

(2022) 12 GAU CK 0010

Gauhati High Court

Case No: MAC APP. No. 632 Of 2019

Nripen Kumer Dutta

APPELLANT

Vs

National Insurance
Co. Ltd And Anr

RESPONDENT

Date of Decision: Dec. 13, 2022

Acts Referred:

- Motor Vehicles Act, 1988 - Section 173

Hon'ble Judges: Parthivjyoti Saikia, J

Bench: Single Bench

Advocate: S.C. Pandit, S. Roy

Final Decision: Allowed

Judgement

1. Heard Mr. S.C. Pandit, learned counsel representing the appellant as well as Mrs. S. Roy, learned counsel appearing for the respondent(s).

2. This is an appeal under Section 173 of the Motor Vehicles Act, 1988 against the judgment dated 08.08.2019 passed by the learned Member, Motor

Accident Claims Tribunal, Nalbari in MAC Case No.214(Death) of 2015.

3. On 23.09.2010, Lt. Sarala Bhuyan, the mother of the present appellant, was riding the pillion seat of a motorcycle bearing registration No.AS-

14B/4050. The motorcycle was driven by her brother Anil Bhuyan. While they reached near Sandheli, Sarala Bhuyan fell down from the motorcycle

and sustained grievous injuries. She was taken to the hospital at Nalbari and subsequently to Guwahati. Ultimately, she expired on 25.09.2010. An FIR

was lodged and Belsor P.S. registered an U.D. Case No.10/2010.

4. The present appellant filed a claim case for seeking compensation.

5. The Insurance Company contested the case by filing a written statement.

6. The Insurance Company, inter alia, denied that the deceased Sarala Bhuyan died because of rash and negligent driving of the motorcycle. The

Insurance Company claimed that it was fault on the part of the deceased, as a result of which, she fell down from the motorcycle.

7. On the basis of the pleadings of the parties, the Tribunal framed 3(three) issues:

(i) Whether Sarala Bhuyan died in an accident, which occurred on 23.09.2010 at about 12.30 P.M. due to rash and negligent driving by the rider of the offending vehicle AS-14B/4050?

(ii) Whether the claimant is entitled to get compensation, as prayed for and if so, to what extent and from whom?

(iii) To what other relief or reliefs the claimant is entitled to?

8. The present appellant had lodged the FIR wherein he stated that his mother Sarala Bhuyan, while riding the pillion seat of the motorcycle, felt

weakness and she was also suffering from abdominal problems since last few days and for these reasons she fell down from the motorcycle. The

appellant claimed in the FIR that the driver of the motorcycle, who was his maternal uncle, was not at fault so far as the theory of rash and negligent driving of the motorcycle is concerned.

9. Those are the facts for which the learned Tribunal held that there was no rash and negligent driving on the part of the driver of the motorcycle and therefore held that the appellant is not entitled to any compensation.

10. I have given my anxious considerations to the submissions made by the learned counsels of both sides.

11. If a pillion rider falls from a running motorcycle, this fact itself proves negligence driving on the part of the driver of the motorcycle. There is no medical evidence to show that Sarala Bhuyan was suffering from certain medical disabilities.

12. The provisions for payment of compensation to motor accident victims under the Motor Vehicles Act, are beneficiary legislations. The learned

Tribunal has committed an error by relying upon the contents of the FIR only in order to decide the claim case. The learned Tribunal failed to apply judicial mind while passing impugned order.

13. Therefore, the impugned judgment dated 08.08.2019 passed by the learned Member, Motor Accident Claims Tribunal, Nalbari in MAC Case

No.214(Death) of 2015 is not sustainable in law. The said judgment is set aside.

14. The case is remanded back to the Tribunal for passing a fresh judgment on the basis of the materials already available in the record. So far as the

son of the deceased, the claimant, is entitled to any compensation, the Tribunal is at liberty to be guided by the judgment of the Supreme Court

reported in 2020 (11) SCC 356.

15. With the aforesaid directions, the appeal is allowed.

Send back the LCR.