

GAHC010121402016



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

Case No. : MACApp./329/2016

SMTI RUPESWARI RABHA RAY and 3 ORS
W/O. LT. BINOD RAY,

2: SRI SAMBARU RAY

S/O. LT. MATIA RAM RAY.

3: SMTI. NIRU BALA RAY

W/O. SRI SAMBARU RAM RAY.

4: SRI BHAGIRATH ROY

S/O. LT. BINOD RAY. ALL ARE RESIDENTS OF VILLAGE - PURANI
BONGAIGAON
P.O.
P.S. and DIST. BONGAIGAON
ASSAM

VERSUS

THE DIVISIONAL MANAGER, ORIENTAL INSURANCE CO. LTD and 2 ORS
BONGAIGAON DIVISIONAL OFFICER, BONGAIGAON, P.O. and DIST.
BONGAIGAON, ASSAM. INSURANCE OF VEHICLE NO. AS-18/9361 TRUCK
VIDE POLICY NO. 322300/31/2013/1165.

2:BIMOLA DEVI SINGHAL

W/O. LT. VED PRAKASH SINGHAL
R/O. CHAPAGURI ROAD
BONGAIGAON
P.O.
P.S. and DIST. BONGAIGAON
ASSAM. OWNER OF THE VEHICLE NO. AS-18/9361 TRUCK.

3:MD. ISMAIL SHEIKH

S/O. KHALIL SHEIKH
VILL. FULKUMARI
P.O. BIDYAPUR
P.O. and DIST. BONGAIGAON
ASSAM

Advocate for the Petitioner : MR.M H TALUKDAR

Advocate for the Respondent : MS. R D MOZUMDAR (R1)

Linked Case : MACApp./179/2019

ORIENTAL INSURANCE CO. LTD
HAVING ITS REGISTERED OFFICE AT ORIENTAL HOUSE
A 25/27 ASAF ALI ROAD
NEW DELHI 110002 AND REGIONAL OFFICE AT GUWAHATI-7
REPRESENTED BY THE REGIONAL MANAGER

VERSUS

SMTI. DIPALI ROY and 3 ORS
W/O LATE NITYA CHARAN RAY

2:MANJIT RAY

S/O LATE NITYA CHARAN RAY
BOTH ARE R/O VILL. CHIPONSILA KAULIPARA
P.O. CHIPONSILA KAULIPARA
P.O. CHIPONSILA
P.S. BONGAIGAON
DIST. BONGAIGAON
ASSAM
PIN 783380
3:BIMOLA DEVI SINGHAL
W/O LATE VED PRAKASH SINGHAL
R/O CHAPAGURI
BOGAIGAON
P.O. BOGAIGAON
P.S. BONGAIGAON

DIST. BONGAIGAON
ASSAM
PIN 783380
4:MD. ISMAIL SK.

S/O KHALIL SK
R/O VILL. FULKUMARI
P.O. BIDYAPUR
P.S. BONGAIGAON
DIST. BONGAIGAON
ASSAM
PIN 783380

PRESENT

THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Appellants : Mr. M. Khan and
Mr. M. Choudhury,
Advocates.

For the Respondent : Mrs. R.D. Mozumdar,
Advocate.

Date of Hearing : 11.01.2024.

Date of Judgment : 18.01.2024.

JUDGMENT AND ORDER (CAV)

Heard Mr. M. Khan and Mr. M. Choudhury, learned counsels appearing for the respective appellants as well as Mrs. R.D. Mozumdar, learned counsel appearing for the respondent Insurance Company.

2. These two appeals under Section 173 of the M.V. Act are taken up together because they relate to the same accident.

3. The appeals are against the judgment and order dated 15.06.2015 passed by the MACT, Bongaigaon in MAC Case No.122/2012 and the judgment and order dated 17.08.2015 passed by the MACT, Bongaigaon in MAC Case No.123/2012.
4. This is a classic example of a single Tribunal having two different views in respect of the same accident.
5. On 30.05.2012, Binod Ray and Nitya Charan Ray were travelling in a scooter bearing Registration No.AS-19/4069. The scooter was driven by Binod Ray and Nitya Charan Ray was a pillion rider. The said scooter was knocked down by a truck. Binod Ray died on the same day whereas Nitya Charan Ray died after a couple of days. Therefore, Smti. Rupeswari Rabha Ray, the wife of Binod Ray had lodged an FIR before police alleging the truck bearing Registration No.AS-18-9360 had caused the accident.
6. Police started investigation into the matter. During investigation, a truck bearing Registration No.AS-18-9361 was seized by police from the place of the accident. Ultimately, police filed the *charge sheet* holding that the truck bearing Registration No.AS-18-9361 had caused the accident.
7. In the meantime, Rupeswari Rabha Ray being the wife of the deceased Binod Ray filed a claim petition before the Tribunal seeking compensation. The claim petition was registered as MAC Case No.122/2012.
8. Subsequently, Smti. Dipali Ray, the wife of the deceased Nitya Charan Ray also filed a claim petition before the Tribunal which was

registered as MAC Case No.123/2012.

9. In the case of MAC Case No.122/2012, the Tribunal held that it was not proved that the accident was caused by the vehicle no.AS-18-9360. The Tribunal accordingly dismissed the claim petition.

10. In the case of MAC Case No.123/2012, the Tribunal agreed with the claimant that the accident took place because of rash and negligent driving of the vehicle no.AS-18-9361. The Tribunal awarded compensation in favour of Smti. Dipali Ray, the wife of the deceased Nitya Charan Ray.

11. I have considered the submissions made by the learned counsels of both sides.

12. The only question involves in this appeal is as to whether the accident caused by vehicle no.AS-18-9360 or by the vehicle no.AS-18-9361?

13. The vehicle no.AS-18-9360 was first referred to by Rupeswari Rabha Ray when she had lodged the FIR before police.

14. Mr. Khan pointed out that the FIR was not written by Rupeswari Rabha Ray. It was written by a person called P. Ahmed upon the dictation of Rupeswari Rabha Ray. Mr. Khan further pointed out that police seized the vehicle bearing registration no.AS-18-9361 from the place of occurrence and after investigation, police filed the *charge sheet* against the said vehicle. According to Mr. Khan, the learned Tribunal in the case of MAC Case No.122/2012, had erroneously oriented itself and arrived at an incorrect finding.

15. The learned counsel Mr. Khan has relied upon a judgment of the

Hon'ble Supreme Court that was delivered in National Insurance Company Ltd. v. Chamundeswari and Ors. (Civil Appeal No.6151/2021).

16. In paragraph 8 of the said judgment, the Supreme Court has held that when there is evidence available in the record, there is no reason to give weightage to the contents of the First Information Report. The Apex Court further held that if any evidence before the Tribunal runs contrary to the contents in the First Information Report, the evidence which is recorded before the Tribunal has to be given weightage over the contents of the First Information Report.

17. In MAC Case No.122/2012, the claimant examined an eye witness, named Pulen Ray and Sri Jitesh Barman, the investigating officer of the case.

18. Pulen Ray stated before the Tribunal that he was an eye witness to the occurrence and he had seen that the scooter AS-19-4069 was hit by a truck bearing registration no.AS-18-9361. But in the connected criminal case, G.R. 323/2012, Pulen Ray had stated before the trial court that at the time of the accident, he was in his house and after hearing about the accident, he had gone to the civil hospital to see Binod Ray.

19. So, the Tribunal held that the evidence of Pulen Ray could not be relied upon as he stated two different versions about the same occurrence before two authorities.

20. The witness Jitesh Barman being the Investigating Officer of the case, has stated in his evidence that he found the vehicle no.AS-18-9361 to be the negligent one, though, the informant Rupeswari Rabha Ray had mentioned in the FIR that vehicle no.AS-18-9360 was involved in the

said accident.

21. In the case of MAC Case No.122/2012, the learned Tribunal believed the evidence of Investigating Officer Jitesh Barman and held that the eye witness Pulen Ray is not a reliable witness because he offered two versions about the accident before two authorities.

22. For the aforesaid reason, MAC Case No.122/2012 was dismissed.

23. On the other hand, the learned Tribunal believed the evidence of Jitesh Barman and awarded compensation to the claimant.

24. I have considered the entire facts and circumstances of the case.

25. It is a settled position of law that every case has to be decided on its own merit. The learned Tribunal in the MAC Case No.122/2012, disbelieved the evidence of the eye witness Pulen Ray because in the connected criminal case, he claimed to be in his house at the time of accident and in the claim case he stated before the Tribunal that he had seen the occurrence caused by vehicle no.AS-18-9361.

26. Pulen Ray was extensively cross-examined in the Tribunal. There is nothing in his cross-examination to disbelieve him. Similarly, Jitesh Barman was also cross-examined in the Tribunal and his evidence remained unassailed. In spite of that the learned Tribunal relied upon the evidence of Pulen Ray which he gave in the connected criminal case. I am of the considered opinion that the learned Tribunal had erroneously oriented itself while appreciating the evidence available in the record.

27. So far MAC Case No.123/2012 is concerned, I am of the considered opinion that the learned Tribunal has correctly appreciated the evidence

available in the record.

28. In case of MAC Case No.122/2012, the Insurance Company in its written statement has claimed that in the said accident, the vehicle no.AS-18-9361 was not negligent. So, it amounts an admission on the part of the Insurance Company that in the said accident the vehicle no.AS-18-9361 was involved.

29. In a case before the Motor Accident Claims Tribunal, it must be borne in mind that strict proof of an accident caused by a vehicle in a particular manner may not be possible to be done by the claimant. Before the Tribunal, the claimant is to merely establish his case on the touchstone of preponderance of probability. In a case before the Motor Accident Claims Tribunal, standard of proof beyond reasonable doubt is not required.

30. Under the aforesaid circumstances, I am of the considered opinion that in the case of MAC Case No.122/2012, the Tribunal erroneously dismissed the claim petition. It is proved with mere preponderance of probability that the accident was caused by vehicle no.AS-18-9361.

31. So far as the MAC Case No.123/2012 is concerned, this Court is of the opinion that the learned Tribunal has arrived at a correct finding and awarded compensation.

32. For the aforesaid reasons, the MAC Appeal No.329/2016 is allowed. The judgment dated 15.06.2015 passed by the MACT, Bongaigaon in MAC Case No.122/2012, is set aside. The case is remanded to the MACT, Bongaigaon for writing a fresh judgment because it is proved that the accident was caused by vehicle no.AS-18-9361.

33. Accordingly, the MAC Appeal No.179/2019 is found to be devoid of merit and stands dismissed.

34. Both the appeals are disposed of accordingly.

Send back the LCRs.

JUDGE

Comparing Assistant