

GAHC010014202013



**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

Case No. : MACApp./349/2013

UNION OF INDIA and ANR,
REPRESENTED BY THE GENERAL MANAGER, N.F RAILWAY, MALIGAON,
GUWAHATI.

2: THE DIVISIONAL RAILWAY MANAGER

TINSUKIA DIVISION
P.O. and DIST. TINSUKI

VERSUS

REKHA BHARALI and 4 ORS.
W/O LATE BIBHNU BHARALI

2:MISS BORSHA BHARALI

D/O LATE BIBHUNU BHARALI

3:MASTER AKASH BHARALI

S/O LATE BIBHNU BHARALI

4:SMTI RUKMA BHARALI

W/O SRI NAR BH. BHARALI

5:NAR BH. BHARALI

S/O PADMA SINGH BHARALI
ALL ARE R/O NO. 2
TOKOWANI GAON
P.O. NAZIRATING
P.S. DIGBOI
DIST. TINSUKI

Advocate for the Petitioner : MS.U CHAKRABORTY

Advocate for the Respondent :

PRESENT

THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Appellants:	Ms. U. Chakraborty, S.C. N.F. Railway.
For the Respondents:	No representation.
Date of Hearing :	16.05.2024.
Date of Judgment:	28.05.2024.

JUDGMENT AND ORDER (CAV)

Heard Ms. U. Chakraborty, learned counsel representing the appellants. None appears for the respondents in spite of service of notice.

2. This is an appeal under Section 173 of the Motor Vehicles Act challenging the judgment and order dated 19.07.2013 passed by the Motor Accident Claims Tribunal, Tinsukia in MAC Case No.23/2010.

3. On 13.11.2009 at about 6.18 P.M., late Bibhnu Bharali was travelling insides the driver's cabin of the TATA Magic ACE Pick Up vehicle bearing Registration No.AS-23-AC-0846. The vehicle was driven by Lok Bahadur Chetri. The handyman Hori Sonar was also present inside the cabin along with the deceased and the driver.

4. When the vehicle tried to cross one unmanned Railway crossing near Laipuli, a train coming from Lidu towards Dibrugarh had hit the aforesaid vehicle. The deceased sustained grievous injuries and succumbed to his injuries.

5. Therefore, Smti. Rekha Bharali, the wife of the deceased, his two children and his parents filed a claim petition before the Tribunal seeking compensation.

6. Shri Bharat Bharali and Shri Lok Bahadur Chetri, the owner and the driver of the vehicle bearing Registration No.AS-23-AC-0846, the Insurance Company of the said vehicle and the present appellant were arraigned as defendants in that case.

7. In his written statement, Shri Bharat Bharali has claimed that his vehicle was insured with a valid Insurance Policy. He, therefore, claimed that the Insurance Company is liable to pay compensation.

8. The driver Lok Bahadur Chetri has stated in his written statement that he did not notice the incoming train due to heavy fog. He further claimed that the train did not use its horn.

9. The National Insurance Company Limited in its written statement has pleaded that since the vehicle bearing Registration No.AS-23-AC-0846 was a goods carrying commercial vehicle, it cannot carry passengers.

10. The appellant Union of India has stated in his written statement that the incident took place because of carelessness and negligence of the driver of the vehicle bearing Registration No.AS-23-AC-0846.

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

I. Whether Bibhnu Bharali @ Bishnu Bharali died on 13.11.2009 as a result of rash and negligent driving of TATA Magic ACE Pick Up vehicle bearing Registration No.AS-23-AC-0846?

II. Whether the claimants are entitled to get any compensation? if so, to what extent and from whom?

III. Whether the accident occurred as a result of negligent act of NF Railways?

12. The claimant Smti. Rekha Bharali examined herself along with Prem Raj Bharali and Lok Bahadur Chetri. The contesting opposite parties did not examine any witness.

13. On the basis of the evidence on record, the Tribunal directed the National Insurance Company Limited to pay compensation of ₹4,03,550/- to the claimant

along with interest @ 6% per annum.

14. The Tribunal further directed the present appellant to pay an amount of ₹4,03,550/- to the claimant along with interest @ 6% per annum.

15. Being aggrieved by the judgment passed by the Tribunal, the appellant has filed the instant appeal.

16. Ms. Chakraborty has pointed out to Section 161 of the Railways Act, 1989, which states that if any person driving or leading a vehicle, is negligent in crossing an unmanned level crossing, he shall be punished with imprisonment which may extent to one year.

17. At this stage, a brief visit to Section 161 of the Railways Act, would be fruitful, it reads as under:

“161. Negligently crossing unmanned level crossing.—

If any person driving or leading a vehicle is negligent in crossing an unmanned level crossing, he shall be punishable with imprisonment which may extend to one year.

Explanation.—For the purposes of this section, “negligence” in relation to any person driving or leading a vehicle in crossing an unmanned level crossing means the crossing of such level crossing by such person—

(a) without stopping or caring to stop the vehicle near such level crossing to observe whether any approaching rolling stock is in sight, or

(b) even while an approaching rolling stock is in sight.”

18. According to Ms. Chakraborty, Lok Bahadur Chetri, the driver of the vehicle bearing Registration No.AS-23-AC-0846 never stopped or cared to stop the vehicle near the level crossing to observe whether any approaching train was in sight. The learned counsel further submitted that it is the fault of the driver for which the accident took place.

19. I have considered the submissions of Ms. Chakraborty.

20. The driver Lok Bahadur Chetri has stated in his evidence that when he had reached the level crossing, the headlights of his vehicle was in switched on mode. He

further stated that before crossing the Railway crossing, he did not stop the vehicle but he had looked towards Dibrugarh direction and his handyman had looked towards Lidu direction. When they found no train on the track, they proceeded towards the level crossing. The driver further stated in his evidence that just before him, an Army truck had crossed the Railway unmanned level crossing and he just followed that truck. Immediately, a train coming from Lidu direction had hit his vehicle. The driver has stated in his evidence that he never heard the sound of an incoming train nor he had heard the whistle of the train.

21. In this case, except Lok Bahadur Chetri, there are no eye witnesses to the occurrence.

22. Section 161 of the Railways Act, 1989, makes it compulsory for the drivers of every vehicle crossing an unmanned level crossing, to stop and to observe whether any train is coming, before crossing the level crossing. The driver Lok Bahadur Chetri has stated in his evidence that he did not stop his vehicle before crossing the level crossing. He has stated that though he did not stop before crossing the level crossing, he had looked for incoming train in the direction of Dibrugarh while his handyman had looked towards Tinsukia/Lidu direction. The driver further stated that when he and his handyman did not see any incoming train, he took the vehicle forward for crossing the level crossing.

23. At this stage, I find it hard to believe that the driver did not hear the sound of a huge incoming train.

24. Now, it is clear on the face of the record that the driver Lok Bahadur Chetri had violated the provision of law as laid down in Section 161 of the Railways Act, 1989. It is proved that the accident took place because of the negligence of Lok Bahadur Chetri who was driving the vehicle bearing Registration No.AS-23-AC-0846. In that case, the appellant NF Railways is not liable to pay any compensation to the claimant.

25. For the aforesaid reasons, the appeal is allowed. The impugned judgment and order dated 19.07.2013 passed by the learned Motor Accident Claims Tribunal,

Tinsukia in MAC Case No.23/2010 directing the appellant NF Railways to pay a compensation of ₹4,03,550/- to the claimant(s) along with interest @ 6% per annum, is set aside.

The MAC Appeal is disposed of.

Send back the LCR.

JUDGE

Comparing Assistant