

GAHC010120492016



THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

PRINCIPAL SEAT AT GUWAHATI

MAC Appeal No. 285 of 2016

Smt. Mary Jerang
W/o Late Tagom Jerang,
Resident of Village-Mapung,
P.S.- Rumgong, Dist.- East Kameng,
Arunachal Pradesh.

.....Appellant

-Versus-

1. The National Insurance Company Limited,
Tinsukia Divisional Branch,
Dist.-Tinsukia, Assam. Pin.
2. Sri Jatin Duwarah (Owner)
Son of Sri Suren Duwarah,
Village Sipuria, District-Tinsukia,
Assam. Pin.
3. Sri Suresh Kumar (Driver)
Son of Late Jogendra Kumar,
Village- Tamulbari, Dist. – Tinsukia,
Assam, Pin.

.....Respondents.

Advocates for the appellant : Mr S P Choudhury.
Advocate for the respondent : Ms S Roy.

BEFORE
HON'BLE MRS. JUSTICE MALASRI NANDI

Date of hearing : 16.08.2022
Date of Judgment : 30.09.2022.

JUDGEMENT AND ORDER (CAV)

Heard Mr S P Choudhury, learned counsel appearing for the appellant and Ms S Roy, learned counsel appearing on behalf of the respondent No. 1/Insurance Company

2. This appeal has been preferred by the appellant/claimant against the Judgment and Order dated 21.09.2012, passed by the learned Member, MACT, Biswanath Chariali, Sonitpur in MAC Case No. 205/2007, whereby the claim petition of the claimant was dismissed.

3. The brief facts of the case is that on 04.06.2006, the husband of the claimant, Tegom Jerang (since deceased) was travelling in a vehicle bearing Registration No. AR-01-A/6722, as a passenger from Namsai to Naharlagun, by purchasing a ticket and he was allotted seat No. 1 of the said vehicle. On 05.06.2006, at about 5:30 am, in the morning hour, he was found lying on the roadside near Nilpur Tea Estate over NH-52, in an unconscious state with severe head injuries. On receipt of the information, the Police came to the spot and the injured was shifted to Biswanath Chariali Civil Hospital for treatment. As the condition of the injured was critical, he was referred to Kanaklata Civil Hospital at Tezpur. But subsequently, he was also

referred to GMCH, but on the way to Guwahati, he succumbed to his injuries at Nagaon. The Post-Mortem examination of the deceased, Tegom Jerang was conducted at Tezpur Civil Hospital on 06.06.2006. In connection with the accident, one case was registered vide BNC PS Case No. 89/2006, under Section 302 IPC. At the relevant time of accident, the alleged vehicle was duly insured with National Insurance Company Limited.

4. Learned counsel for the appellant has argued that the learned Tribunal while deciding on the point of issue, as to whether the accident occurred due to negligent driving of the vehicle, which resulted into the death of the husband of the claimant, came to a finding that the deceased might have died due to any other reason, which is absolutely perverse. As such, the Judgment and order passed by the learned Tribunal is liable to be set aside.

5. It is also the submission of the learned counsel for the appellant that CW-2 and CW-3 had categorically stated in their deposition that they had seen falling something from the bus, which was coming in a very high speed and when they reached the spot, they found one tribal man lying on the road in a pool of blood. Thereafter, they went to Biswanath Chariali Police Station and informed Police about the accident.

6. Learned counsel for the appellant also contended that the two other witnesses, i.e., CW-4 and CW-5, who were the co-passengers in the bus, in which the deceased was travelling also deposed in their evidence that when they reached near Biswanath Chariali, it was dawn. After a few minutes of crossing Sadharu Shiva Mandir, the front side of the bus jumped into air, at which some of the passengers cautioned the driver. At the jump, they heard a thudding sound of falling something from the bus, but the conductor and handyman, who were in the cabin of the bus, did not come out of cabin to take stock of the matter if there was anything

wrong. It is further submitted by the learned counsel for the appellant that from the evidence of PWs-2, 3, 4 and 5, it is crystal clear that the husband of the claimant, who was travelling in the offending bus, had fallen down due to rash and negligent driving of the bus driver, as a result of which he died. As such, the Judgment and Order of dismissal, passed by the learned Tribunal is liable to be set aside.

7. On the other hand, the learned counsel for the Insurance Company has submitted that the death of the deceased cannot be said to have arisen out of any accident, involving the vehicle. On receipt of the FIR, a case was registered under Section 302 IPC, the penal provision of murder and the murder cannot be said to be an accident for granting compensation under the Motor Vehicles Act. It is also submitted that the claimant has filed the case under Section 166 of the Motor Vehicles Act. As such, necessarily they have to take upon themselves the burden of establishing the negligence of the owner/ driver of the vehicle concerned. But, here in this case, it is not proved that the accident occurred due to rash and negligent driving of the offending vehicle. As such, the Judgment passed by the learned Tribunal does not need for any interference.

8. In support of his submission, learned counsel for the Insurance Company has placed his reliance on the following case-law:-

(2007) 5 SCC 428; ***(Oriental Insurance Co. Ltd. –vs- Meena Variyal & Ors).***

9. Section 165 of the Motor Vehicles Act, provides for constitution of MACTs for the purpose of adjudication upon claims for compensation in respect of accidents, involving death of or bodily injury to persons, arising out of the motor vehicles. Section 166 enables an application for compensation, arising out of an accident of the nature specified in Section 165

to be made *inter alia* by the person, who has sustained the injury. Now, the question comes whether the claim of the applicant for compensation for the death of her husband on account of falling from the moving bus thereof is within the domain of Section 165 of the Motor Vehicles Act or whether the murder of the deceased, Tegom Jerang was an accident arising out of the offending vehicle bearing Registration No. AR-01-A/6722.

10. The Supreme Court in the case of ***Shivaji Dayanu Patil –Vs- Vatschala Uttam More***; reported in **(1991) 3 SCC 530** held that the word “use” in the context of motor vehicle has a wider connotation than the expression “caused by” and that the causal relationship between the use of the motor vehicle and the accident resulting in injury is not required to be direct and proximate and it can be less immediate. It was yet further held that as long as the accident is connected with the use of the motor vehicle, the MACT would have jurisdiction. Accordingly, the Tribunal was held to have jurisdiction where the petrol tanker went off the road and fell from the highway leading to leakage of petrol, which caused the explosion for entertaining the claims for injury to the persons who had sustained injuries on account of being at a place, where the explosion had occurred.

11. The law on this issue is well settled by the Hon’ble Supreme Court in the case of ***Rita Devi –vs- New India Assurance Company Limited***; reported in **(2000) 5 SCC 113**. The Hon’ble Supreme Court drew the distinction between ‘murder’, which is not accident and the ‘murder’ which is an accident. The Hon’ble Supreme Court laid down the test that if the dominant intention of the felonious act is to kill any particular person, then such killing is not accidental murder, but a murder simpliciter. However, if the cause of murder or act of murder was originally not intended and the same was caused in furtherance of any felonious act, then such murder is an accidental murder.

12. In ***Rita Devi (supra)***, the deceased was employed to drive an auto-rickshaw for ferrying passengers on hire. On the fateful day, the auto-rickshaw was parked at auto stand at Dimapur when some unknown persons engaged the deceased for a journey. As to what happened on that day is not known. It was only on the next day that the Police was able to recover the dead body of the auto driver, but the auto-rickshaw in question was never traced out. The owner of the auto-rickshaw claimed for compensation from the Insurance Company for loss of auto-rickshaw. The heirs of the deceased claimed compensation for the death of the driver on the ground that the death occurred because of the accident on account of use of the motor vehicle. The Apex Court held that murder to be an accidental murder.

13. Similarly in the case of ***Samir Chanda –Vs- Managing Director, Assam State Transport Corporation;*** reported in (1998) 6 SCC 605, the claims for compensation in respect of injuries due to bomb blast inside the vehicle were held to be falling within the jurisdiction of MACT.

14. In the case of ***Kaushnuma Begum –Vs- New India Assurance Company Limited;*** reported in (2001) 2 SCC 9, the Hon'ble Supreme Court further clarified that even if there were to be no negligence on the part of the driver or the owner of the motor vehicle, but accident happened while the vehicle was in use, the injured would be entitled to get compensation from the MACT.

15. In the case of ***National Insurance Co. Ltd. –vs- Shiv Dutta Sharma;*** reported in 2004 ACJ 2049, it was held that claims for compensation on account of the terrorist gunning down passengers in a bus to be entertainable by the MACT.

16. In another case ***DTC –Vs- Meena Kumari,*** reported in III (2010) ACC 72, held the

claims for compensation on account of a bomb blast in a DTC bus, to be within the jurisdiction of MACT.

17. Now applying the aforesaid principles, turning to the facts of the present case, admittedly, the deceased was travelling in the vehicle bearing Registration No. AR-01-A/6722 from Namsai to Naharlagun,. In the case in hand, six witnesses were examined including the claimant, who is the wife of the deceased, who reiterated the same thing whatever she had stated in her claim petition. She was not present when the accident occurred.

18. PW-2 is Sabitri Majhi and PW-3 is Kushila Bakhte, who deposed in their evidence that on the date of accident, at about 04:00 to 04:30 am, in the morning hour, when they were returning home on foot, after attending a Manasha Puja, whole night at Nilpur Tea Estate, they saw one bus was coming from their opposite side i.e., Jamuguri side towards Biswanath Chariali in a rash and negligent manner. In the meantime, they had noticed the front side of the bus jumped up with a big sound and also saw falling something from the bus at a distance of about 70 feet away from them. The bus crossed them within seconds. They went ahead and when they arrived on the spot, they were shocked to see that young man tribal in look was lying head towards West on the grass part of the road with injuries on his head and he was found unconscious. They immediately went to Biswanath Chariali Police Station and informed the Police about the incident. Later on, they came to know that the person was from Arunachal Pradesh, travelling from Namsai to Naharlagun. He died on the way to Guwahati.

19. In her cross-examination, PW-2 replied that she saw the accident at about 04:00 am. She did not remember the number of the vehicle. She saw a man, falling down from the

vehicle but she did not notice any articles with the man. She had noticed blood was oozing out from different parts of his body. PW-3 replied in her cross-examination that she had not seen the accident. But saw the man fell down from the vehicle, but she had not noticed any articles with the man.

20. PW-3 Mohan Muria and PW-4, Gokul Tamaria, who were the passengers of the vehicle in which the deceased was travelling on the date of the incident. According to them, on 04.06.2006, PW-4 was boarded in the bus from Dibrugarh to Halem, in an air bus AR-01-A/6722, occupying seat No. 22 of the said bus. He had been in service as a security guard under 80 ATPSF at Bokel Tea Estate for 4 years. The bus comes from Namsai to Naharlagun, Itanagar. PW-5 was boarded in the said bus from Bokakhat, who is known to PW-3. PW-4 met PW-5 at Bokakhat and asked him to travel in the said bus, as there was a vacant seat and accordingly, PW-5 occupied a vacant seat in the said bus. Both PW-4 and PW-5 stated that at Jakhalabandha their bus stopped for some time on which some of the passengers complained at stopping there as the bus was late more than two hours by then. From Jakhalabandha, the bus was driven at a very high speed non-stop till it reached Balipara, where many of the passengers got down. It was then about 03:30 am, from Balipara again, the bus was driven with more speed, which was perhaps to make up the late time. When they were about to reach Biswanath Chariali, it was dawn. After a few minutes of crossing Sadharu Shiv Mandir, the front side of the bus jumped into air, at which some of the passengers shouted and cautioned the driver. At the jump, they heard a thudding sound of falling something from the bus behind the driver's seat. Conductor and handyman of the bus were in the cabin, but they did not come out from the cabin. Thereafter, the bus stopped at Halem, and both of them got down. By that time, it was about 05:30 to 06:00 am. On the next day, at Halem Centre, they

came to know from newspapers clipping that one Arunachali passenger died falling from a fast moving tourist bus, in which both of them were travelling. After few months of the accident, both of them were called to Biswanath Chariali Police Station and their statements were recorded. When they visited Biswanath Chariali Police Station, they met the wife of the deceased.

21. In his cross-examination, PW-4 replied that he was travelling in the bus by purchasing a ticket, but he did not submit the said ticket to the Court. The said bus was not stopped at Biswanath Chariali. He did not witness the incident. He came to know about the incident through the newspaper clipping. He occupied seat No. 22 in the said bus.

22. PW-5 in his cross-examination replied that he did not purchase any ticket in travelling the said bus. He was sitting on the seat of the right side of the vehicle.

23. PW-6 is the Investigating Officer, who was working as Officer-In-Charge at Biswanath Chariali Police Station at the relevant time of accident. According to him, on receipt of the Case Diary to investigate the BNC PS Case No. 89/2006, having perused the Case Diary, he came to know that on 05.06.2006, one passenger Tegom Jerang fell from a bus bearing No. AR-01-A/6722, near Biswanath Chariali. He was found lying unconscious. One purse was recovered beside him along with one travelling bus ticket, from which, Police came to know about his name and place of residence. He was admitted to the Biswanath Chariali Civil Hospital, but ultimately died on his way to Guwahati. During investigation, the said bus AR-01-A/6722 was seized along with its documents and wearing apparels of the deceased. He also interrogated Mohan Muria and Gokul Tamuria, who were the passengers of the ill-fated bus. They had stated before him that they had heard the sound of falling of one passenger

from the bus at the place of incident.

24. From the evidence of aforesaid witnesses, it reveals that the deceased Tegom Jerang was travelling in the bus AR-01-A/6722, on the date of incident. From the evidence of PW-3 and PW-4, it is seen that the deceased was found lying unconscious on the roadside. They had also noticed the bus, which was coming in a rash and negligent manner. The bus jumped high upwards near Biswanath Chariali and they had seen one person falling from the bus. They went ahead and identified the person and informed in the Police Station. Police came and found one bag beside the deceased from which a travelling ticket was recovered, which shows that the deceased was travelling from Namsai to Naharlagun in the bus AR-01-A/6722.

25. In view of the evidence of the aforesaid witnesses and applying the principles laid down in the case of ***Rita Devi (supra)***, I am of the opinion that the husband of the claimant died due to negligence of the driver of the vehicle, in which the deceased was travelling. Though the case was registered under Section 302 IPC, but it is not known what is the outcome of the criminal case. At this stage, we cannot say that the death of the deceased was caused due to pre-planned murder. Under such backdrop, it can be said that husband of the claimant died of accident. As such, the claimant, who is the wife of the deceased, is entitled to get compensation from the insurer of the vehicle.

26. As per claim petition, the deceased was a Government Servant of Arunachal Pradesh and his monthly salary was Rs. 11,000/-. In support of the fact, the claimant has submitted last pay certificate of the deceased, which shows that late Tegom Jerang was working as an Assistant Urban Project Officer in the Department of Urban Development and Housing, Government of Arunachal Pradesh, at Anjao, who died in a motor vehicle accident. At the

time of his death, he was drawing his salary at Rs. 11,000/-.

27. Regarding the age of the deceased, as per the claim petition, he was 26 years of age at the relevant time of accident. As per report of Deputy Director, Headquarter, Department of Urban Development Housing, Itanagar, which is available on record, reveals that as per service record, the deceased was born on 01.01.1976. The accident occurred on 05.06.2006. It transpires that the deceased was around 30 years of age at the time of accident.

29. Now, the law is well settled that in the death case, the multiplier should be considered on the basis of the age of the deceased. As the age of the deceased was 30 years at the relevant time of accident, as per the Judgment of ***Sarala Verma –Vs- DTC; reported in (2009) 6 SCC 121***, the multiplier would be 17.

30. The Hon'ble Apex Court in the case of ***National Insurance Company Limited –Vs- Pranay Sethi & Ors.***, reported in **SLP (Civil) No. 25590/2014**, has held that while determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%.

31. In the present case, age of the deceased was 30 years, when the accident took place. Hence, 50% be added to the established income of the deceased, i.e., Rs. 11,000/- + 50%, i.e., Rs. 5,500/- = Rs. 16,500/-

32. In the instant case, the deceased, Tegom Jerang has left behind his wife and his father. As such, the standard deduction towards personal and living expenses is applicable as stated

in the case of ***Sarala Verma(supra)***, as such one-third income is required to be deducted with the presumption that if the deceased would have been alive, he could have spent two-third for his personal and living expenses.

33. As per the case of ***Pranay Sethi (supra)***, the Hon'ble Supreme Court has fixed the compensation in case of death reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. As per the impugned judgment, the aforesaid amount shall be enhanced @ 10% in every 3 years. Hence, the amount of loss of estate and funeral expenses would come to Rs. 16,500/- on each count and loss of consortium as Rs. 44,000/-.

34. In view of the above discussion, the computation of compensation is awarded as follows-

A. Annual income of the deceased- Rs. 16,500/- x 12 = Rs. 1, 98,000/-

B. After deducting one-third of the income of the deceased, the amount comes to- Rs. 66,000/-

C. After multiplied with multiplier, the amount comes to Rs. 66,000 x 17= Rs. 11,22,000/-.

D. Funeral expenses = Rs. 16,500/-

E. Loss of Consortium = Rs. 44,000/-

F. Loss of Estate = Rs. 16,500/-

Total – Rs. 11,99,000/- (Rupees Eleven Lacs Ninety Nine Thousand) only.

35. In the result, the appeal is allowed.

36. The Insurance Company is directed to deposit the amount of Rs. 11,99,000/- (Rupees Eleven Lacs Ninety Nine Thousand) only. in the savings account of the claimant/wife, Smt Mary Jerang through NEFT. The amount of compensation shall carry an interest @ 6% per annum, from the date of filing of the case till full and final realization. The Insurance Company is directed to discharge the liability of the award within a period of 30 days from the date of receipt of the order. The claimant/wife, Smt Mary Jerang is directed to furnish her bank details of any nationalized bank to the Insurance Company for necessary payment.

37. Judgment and Order dated 21.09.2012, passed by the learned Member, MACT, Biswanath Chariali, Sonitpur in MAC Case No. 205/2007, is hereby set aside.

38. Send down the LCR.

JUDGE

Comparing Assistant