

(2010) 11 GAU CK 0029

Gauhati High Court (Aizawl Bench)

Case No: MAC App. No. 18 of 2008

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Ms. Lalmalsawmi Ralte (L) and
Others

RESPONDENT

Date of Decision: Nov. 23, 2010

Acts Referred:

- Evidence Act, 1872 - Section 106
- Motor Vehicles Act, 1988 - Section 170, 173
- Penal Code, 1860 (IPC) - Section 279, 304A

Hon'ble Judges: C.R. Sharma, J

Bench: Single Bench

Advocate: S.N. Meitei, for the Appellant; Helen Dawngliani, for the Respondent

Judgement

C.R. Sarma, J.

The judgment and award, dated 15.02.2008, passed by the learned Member, Motor Accident Claims Tribunal, Aizawl, is in challenge in this appeal, filed u/s 173 of the Motor Vehicles Act, 1988.

2. The claimant-Respondent No. 1 filed a claim case before the Motor Accident Claims Tribunal, Aizawl, claiming compensation amounting to Rs. 17,00,000/-, due to the death of her father, namely, Lalsangvunga Ralte (L) (hereinafter called "the deceased"). The learned Member of the Tribunal granted compensation of Rs. 15,05,080/- in favour of the claimant, payable by the Appellant-opposite party No. 4 with interest thereon @ 9% per annum.

3. The claimant's case, giving rise to this appeal, may in brief, be stated as follows:

On 19.10.2005, the claimant's father, namely, Lalsangvunga Ralte, aged about 45 years, was travelling as a pillion rider of a Pulsar Bike, bearing Registration No. MZ-01/C-2671, owned and driven by Sri Laldawngliana, Durtlang Mel-5, Aizawl i.e.

the Respondent No. 4 in this appeal and opposite party No. 3 in the claim case. As per the police report, the said driver of the bike, after proceeding some distance, while stopping for nature's call, could notice that the said pillion rider, was missing. Then he returned back and found the said pillion rider, lying in a pool of blood on the road. As the said Respondent No. 4 was drunk, apprehending arrest by police, he left for home. On the same night, at about 8.00 p.m., one Head Constable, namely, Sri Lalsangliana, finding the dead body of the deceased, lying on the national Highway, suspected that the deceased was run-over by a heavy vehicle. Accordingly, he lodged an FIR with the police. On receipt of the said information, police launched investigation into the matter, after registering a case, being Bawngkawn P.S. Case No. 508/05, dated 20.10.2005, under Sections 279/304A IPC, conducted inquest and carried the dead body to the hospital for post mortem examination. During the investigation, two heavy vehicles under Registration Nos. MZ-05/1371 and AS-01S/2543, were intercepted by police and suspecting the involvement of the said vehicles in connection with the death of the deceased, the drivers of the said vehicles were arrested at the places called Sairang and Khamrang. Police also seized some substance, suspected to be human tissue from the Mudguard of the Truck, bearing registration No. AS-01S/2543, and sent the same to the Forensic Science Laboratory, Mualpui, Aizawl, for examination. From the forensic examination report, it was confirmed that the said seized material was human tissue. Accordingly, police, finding a prima facie case u/s 279/304A IPC, against the drivers of the said two vehicles, forwarded them to the Court to stand trial.

4. The claimant being the daughter of the deceased, filed a claim case, seeking compensation from the owners of the said two offending Trucks and the Motor Bike. Claim was also made against M/S Oriental Insurance Co. Ltd., being the insurer of the said two Trucks and M/S United India Insurance Co. Ltd., which was the insurer of the said Pulsar Bike. According to the claimant, her deceased father, who was aged about 45 years, was working as Sr. T.O.A. in the Office of the General Manager, TELECOM, BSNL, Aizawl, and was drawing monthly salary of Rs. 12,459/-at the time of his death in the said accident.

5. Though the owners and the drivers of the said offending vehicles did not contest the claim, the opposite party No. 4 i.e. the Appellant being the insurer of the said two Trucks, contested the claim, seeking permission u/s 170 of the M.V. Act and denied the involvement of the said two Trucks with the death of the deceased. On the other hand, M/S United Insurance Co. Ltd. i.e. the insurer of the Motor Bike, by filing written objection, contended that the owner of the said Pulsar Motor Bike did not pay additional premium to cover the accident benefit of the pillion rider and as such the answering insurer was not liable to pay any compensation.

6. Upon the pleadings of both the parties, the learned trial Judge, framed the following two issues:

(1) Whether the claim petition is maintainable or not?

(2) Whether the claimant is entitled to get compensation and if so, who is liable to pay and to what extent?

7. In order to substantiate her claim, the claimant examined herself as PW.1 and exhibited the following documents:

(1) Ext. C-1 - Claim application

(2) Ext. C-2 - Birth Certificate of Lalsangvunga Ralte.

(3) Ext. C-3 - Death Certificate of Lalsangvunga Ralte.

(4) Ext. C-4 - Last Pay Certificate of Lalsangvunga Ralte.

(5) Ext. C-5 - Copy of Post Mortem Examination Report of Lalsangvunga Ralte

(6) Ext. C-6 - Heirship Certificate No 39 of 2006

(7) Ext. C-7 to Ext. C-7(7) - Copy of charge sheet submitted by the Investigating Officer, S.I. K. Lalmalsawma of Vaivakawn Police Out Post

(8) Ext. C-8 to Ext. C-8(g) - Copy of driving licence of Shri Laldawngliana.

(9) Ext. C-9 to Ext. C-9(j) - Copy of Certificate of Registration of MZ-01-C-2671

(10) Ext. C-10 to Ext. C-11(b) - Copy of Insurance Policy No. 130502/31/05/00034 in respect of MZ-01-C-2671

(11) Ext. C-11 - Copy of driving licence of Shri Samsur Uddin.

(12) Ext. C-12 - Copy of Certificate of Registration of MZ-051371

(13) Ext. C-13 - Copy of the Insurance Certificate under Policy No. 2006/2598 and the previous Policy No. 2005/9340 issued by the Oriental Insurance Co. Ltd., Silchar.

(14) Ext. C-14 - Copy of Goods Carriage Permit in respect of vehicle No. MZ-05/1371.

(15) Ext. C-15 - Copy of driving licence of Shri H. Kabir.

(16) Ext. C-16 - Copy of receipt No. 5334868

(17) Ext. C-17 to Ext. C-17 (d) - Certificate of Registration of AS-01/S-2543

(18) Ext. C-18 - Copy of Certificate of Fitness of AS-01/S2543

(19) Ext. C-19 - Copy of receipt No. 154278 in respect of AS-01/S-2543.

(20) Ext. C-20 - Copy of Permit in respect of AS-01/S-2543.

(21) Ext. C-21 to Ext. C-21(b) - Copy of insurance policy No. 2007/62 issued by the Oriental Insurance Co. Ltd.

8. Depositing as PW.1, the claimant stated that, earlier, a claim case, being MACT Case No. 05 of 2006, was filed against the opposite party Nos. 3 and 5 i.e. the owner of the Motor Bike and its insurer, but due to certain formal defect the same was withdrawn, with liberty to file a fresh one. She further stated that she filed the claim case on her own behalf and on behalf of her sisters, seeking adequate compensation for the death of their deceased father. The claimant stated that, she and her sisters were dependant upon the income of their deceased father till his death, in the said accident. The Respondent No. 4 i.e. the Appellant cross-examined the said witness and declined to adduce any witness. In her cross-examination, PW.1 stated that, she did not see the accident herself.

9. Having heard the parties and considering the evidence on record, more particularly, the report of the Forensic Science Laboratory (Ext.C-7(z)), submitted by the Assistant Director, Forensic Science Laboratory, Aizawl, Mizoram, the learned trial Judge, came to the conclusion that the finding of human tissue in the mudguard of the said vehicle suggested that the deceased died in a vehicular accident, caused by the vehicles, insured by the Respondent No. 4 i.e. the Appellant and that the accident was caused due to rash and negligent driving, on the part of the said drivers. Accordingly, the learned Member of the Tribunal, fixed the liability to pay the compensation with the insurer of the said two Trucks i.e. M/S Oriental Insurance Co. Ltd. and quantified the compensation at Rs. 15,05,080/-, to be paid by the Appellant with interest thereon @ 9% per annum.

10. Being aggrieved by the said judgment and award, M/S Oriental Insurance Co. Ltd. i.e. the insurer of the said Trucks, has come up with this appeal, challenging the said judgment and award.

11. I have heard Mr. S.N. Meitei, learned Counsel, appearing for the Appellant and Ms. H. Dawngliani, learned Counsel, appearing for the Respondents.

12. Mr. S.N. Meitei, learned Counsel, appearing for the Appellant, drawing my attention to the evidence on record and the impugned judgment and award, has submitted that there is no substantive evidence to find that the said two Trucks, which were insured by the Appellant, were involved in connection with the death of the deceased. It is also stated that, as the claimant did not see the accident herself, it was the duty of the claimant to adduce sufficient and reasonable evidence to establish that the death of the deceased was caused by the said two Trucks. The learned Counsel, further submitted that, from the charge sheet submitted by police, it has been revealed that the driver of the motor bike and the deceased were returning home, after consuming liquor and that the deceased probably died due to fall from the said running motor bike. It is also submitted that, finding of human tissue from the Mudguard of one of the vehicles can't be sufficient evidence to hold that the concerned vehicle was involved with the accident, resulting the death of the deceased. The learned Counsel, further pointed out that non-examination of the Head Constable, who had lodged the FIR, after detecting the dead body of the

deceased on the road, and the Assistant Director of Forensic Science Laboratory, Aizwal, Mizoram, who submitted the said report, after examining the suspected human tissue, caused much prejudice to the Appellant, because the Appellant has been deprived from cross-examining the said two witnesses to negate the claimant's plea. Referring to the evidence given by PW.1, the learned Counsel, appearing for the Appellant, further submitted that the learned trial Judge passed the award only on surmise and conjecture, without any substantive evidence and that the claimant failed to prove that the Appellant was liable to pay the compensation for the death of the deceased. In support of his contention, the learned Counsel, appearing for the Appellant, has relied on the following decisions:

(1) Ram Karan and Ors. v. Zile Singh and Ors., reported in 2001 (3) T.A.C. 707 (P.& H.).

(2) Mataji Bewa and Ors. v. Hemanta Kumar Jena and Anr., reported in 1994 (1) T.A.C. 413.

13. Refuting the said argument, advanced by the learned Counsel, appearing for the Appellant, Ms. H. Dawngliani, learned Counsel, appearing for the Respondents, has submitted that finding of the dead body of the deceased, lying in a pool of blood, on the National Highway and human tissue on the mudguard of one of the said two Trucks, which were intercepted immediately after the occurrence, were sufficient and strong circumstances to hold that the vehicle, from which the human tissue was found, was involved with the death of the deceased. Supporting the impugned judgment and award, the learned Counsel, has also submitted, that considering the facts and circumstances of this case, it was not possible to find any eye witness to the occurrence and as such the learned trial Judge committed no error by granting the award on the basis of the evidence rendered by PW.1 and the exhibited documents, more particularly, the report of the Forensic Science Laboratory and the charge sheet, submitted by police after due investigation. In support of her submission, the learned Counsel has relied on the decision held in the case of Bimla Devi and Ors. v. Himachal Road Transport Corporation and Ors., reported in 2009 (2) T.A.C. 693 (S.C.).

14. There is no dispute that, in a claim case, the claimant is required to establish the involvement of the alleged offending vehicle in a vehicular accident, resulting injury or death of a person, as the case may, for whose death or injury compensation is sought for. It is also settled law that the provision under the Motor Vehicles Act, being a benevolent social legislation, enacted with a view to give relief to the victims or dependants of the victim of vehicular accident, the claimant is not required to prove its case beyond all reasonable doubt. The claim can be decided on the basis of strong reasonable probability and preponderance of evidence.

15. In the case of Ram Karan (supra), a Single Judge of the High Court of Punjab and Haryana, observed:

... Mere framing of the charge will not suffice. Even the judgment of conviction or acquittal of Criminal Court is not binding on the Tribunal. The onus of proving negligence is always upon the claimants and they have to discharge it.

16. In the case of Mataji Bewa (*supra*), the question that arose, was whether the deceased was travelling on the offending Truck as a passenger or he was a pedestrian and hit by the offending vehicle. On the basis of the charge sheet filed in the criminal case, the Tribunal came to the conclusion that the deceased was a passenger. There was positive evidence of the claimant that the deceased was a pedestrian and a Truck came behind and knocked him down. This evidence was not impeached in any manner by way of cross-examination. In view of the above, the learned Single Judge of the High Court of Orissa, observed that the Tribunal committed gross error of law in relying upon the said charge sheet to come to the conclusion that the deceased was travelling on the Truck as a passenger and that there was no justification on the part of the Tribunal to ignore the evidence of the claimant. In view of the convincing and unimpeached oral evidence, the contention made in the charge sheet was not accepted. But, in our present case, there being no such contradictory evidence, the decision held in the said case will not help the Appellant.

17. In the case of Bimla Devi (*supra*), one Jawala Ram, husband of the first Appellant, who was a Police Constable, was posted at Police Station Dharampur. On 11th February, 1997, at about 7 or 8 a.m., he was standing near the shop of one Chand Kishore. A Bus bearing registration No. HP-14-3596, owned by the first Respondent was parked there. The second Respondent Vijay Kumar was the driver and the third Respondent Om Dutt was the conductor of the aforementioned bus. Allegedly, the driver of the bus, Vijay Kumar, reversed the bus without blowing any horn as a result whereof Jawala Ram died on the spot. Allegedly, conductor also did not bother to check whether any person was standing behind the bus. The Respondents, however, denied and disputed the occurrence of the said accident. According to the Respondent, the deceased died the previous evening and finding the dead body of a person wrapped in a blanket lying at some distance from the bus, they informed the police personnel, whereafter the driver was falsely implicated. The learned Tribunal, upon consideration of the evidence, adduced on behalf of the Appellant, came to the finding that the death of Jawala Ram took place in an accident, wherein he sustained brain injury. The driver and conductor of the bus admitted their presence at the scene of occurrence. Vijay Kumar (RW.1) alleged that he had seen the dead body wrapped in a blanket behind the bus when he was still to start the bus. The Tribunal did not find his statement to be reliable. The Tribunal opined that, keeping in view of the statement of PW, Dharam Pal, the presence of the Bus of the Respondents and the place and time of the occurrence and the other circumstances of the case, the death of Jawala Ram took place after being hit by the Bus, when it was being reversed in backward directions. On an appeal, the High Court reversed the said finding, holding that the deceased might

have died in some other accident and the police officials wrongly lodged the first information report against the driver of the bus. Being aggrieved, an appeal was carried to the Supreme Court. In reversing the judgment, passed by the High Court and upholding the award, granted by the trial Judge, the Supreme Court observed as follows:

14. The learned Tribunal, in our opinion, has rightly proceeded on the basis that apparently there was absolutely no reason to falsely implicate the Respondent Nos. 2 and 3. Claimant was not at the place of occurrence. She, therefore, might not be aware of the details as to how the accident took place but the fact that the First Information Report had been lodged in relation to an accident could not have been ignored. Some discrepancies in the evidences of the claimant's witnesses might have occurred but the core question before the Tribunal and consequently before the High Court was as to whether the bus in question was involved in the accident or not. For the purpose of determining the said issue, the Court was required to apply the principle underlying burden of proof in terms of the provisions of Section 106 of the Indian Evidence Act as to whether a dead body wrapped in a blanket had been found at the spot at such an early hour, which was required to be proved by the Respondent Nos. 2 and 3.

15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties.

18. Admittedly, in our present case, there is no witness to the occurrence. The learned Member of the Tribunal fixed liability with the offending vehicles on the basis of finding of human tissue on the mudguard of one of the vehicles, immediately after the occurrence. There is no dispute that the dead body of the deceased was found lying, in a pool of blood, on the road with heavy injuries, caused by blunt object and that the concerned vehicles were found to have proceeded through the same road. The police, detecting the vehicles, immediately after the occurrence, collected some tissue, suspected to be of human, from the mudguard of the Truck bearing registration No. AS-01S/2543 and sent the same to the Forensic Science Laboratory for its examination. The report issued by the Asstt. Director, Forensic Science Laboratory i.e. Ext.C-7(z), indicates that the said suspected material was from human body. Therefore, it stood established that human tissue like substance was found from the mudguard of the said vehicle immediately after the occurrence. As submitted by the learned Counsel for the claimant-Respondent, the charge sheet i.e. Ext.C-7, submitted by the police, established a prima facie case u/s 279/304A IPC against the drivers of the said vehicles. These are the

circumstantial evidence available on record pointing the liability to the vehicle, wherefrom the human tissue was found.

Non-examination of the Investigating Police Officer, who investigated into the matter and the Asstt. Director of the Forensic Science Laboratory, who examined the suspected human tissue (marked as EX-A), deprived the Appellant-Respondent from controverting the opinion of the examiner of the Forensic Science Laboratory and the finding of the Investigating Officer, by cross-examining the said persons. That apart, the dead body of the deceased was first noticed by one Head Constable, namely, Lalsangliana and accordingly the First Information Report was lodged by him with the police. Therefore, examination of the said Head Constable, was also necessary to unearth the facts and circumstances and the condition in which the dead body of the deceased was found. In my considered opinion, examination of the said persons would have thrown much light to the occurrence.

The learned trial Judge, came to the finding that the deceased was over-run by the Trucks bearing Registration Nos. MZ-05/1371 and AS-01S/2543. Both the vehicles were insured with the M/S Oriental Insurance Co. Ltd. i.e. the Appellant. The suspected human tissue was detected from the mudguard of the vehicle bearing Registration No. AS-01S/2543.

19. It is not the case that both the Trucks had hit the deceased at the same time and that he died due to the accident, involving both the said vehicles. At best, one of the said two vehicles might have got involved with the accident. Therefore, it was necessary to arrive at a definite finding as to which of the said two vehicles, was involved in the said accident.

20. That apart, from the charge sheet, filed by the police i.e. Ext.C-7, it appears that both the deceased and the owner-cum-driver of the said Pulsar Bike, bearing Registration No. MZ-1/C-2671, were returning, after consuming some alcohol and that the driver of the said motor bike, while stopping for attending nature's call, could notice that his friend i.e. the deceased, who was a pillion rider in respect of the his motor bike, was missing. Therefore, he hurriedly returned back and found the deceased lying in a pool of blood on the road. As per the said charge sheet, as the owner-cum-driver of the said motor bike was under intoxication, apprehending arrest by police, he left for his home. Subsequently, he was arrested by police and forwarded to the Court. The involvement and liability, if any, of the said motor bike, in respect of which the deceased was a pillion rider, has not been ascertained.

21. The learned Counsel, appearing for the Appellant, has submitted that, probably the deceased had died after sustaining the injuries due to his fall from the said motor bike. The learned trial Judge has not look into this aspect of the matter. Therefore, it would have been appropriate to ascertain as to whether the deceased died due to fall from the said motor bike or whether the deceased died due to any fault on the part of the said Trucks. A definite finding in this regard is necessary.

22. In view of the above discussion, I am of the considered opinion that non-examination of the Investigating Officer, the Head Constable, namely, Lalsangliana, and the Asstt. Director of the Forensic Science Laboratory, Aizawl, who gave the opinion regarding the suspected human tissue, caused prejudice to the Appellant-Respondent. Therefore, in order to arrive at a just and correct decision, regarding involvement of the concerned vehicle, examination of the aforesaid persons are found to be necessary.

23. In the light of the above discussion, the impugned judgment and award, is set aside and the matter is remanded to the learned Tribunal, Motor Accident Claims Tribunal, Aizawl, for fresh disposal of the same after giving sufficient opportunity to the claimant, to examine the above named persons and/or any other relevant witness(s) and determine the involvement and liability of the concerned vehicle(s) insured by the Appellant and the motor bike, owned and driven by the Respondent No. 4.

24. As the matter relates to a claim case involving the death of a person, considering the delay that has already been caused, the learned Member, Motor Accident Claims Tribunal, Aizawl, is directed to take steps to dispose of the matter, in the light of the above observations made by this Court, within a period of 6 (six) months from the date of receipt of a copy of this judgment and order and the records.

25. The Registry shall return the Lower Court Records along with a copy of this judgment and order, to the learned trial Court immediately.

26. With the above observations and directions, this appeal stands disposed of.