
(2022) 03 GAU CK 0004

Gauhati High Court

Case No: MACApp. No. 376 Of 2018

Reliance General
Insurance Co. Ltd

APPELLANT

Vs

Parul Hazarika And 6
Ors

RESPONDENT

Date of Decision: March 3, 2022

Acts Referred:

- Motor Vehicles Act, 1988 - Section 122, 173
- Indian Penal Code, 1860 - Section 279, 304A

Citation: (2022) 03 GAU CK 0004

Hon'ble Judges: Malasri Nandi, J

Bench: Single Bench

Advocate: K.K. Bhatta, R.C. Paul, M. Dutta

Final Decision: Dismissed

Judgement

1. Heard Mr. K.K. Bhatta, learned counsel appearing for the appellant/ Reliance General Insurance Co. Ltd as well as Mr. R.C. Paul and Mr. M.

Dutta, learned counsel appearing for the respondents.

2. This appeal has been preferred under Section 173 of M.V. Act, 1988 filed by the appellant Reliance General Insurance Co. Ltd being aggrieved by

the award of compensation dated 15.02.2018 passed by the learned Member, MACT, Golaghat in MAC Case No. 79/2014.

3. The brief facts of the case is that on 18.03.2017 at about 08.30 P.M., Rana Jagadish Hazarika the husband/son/father of the claimants (since

deceased) was riding his motorcycle bearing registration no. AS-05/E-4915 towards Thuramukh through N.H. 39 and on his arrival near Indian Oil

Depot, Rongajan, the motorcycle dashed against a stationary Heavy Goods Vehicle (Trailer Truck) bearing registration no. NL-01/D-9074. As a result

of the accident, the rider of the motorcycle Rana Jagadish Hazarika sustained severe head injuries and died on the spot. After the accident, he was

shifted to Golaghat Civil Hospital, wherein his post-mortem examination was performed.

4. After the accident one case was registered vide Golaghat P.S. Case No. 238/2014, under Section 279/304(A) I.P.C. At the relevant time of the

accident, the alleged offending vehicle Trailer Truck was insured with Reliance General Insurance Co. Ltd i.e. with the appellant and the motorcycle

of the deceased was also duly insured with Oriental Insurance Company Limited.

5. The claimants are the heirs of the deceased Rana Jagadish Hazarika who died in the vehicular accident, approached the learned MACT, Golaghat,

claiming compensation amounting to Rs. 38,07,080/- (Rupees Thirty Eight Lakhs Seven Thousand Eighty) only. After completion of trial, the Tribunal

awarded compensation in favour of the claimants amounting to Rs. 29,91,772/-(Rs. Twenty Nine Lakhs Ninety One Thousand Seven Hundred

Seventy Two) only. Hence, this appeal. But the undisputed facts are that the accident took place, the deceased coming with a motorcycle dashed

against a stationary truck which was insured with the appellant.

6. It was urged by the learned counsel for the appellant/insurance company that the learned Member, MACT, Golaghat did not consider the evidence

on record, which clearly indicated that the deceased was riding a motorcycle bearing no. AS-05E/4915, at the relevant time of the accident. He

dashed against a stationary trailer truck and as such, it was apparent that he could have been avoided the accident, if he was cautious. So the accident

was the outcome of the negligence of the deceased himself and the truck in no manner was responsible for the happening of the accident.

7. It is also the submission of the learned counsel for the appellant that it was highly improper to fasten the entire liability on insurer of the truck

bearing no. NL-01D/9074 when there was ample evidence before the Court that the deceased had also some contribution in causing the accident.

Hence, 50% be deducted from the awarded amount in respect of contribution of the deceased towards the alleged accident.

8. In support of his submission, the learned counsel for the appellant has placed reliance on some case laws:-

(i) Ramanna Vs. Rameez reported in 2018 ACJ 958,

(ii) Janti Das Vs. New India Assurance Co. Ltd. and Anr. reported in 2018 Legal Eagle (Gau) 1122,

(iii) New India Assurance Co. Ltd. Vs. Harbans Kaur reported in 2012 (3) TAC 669

9. On the other hand, learned counsel for the respondent/claimant has argued that the appellant/Insurance Company though pleaded contributory

negligence, but they did not lead any evidence before the Tribunal. Moreover, C.W.-2 Ganesh Baruah, eyewitness of the accident in his evidence

deposed that at the time of the accident, the rider of the motorcycle drove his motorcycle in a normal speed. Hence, the contention of the insurance

company that deceased had contributed to the accident cannot be accepted.

It is further submitted that omission to take requisite care in the use of the vehicle by its driver, amounts to rash and negligent driving of the said

vehicle. The use of the vehicle does not necessarily mean that the vehicle has to be in motion. The use of the vehicle may be inferred even when it is

stationary. It is also submitted that in the instant appeal, the contention of the appellant is on mere presumption and surmises and therefore, there is no

scope for appreciation of the contention of the appellant by this Court and the appeal is liable to be dismissed.

10. The learned counsel for the respondents/claimants has placed reliance in support of his submission on the following case laws:-

(i) Bipal Bashi Das Vs. Oriental Insurance Company Ltd. and Anr. reported in 2005 (3) GLT 407,

(ii) Oriental Insurance Co. Ltd. Vs. Pekhan Bala Das and Ors. reported in 2014(2) GLT 855,

11. The principles for considering negligence will have to be looked into normally that both the drivers should not have contributed to drive the vehicle

in rash and negligent manner on the touchstone of the principles to enunciate for deciding negligence. In the present case, to prove the fact in question

the eyewitness C.W.-2 was examined. Admittedly, the C.W.-1, who is the wife of the deceased was not present when the accident took place.

12. C.W.-2, Ganesh Baruah deposed before the Tribunal that on the date of the accident at about 8.30 P.M. he was standing in front of his house

N.H. 39 (opposite to Indian Oil Depot). He had seen that one motorcycle coming from Rangajan Tini-ali side towards Thuramukh dashed back side of

a stationary Heavy Goods vehicle Trailer Truck which was heading towards Thuramukh. As a result, the rider of the motorcycle fell down and died

on the spot. After the accident, he went to the place of occurrence and could identify the deceased to be Rana Jagadish Hazarika. This witness also

stated that the rider of the motorcycle drove his vehicle at a normal speed. On the other hand, the driver of the truck bearing no. NL-01D/9074 was

illegally parked his vehicle in night on the road at a "No Parking" area of the busy National Highway No. 39 without flashing any indicator/signal

on the vehicle. This witness also stated that he had not seen any barricade either in the form of tree branches or stones etc. in front or backside of the

trailer truck. As such, the accident occurred due to fault of driver of the offending truck.

In his cross-examination, C.W. -2 replied that at the relevant time of the accident, the other vehicles were plying on the road. On the day of the

accident, there were three other trucks stood on the place of the accident-one on the right side and two on the left side but he could not see the

numbers of the vehicles. It was suggested that the deceased drove the motorcycle in a rash and negligent manner and dashed against the vehicle for

which the accident occurred.

13. I have gone through the judgment of the learned Tribunal and also the documents available on the record of MAC Case No. 79/2014.

14. Learned Tribunal has discussed the evidence of the witnesses and the background of the case on cited case law of Bipal Bashi Das (supra). In his

judgment relying on the fact that the question of compensation would, undoubtedly, arise only when the death or injury is caused as a result of an

accident arising out of rash and negligent use of the vehicle, but at the same time, it also needs to be borne in mind that the use of the vehicle does not

necessarily mean that the vehicle has to be in motion. Far from this, the use of the vehicle may be inferred even when it is stationary.

15. In the case in hand, it is not in dispute that the alleged offending vehicle was standing on the road without showing any indicator. The deceased by

riding the motorcycle dashed against the said vehicle and died on the spot. There is no any dispute about the involvement of the two vehicles in the

accident and the present appellant and the respondent no. 7 are the insurers of both the vehicles. It is to be noted that the claimant in his claim petition

as well as in his evidence, which is supported by one eyewitness (C.W.-2) has fully asserted that the accident took place explicitly for the fault of the

driver of the truck bearing no. NL -01D/9074, which was standing on the middle of the road without showing any indicator or signal. The deceased

who was the owner-cum-driver of the motorcycle died when he hit against the stationary truck. The accident took place at about 8.30 P.M. The

police has prosecuted driver of the stationary truck. The Tribunal has found that the accident occurred on account of the negligence of the stationary

truck only.

16. In the case of Ramanna (supra) cited by the learned counsel for the appellant, it was held that with regard to contributory negligence is concerned,

the driver was not supposed to park the lorry on the National Highway. In case of exigency, if the driver of the lorry is forced to park the lorry on the

National Highway, he has to put the indicators. No evidence has been placed to show that the driver of the lorry had put on the indicators. In the very

same accident, the Tribunal has assessed the contributory negligence to an extent of 70% on the part of driver of the lorry and 30% on the part of

driver of the Omni car and the order of Tribunal was upheld by the First Appellate Court.

17. Reverting back to the present case, the fact that a collision took place in which two motor vehicles were involved is not in dispute. The question is

whether the testimony of C.W.-2 is acceptable as credible evidence to establish actionable negligence on the part of the driver of the offending vehicle.

18. The complainant's statement indicates that she was not an eye-witness. But according to her she had heard that her husband by riding the

motorcycle dashed against a stationary truck. Be that as it may, the offending vehicle was parked on the road which is not in dispute. But there is no

evidence that there were signs or indications in regard to the parking of the offending vehicle on the road which ought to be normally found in such

parked vehicles or some kind of warning for parking of the vehicle. In addition, the driver of the offending vehicle was not examined by the

appellant/insurance company whose testimony would have been the best piece of evidence over actionable negligence alleged against the deceased

rider of the motorcycle.

19. Even in the cross-examination of C.W. 2 nothing is elicited to show that the offending vehicle was parked with any sign or indicator. Neither the

driver nor the cleaner of the offending trailer truck was examined to show whether any sign or indication was provided regarding parking of the

vehicle.

It is needless to state that Section 122 of the Motor Vehicles Act, 1988 provides that:-

“Leaving Vehicles in dangerous position.- No person in charge of a motor vehicle shall cause or allow the vehicle or any trailer to be abandoned or

to remain at rest on any public place in such a position or in such a condition or in such circumstances as to cause or likely to cause danger,

obstruction or undue inconvenience to other users of the public place or to the passengers.”

20. In similar circumstances, the High Court of Gujarat in Premalata Nilamchand Sharma Vs. Hirabhai Ranchhodbhai Patel reported in 1983 ACJ 290

and the High Court of Punjab and Haryana in Nirmal Bhutani Vs. Haryana State reported in 1983 ACJ 640 and Delhi High Court in Pushpa Rani

Chopra Vs. Anokha Singh, reported in 1975 ACJ 396 held that where the place was dark and where the vehicle was parked without any sign or

indication to warn other Road users, the negligence is on the driver of the parked vehicle and not the driver of any vehicle which dashes into such

parked vehicle.

21. Hon'ble Supreme Court in the case of Jumani Begum Vs. Ram Narayan reported in Civil Appeal No. 9343 of 2019 (Arising out of SLP(C)

No. 29254 of 2019) it was held that "Once the substantive evidence before the MACT established that the truck trailer had been parked on the

road at night without any reflectors, we are of the view that there was no reason or justification for the MACT to proceed on the basis of conjecture

in arriving at a finding of contributory negligence.

22. In view of the aforesaid legal proposition, being satisfied in the facts and circumstances that the driver of the parked

truck was alone to be blamed as he was parked the trailer truck in the public road without any sign or indication for other road users, I am of the view

that the Tribunal in MAC Case No. 79/2014 has rightly passed the judgement in placing the blame on the driver of the trailer truck. The actionable

negligence is palpable against the driver of the offending trailer truck.

23. In the result, the appeal is dismissed. Judgment and award passed by the learned MACT, Golaghat dated 15.02.2018 is upheld.

24. Statutory amount in deposit be refunded accordingly.

25. LCR be returned back.