on the part of the deceased.

21. Accordingly, this Court finds that while there is contributory negligence on the part of the deceased, the truck owner was also equally negligent for keeping the truck stationary on the National Highway for three days without displaying a proper parking sign. The



deceased lost his life due to the truck being parked on the National Highway without adequate parking signage. In that view of the above facts, this Court also finds that the negligence should be apportioned in the ratio of 75:25, therefore, the respondent claimant is entitled for 75% of the total awarded amount.

22. It is undisputed that the deceased was working as L.P. School teacher and was receiving a monthly salary. The salary slip of the deceased was exhibited and proven by CW-4, and this was not disputed by the opposite party. Furthermore, had the deceased been alive, he would have earned annual increments and benefited from the pay commission recommendations over time, as observed by the learned Tribunal. During hearing, the learned counsel for the appellant did not raise any serious objections regarding the fixation of the monthly salary. Therefore, this court has no reason to disbelieve the reasonableness of the salary determined by the learned Tribunal. Additionally, considering that Respondent No.1/Claimant No.2, lost her deceased husband in the accident early in her married life, the learned Tribunal deemed Claimant No.2 entitled to a loss of consortium in the amount of Rs.40,000/-. **In view of the Sarla Verma**, I do not find any reason to interfere with these findings. In light of the above, this Court finds no infirmity in the findings of the learned Tribunal. Accordingly, this appeal is dismissed being devoid of merit.

23. The appellant/Insurance Company is directed to deposit the remaining amount with the Registry of this Court within 60 (sixty) days from the date of this order, which shall be paid to the claimants in accordance with the judgment and award dated 08.07.2009, passed by



the learned Member MACT, Biswanath Chariali at Sonitpurin MAC Case
No. 2/2008.

The appeal stands disposed of. No cost.

JUDGE

Comparing Assistant