

(2014) 01 GAU CK 0033

Gauhati High Court

Case No: M.A.C. Appeal No. 21 of 2009

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Nirmal Boro

RESPONDENT

Date of Decision: Jan. 28, 2014**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 2(ii)
- Motor Vehicles Act, 1988 - Section 140, 165, 166

Citation: (2014) 4 ACC 67 : (2014) 1 AnWR 794**Hon'ble Judges:** Indira Shah, J**Bench:** Single Bench**Advocate:** S.K. Goswami, R. Kathkutia and P.K. Sharma, Advocate for the Appellant; K.R. Bora and Md. D. Aslam, Advocate for the Respondent**Final Decision:** Dismissed

Judgement

Dr. Indira Shah, J.

Challenging the judgment and award dated 3.7.2007 passed by learned Member, Motor Accident Claims Tribunal, Kamrup in MAC Case No. 709 of 2004 the appellant Oriental Insurance Company Ltd., has filed this appeal. The respondent Nos. 1 and 2 filed MAC Case No. 703 of 2004 seeking compensation on accident and death of their brother late Lal Bora in a motor accident occurred on 10.3.2004. Both the claimants are brother & sisters of the deceased.

2. The appellant Insurer resisted the claim wherein inter alia they raised the plea that since the claimants are brother and sisters and they were not dependent on the earning of the deceased. Moreover, they also denied that the accident took place due to any fault of the offending vehicle. The income of Rs. 3,400/- of the deceased was also disputed. Learned tribunal held that the accident took place as truck driver drove the vehicle in excessive speed and in a rash and negligent manner. The income of the deceased was Rs. 3,400/- per month and awarded the compensation

of Rs. 3,00,000/- with interest @ 7% per annum with effect from date of filing of the claim petition.

3. Heard Mr. Mr. S.K. Goswami, learned counsel appearing for the appellant and Mr. Mr. K.R. Bora, learned counsel appearing for the respondents/claimant.

4. Whether the brother & sisters are legal representative of the deceased with the meaning of "legal representative" appearing in Section 166 of the Act. Whether the claimants were dependent and if not can yet be beneficiary of the estate of deceased are the questions raised in the appeal.

166. Application for compensation- (1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of Section 165 may be made--

(a) by the person who has sustained the injury; or

(b) by the owner of the property; or

(c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

(d) by any agent duly authorized by the person injured or all or any of the legal representatives of the deceased, as the case may be:

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondent to the application.

5. Thus in terms of Section 166 of the Act in case of death, all or any of the legal representatives of the deceased becomes entitled to compensation and any such legal representative can file a claim petition. The proviso to said sub-section makes the position clear that where all the legal representatives had not joined, then application can be made on behalf of the legal representatives of the deceased by impleading those legal representatives as respondents.

6. The expression "Legal representative" has not been defined either in the Act or in Rules. Section 2(ii) of the CPC defines legal representatives as under:

2(ii) legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued.

7. Thus the definitions of legal representative includes heirs as well as persons who represent the estate either as executors or administrators in possession of the estate of the deceased.

8. In [Smt. Manjuri Bera Vs. The Oriental Insurance Company Ltd. and Another](#), it was held that married daughter is entitled to file petition for compensation. In Gujarat State Road Transport Corporation v. Ramabhai Prabhatbhai 1987 SC 1690, it was held that, a legal representative is one who suffers on account of death of a person due to a motor vehicle accident and need not necessarily be a wife, husband, parents and child.

9. Thus, there cannot be any dispute about the proposition law that the legal representative who represent the estate of the deceased can claim compensation u/s 166 of the M.V. Act.

10. Now the question for determination is whether there was any loss of dependency or the award of compensation would be under the non-pecuniary heads and towards loss of estate.

11. In Manjuri Bora v. Oriental Insurance Co. Ltd., (supra) it was held that legal representatives can maintain a petition for compensation under the Motor Vehicle Act. Though there may not be loss of dependency. It was held that the legal representatives would be entitled to the compensation at least u/s 140 of the Motor Vehicle Act. The liability u/s 140 of the Act does not cease because there is absence of dependency. The quantum thus cannot be less than liability u/s 140 of the Act. Therefore even if there is no loss of dependency the claimants who are legal representatives will be entitled to compensation, the quantum of which shall not be less than liability flowing from Section 140 of the Act.

12. In this case claimant/respondent No. 1 elder brother of the deceased stated that he is daily wage earner and his income depends upon the availability of daily work. The fact that respondent No. 2 sister of the deceased was dependent is not dispute.

13. In the case of Gujarat State Road Transport Corporation v. Ramabhai (supra) it was observed:-

....we should remember that in an India Family brothers, sisters and brother's children and sometimes foster children live together and they are dependent upon the bread-winner of the family and if the bread winner is killed on account of Motor Vehicle accident, there is no justification to deny them compensation.

In this case there is no rebuttal evidence that the claimants were not at all dependent on the deceased. Therefore, this Court declines to interfere with the judgment passed by learned Tribunal. This appeal is accordingly dismissed.