(1998) 05 GAU CK 0011

Gauhati High Court

Case No: M.A.F. No. 68 of 1997

Smti. Sonafuli Deka		APPELLANT
	Vs	
Member, M.A.C.T. and Others		RESPONDENT

Date of Decision: May 25, 1998

Acts Referred:

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

Citation: (1998) 2 GLT 233

Hon'ble Judges: V.D. Gyani, Acting C.J.; N. Surjamani Singh, J

Bench: Division Bench

Advocate: D. Baruah and A.C. Mahanta, for the Appellant; R. Choudhury, B. Buragohain, G.K. Bhattacharjee, G.K. Das, B. Chakraborty and B.C. Kalita, for the Respondent

Final Decision: Allowed

Judgement

V.D. Gyani, Actg. C.J.

1. This appeal u/s 173 of the Motor Vehicles Act, 1988 is directed against the judgment and order dated 30.10.96 passed by Member, Motor Accident Claims Tribunal, Kamrup, Guwahati in M.A.C. Case No. 191/89.

2. Claimant Appellant''s case was that her husband Pabitra cieka, aged about 23 years, met with accidental death on 28.3.89. The accident occurred at village Pabani near Hajo Police Station, where G.R. Case No. 107/89 was registered u/s 304A/279 IPC. The offending vehicle was owned by Phanidhar Das and insured with M/s. Oriental Insurance, who resisted the Appellant''s claim, inter alia, on the ground that it was solely due to fault of the deceased, who was riding a bicycle at the material time that the accident occurred for which the driver of the offending vehicle could not be blamed. Pabitra Deka had no earning or income.

3. On the basis of the pleadings, the Tribunal framed the following issues:

1) Whether the case is maintainable?

2) Whether the death is caused due to the rash and negligent driving of the opposite party?

3) Whether the apposite parties are liable?

4) What relief or reliefs is entitled by the claimant?

4. The claimant examined four witnesses in support of her case, the Respondents note. The Tribunal held that was a case of contributory negligence, the deceased did not get down from his bicycle, the driver of the vehicle was slowly proceeding, the road was under repair and it was partly closed, only one side of the road was kept open for vehicular traffic. Tow cyclists were coming from the office direction as testified by P.W. 1, he signalled the driver of the offending vehicle (which was a chassis without body) to stop but defying the signal the chassis vehicle proceeded ahead, climbed upon heap of boulders lying on one side of the road, hitting one of the cyclists who died on the spot. The driver rushed to the police station, for his own safety. This P.W. 1 in his cross-examination admitted that a cyclists who was ahead of the two cyclists was not hurt, the deceased Pabitra Deka was hit by the rear wheel as the chassis skidded off the heap of boulders lying on the road and dashed against the cyclists. P.W. 2 has also substantially corroborated in making the same statement that the cyclists hit by rear wheel.

5. On the evidence as noted above, the learned Member has concluded contributory negligence on the part of the deceased, overlooking a vital fact that none of the Respondents, not even the driver has entered the witness box, nor examined any witness in support of their case.

6. As for income of the deceased the Tribunal came to the conclusion that the same has not been proved.

7. In deciding the question of quantum of compensation, the learned Member has reasoned out a case without any basis that the claimant who was a young widow would marry as such. Rs. 50,000/- if awarded and profitably invested would serve the ends of justice. It would be better to quote the Tribunal in its own words:

The claimant in her deposition admitted that she is living with her parents after the death of her husband, it is clearly stated in the claim petition also that she had only 9 months marital life, since the death of her husband. It is likely that she will soon have her second marriage for the sake of her security for her future life and in that case she may not be in need of maintenance as an widow of the deceased to continue till the end of her life. Taking all these facts I find in the instant case a lump-stun amount will meet the ends of justice. If a sum of Rs. 50,000/- if profitably invested in any of the Nationalised Bank would give her a sustaining allowance as interest. Giving also consideration for loss of consortium etc. I would like to assess the compensation in this case at Rs. 80,000/-. The issue is answered accordingly. The

owner, driver and insurer will be jointly and severally liable to pay the compensation.

8. Finding fault with the claimant, a widow, how she prosecuted her claim, the learned Member, in the name of "judicial prudence" has awarded interest at the rate of 6% P.A. in October, 1996.

9. Here again it would be better to quote the Tribunal to show as to how it has arrived at the figure of Rs. 32,500/-.

A casual look into the order-sheet of this case will reveal that the claimant usually remain absent and witnesses were first examined on 11.11.94, i.e. after 5 years from the institution of the case. It is a serious laches on the part of the claimant and accordingly judicial prudence will refuse usual rate of interest because equity demands that one should be vigilant arid should not gain on his own default. There is also a case of contributory negligence in this case and I assess the liability to the extent of 50 : 50. Thus if the compensation is assessed at Rs. 80,000/- inclusive of no fault liability and the amount payable to the claimant will be Rs. 80,000/- minus 15,000/- - 2 = Rs. 32,500/-.

The insurer is therefore directed to pay the amount of Rs. 32,500/- together with interest at the rate of 6% (six) per annum from the date of institution till payment of realisation within 60 days.

10. The learned Member by invoking the doctrine of contributory negligence in the name of judicial prudence has over looked certain basic facts emerging from evidence. The vehicle was admittedly proceeding in defiance of the signal given by the man on the road which was under repair. He should have stopped, rather than stopping the vehicle proceeding ahead. It is also an admitted fact that on one side of the road there was heap of boulders. He could also see the cyclist going ahead. Merely because the cyclist was hit by rear wheel would not necessarily mean that the cyclist contributed to the negligence, more so in the face of the fact that the vehicle of the driver proceeded ahead in defiance of the signal stop given by P.W. 1, when the road was under repair and closed for one-way traffic.

11. In all cases it is the duty of the person over taking to allow an adequate margin of safety between his vehicle and the vehicle he is trying to overtake and to overtake only when he can do so without causing danger to others. The case at hand is one where the driver of the vehicle in defiance of the signal given to him to stop, yet proceeded ahead. In such a case there can be no question of contributory negligence. He should have used reasonable care when the road was under repair and a heap of boulders were lying in one side of the road, he should have seen it to swerve outward so as to knocked down other vehicle, cyclist or pedestrian. It has come in evidence that the cyclist who was ahead of the deceased could proceed further savely having seen the cyclist. It was again the duty of the driver of the vehicle to allow sufficient space that means his vehicle and the cyclist so as to deal

with ordinary exigencies. The negligence was solely on the part of the driver of the offending chassis. The finding arrived at by the learned Member cannot be subscribed to in view of the clear facts emerging from evidence available on record. The learned Tribunal has fell into a patent error ignoring the scenario of the accident as emerges from the evidence and can well be visualised. It may also be noted that the driver of the vehicle has not entered into the witness box and yet the finding of contributory negligence which is liable to be quashed and accordingly quashed.

12. The deduction made on this account cannot be sustained in law, they are also accordingly quashed. Having determined the compensation payable at Rs. 80,000/-, the learned Member has deducted Rs. 15,000/- on account of lump sum payment and further reduced it 50% on account of contributory negligence. The interest awarded is 6% that too in the year 1996, it cannot be sustained in any view of the matter. Setting aside the same and without disturbing the amount of compensation as determined by the Tribunal, we direct it to be paid to the Appellant within 2 months from the date of this judgment. It will carry an interest @ Rs. 12% per annum from the date of award as passed by the Tribunal. The appeal is allowed with cost, counsel fee Rs. 2,000/- to be paid.