



GAHC010009412014

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

Case No. : MACApp./112/2014

SUMITRA DEVI AGARWAL and ANR.
W/O SRI BAJRANG AGARWAL

2: BAJRANG LAL AGARWAL

S/O SRI MADAN LAL AGARWAL
BOTH ARE PERMANENTLY RESIDING AT VILL. TOKRIGOLA
MAKUM ROAD
P.O. TINSUKIA AND TEMPORARILY RESIDING AT C/O SRI NARESH
AGARWAL
HOUSE NO. 330
2ND FLOOR
BARUAH
MARKET
FANCY BAZAR
GUWAHATI
ASSAM

VERSUS

HIRALAL JAT and 4 ORS.
S/O SRI HANUMAN RAM JAT, R/O MARGHERITA BAZAR, P.S.
MARGHERITA, DIST. TINSUKIA, ASSAM OWNER OF MAHINDRA MAXX
BEARING REGISTRATION NUMBER AS-23/E-2134

2:DHARAM PAL KULHARI
S/O SRI MEWARAM KULHARI
R/O VILL. MARGHERITA BAZAR
P.S. MARGHERITA
DIST. TINSUKIA
ASSAM DRIVER OF MAHINDRA MAXX BEARING REGISTRATION
NUMBER AS-23/E-2134

3:RAM AVATA AGARWAL



S/O BANSIDHAR AGARWAL
R/O M/S KAMDHENU
A.T. ROAD
P.S. TINSUKIA
DIST. TINSUKIA
ASSAM OWNER OF CHEVROLET AVEO BEARING REGISTRATION NO. AS-23/E-4999

4:THE ORIENTAL INSURANCE CO. LTD.

THROUGH THE CHIEF REGIONAL MANAGER
REGIONAL OFFICE
G.S. ROAD
GUWAHATI 781005 INSURER OF THE VEHICLE BEARING REGISTRATION NO. AS-23/E-2134

5:THE UNITED INDIA INSURANCE CO. LTD.

THROUGH THE CHIEF REGIONAL MANAGER
REGIONAL OFFICE
G.S. ROAD
GUWAHATI 781005 INSURER OF THE VEHICLE BEARING REGISTRATION NO. AS-23/E-499

Advocate for the Petitioner : MR.S DUTTA

Advocate for the Respondent : MR.C SHARMA

BEFORE
THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Appellant	: Mr. S Dutta, Sr. Advocate Ms. I Das, Advocate
For the Respondents	: Mr. S Dutta, Sr. Advocate Mr. S Dutta, Advocate Mr. S Muchahary, Advocate Mr. R Goswami, Advocate
Date of Hearing	: 23.06.2022



Date of Judgement :24.08.2022

JUDGEMENT & ORDER (CAV)

Heard Mr. S Dutta, learned Senior counsel assisted by Ms. I Das, learned counsel for the claimants/ appellants. Also heard Mr. Sishir Dutta, learned Senior counsel assisted Mr. Mr. S Dutta, learned counsel representing Insurance Company.

2. This appeal is preferred by the two claimants against the judgment dated 23.12.2013 passed by the learned MAC, Tribunal, Kamrup, Guwahati whereby the claim of the present appellants was dismissed.

3. **The accident and the claim:**

On 10.12.2006, the deceased Vishal Agarwal along with other occupants late Karan Agarwal and one Sri Kishan Prithani was coming towards Tinsukia from Dibrugarh in a Chevrolet Aveo car bearing registration No. AS-23/ E-4999. The owner of the car was one Sri Ram Avatar Agarwal and same was being driven by deceased Vishal Agarwal. When they reached near Balmikibasti at Chabua, at about, 11.30 p.m-11.45 p.m., the alleged offending vehicle Mahindra Maxx bearing registration No. AS-23/ E-2134, which was proceeding towards Dibrugarh from Tinsukia being driven in rash and negligent manner, knocked down the Chevrolet Aveo car resulting in grievous injury to Vishal Agarwal and Sri Kishan Prithani while the other occupant Karan Agarwal died on the spot. The victim Vishal Agarwal was shifted to Brahmaputra Hospital, Dibrugarh, but he succumbed to his injuries on the way to the hospital. The deceased was

aged 25 years at the time of his death and the claimants claim that he had an earning of Rs. 75,000/- per month being Director of a firm M/s Express Wing Pvt. Ltd. The claimants are the parents of said deceased Vishal Agarwal. The parents filed the claim before the Tribunal claiming compensation of Rs. 1 Crore for death of their son Vishal Agarwal. The Insurance Company filed written statement and took usual pleas like suppression of material facts, defect in the form of the claim etc. They also disputed the income of the deceased as well as his age. The Insurance Company took a stand that denying the date and time of the accident as neither owner of the vehicle nor the police officer has informed the Insurance regarding the alleged accident. They had put the onus of proof upon the claimant that the Insured vehicle (Mahindra Maxx) was driven in a rash and negligent manner. They denied that the alleged accident occurred due to rash and negligent driving of the vehicle bearing registration No. As-23/ E-2134 (Mahindra Maxx).

4. The learned appellate court framed the following two issues:

“ 1. Whether victims, Vishal Agarwal and Karan Agarwal, died in the alleged accident dated 10.12.06 involving vehicle No. As-23/ E-2134 and whether the said accident took place due to rash and negligent driving of the driver of the offending vehicle?

2. Whether the claimants are entitled to compensation as prayed for, if yes, to what extent and by whom amongst the opposite parties, the said compensation amount will be payable?”

5. While dealing with the first issue, the learned Tribunal below came to a conclusion that the accident took place not due to rash and negligent driving of

the Mahindra Maxx but due to rash and negligent driving of Chevrolet Aveo which was driven by the deceased Vishal Agarwal and accordingly denied any compensation to the claimant on the death of their son Vishal Agarwal. However, the learned Tribunal below awarded a compensation amounting to Rs. 16,60,000/- to the co-occupant Karan Agarwal who died in the accident as Chevrolet car's (which was driven by Vishal) insurance policy was a package policy.

6. The learned court below came to such finding heavily relying on the photographs of the vehicles taken after the accident at the place of the accident and were exhibited by the Insurance Company. The finding of the learned Tribunal below, on such photographs can be summarized as follows:

- I. The photographs have been admitted by eye witness i.e. the PW5 (Kishan Prithani) and the SI of Police who investigated into the accident i.e. PW6.
- II. On perusal of the photographs there is no room for doubt that it was the Chevrolet car, which crossed the painted divider line in the middle of the road as a result of which there was head-on-collision between the Mahindra Maxx which was on its own side of the road.
- III. The photographs more particularly document 1,2 and 3 clearly shows that it was the Chevrolet car, which was responsible for the accident.
- IV. There was no space for Mahindra Max to make room for the Chevrolet car because of the iron railing in the side.

7. Now, in view of the aforesaid finding, let this court examine the evidence available on record including the photographs:

A. CW5, Kishan Prithani was an occupant of the Chevrolet car. He deposed that the car was driven by the deceased Vishal Agarwal. The other deceased Karan Agarwal was sitting on the front seat and when the vehicle arrived at the place of accident, Mahindra Max vehicle, which was driven in a rash and negligent manner in a very high speed knocked the Chevrolet car from front side and as a result of which Karan Agarwal died on the spot and Vishal Agarwal declared dead on arrival at hospital.

He further deposed that he himself sustained injuries and was taken to nursing home for treatment.

When the photographs were shown to him during cross-examination, he admitted that these are the photographs of the vehicles that met with the accident.

He denied the suggestion that due to rash and negligent driving of the Chevrolet car, it entered the right side of the road and hit the Mahindra Max. He further denied the suggestion that Vishal was driving the vehicle in a drunken condition.

Facing the cross-examination for OP No. 5, he reiterated that the Mahindra pick van knocked down their vehicle in a rash and negligent manner.

Thus, except the admission that photographs exhibited as Document 1,2,3 and 4 are of the vehicle, which met with the accident nothing could be extracted by the Insurance Company from him that accident

took place due to rash and negligent driving of the Avio vehicle driven by deceased Vishal Agarwal inasmuch as he was the only supporting eye witness to the accident.

- B. CW6, the Officer-in-Charge of Chabua PS** and one of the investigating officer of Chabua PS Case No. 222/2006 which was registered after and relating to the accident, deposed in his evidence in chief that after receiving the information of the accident at about 12.30 a.m. after making a GD entry rushed to the spot and found that Vishal Agarwal and Karan Agarwal were already evacuated by their friends and other people to hospital for treatment. He further deposed in his evidence in chief that after enquiry it was ascertained that the Mahindra Max vehicle was driven in a rash and negligent manner by its driver and in a very high speed knocked down the Chevrolet vehicle, which the deceased Vishal was driving. He also deposed that after completion of the investigation, charge-sheet was filed against the driver of the Mahindra Max under Section 279/304(A)/338/427 IPC. During cross-examination, he admitted that Document 1,2 and 3 are the photographs of the vehicle involved in the accident.
- C.** The Insurance Company under which the offending Mahindra Max was insured led evidence of one, Sanjay Kr. Das, who was an Insurance Investigator. During his examination-in-chief, he deposed that during investigation he recorded statement of the owner and driver of the vehicle and also visited the spot during investigation. During cross, he stated that he visited the site on 11.12.2006 at about 11/ 11.30 am. He admitted that he did not take the photos and he did not examine any eye witness or found any eye witness. He further deposed that he did

not know who had witnessed the accident. He also deposed that he did not know when the police arrived at the spot. He further admitted that in his report, he has not attributed fault to any of the vehicles.

8. Thus from the aforesaid material available on record, it is clear that the photographs were not taken by the Insurance Investigator, he had not examined the sole eye witness Mr. Prithani or any other eye witness, the Insurance Investigator has also in his report not attributed fault to any of the vehicles. He had not taken the photographs, he had visited the place of accident almost after 12 hours i.e. the accident took place at about 12/ 12.30 p.m. on 10.12.2006 and he visited the place of accident at about 11/ 11.30 am on 11.12.2006.

9. In the aforesaid backdrop now this court is to decide whether the learned Tribunal below was right in holding that the driver of the Avio vehicle i.e. deceased Vishal Agarwal was driving in a rash and negligent manner. This court had the occasion to peruse the photographs exhibited as Document Nos. 1,2,3 and 4. Said documents only depict an accident involving two vehicles and nothing more. The same shows that two damaged vehicles in one side of a road.

10. After scrutiny of the evidence available on record, this court do not find any proof of rash and negligent driving on the part of deceased Vishal Agarwal rather, the only eye witness unshaken evidence depicts that the Mahindra Max vehicle was driven in a rash and negligent manner and the same knocked down the Avio vehicle. The investigation made into Chabua police case and submission of charge-sheet against the driver under Section

279/304(A)/338/427 IPC also prima-facie shows that after investigation the Investigating Officer found that the driver of the offending vehicle was driving in rash and negligent manner.

11. Against such evidence, the evidence of DW1 depicts that the photographs exhibited were not taken by the Insurance Investigator, the Insurance Investigator visited the site after 12 hours from the time when the accident took place. He did not find any eye witness in the place of occurrence. He further deposed in cross-examination that the statement of the owner of the Mahindra Max vehicle though was recorded, he did not know who had recorded the statement and he had not recorded such statement. He further deposed that at the time of accident, the owner of the Mahindra Max vehicle was not in the vehicle. He admitted that he had not attributed any fault to any of the vehicle.

12. The only evidence i.e. the photographs of the offending vehicle, on the basis of which he learned Tribunal held that deceased Vishal Agarwal was driving negligently. Such finding of the learned Tribunal was based on the position of the vehicle after the accident as depicted in the photographs. The photographs at best can be proof of the accident but same cannot be a proof of rash and negligent driving. The position of the vehicle, its direction etc. depends on myriad factors like speed of the vehicle, the intensity of collision, reason of collision, place at which one vehicle hit the other vehicle etc. The photographs of the accident in absence of any direct and corroborative evidence cannot depict that the deceased Vishal Agarwal was driving the vehicle in rash and negligent manner. Such finding of this court is based on decision of the **Hon'ble**

Apex Court in Jiju Kuruvila & Ors. vs Kunjamma Mohan & Ors.
reported in ***2013 AIR SC 2293***.

13. Accordingly, in view of the above factual position and settled proposition of law, this court is of the un-hesitant view that the photographs (document Nos. 1,2,3 and 4) cannot lead to a finding that deceased Vishal Agarwal was driving the vehicle in rash and negligent manner and for his fault the accident took place, that too in absence of any corroborative evidence and in view of unshaken evidence of the sole eye witness (PW5).

14. In the aforesaid backdrop, this court interferes with the finding of the learned Tribunal below relating to the issue No. 1 so far relating to the deceased Vishal Agarwal. Accordingly, it is held that victim Vishal Agarwal died in the accident dated 10.12.2006 involving vehicle No. As-23/ E-2134 and the said accident took place due to rash and negligent driving of the driver of the offending vehicle Mahindra Max bearing No. As-23/ E-2134.

15. As the learned Tribunal below held Vishal Agarwal to be the cause of accident, did not further proceed on the entitlement of the parents of the claimant though certain documents were exhibited in proof of income and age of deceased Vishal Agarwal and the Insurance side also cross-examined the witnesses, who exhibited such materials. The Insurance Company also raised disputes regarding age and income of deceased Vishal Agarwal. The fact also remains that in the present proceeding the 1st issue was only deliberated and no deliberation was made on the other disputes i.e. age and income of the

deceased and the quantum of compensation.

16. Therefore, in view of the aforesaid, this court is of the considered opinion that interest of justice could be met if the matter is remanded back to the learned Tribunal below to pass an just award on the basis of material available on record relating to income and age of the deceased Vishal Agarwal after hearing the learned counsel for the parties and determine the claim on the basis of settled position of law as on date.

17. The entire exercise shall be completed by the learned Tribunal within a period of two months from the date of receipt of this order inasmuch as the accident took place on 10.12.2006, impugned judgment was passed on 23.12.2013 and the present appeal has been pending since 2014 before this court. The parties are directed to appear before the learned Tribunal on 26.09.2022.

18. The appeal is answered in the aforesaid term.

19. Registry to send back the LCR forthwith so that the same reaches the learned Tribunal on or before 26.09.2022.

JUDGE

Comparing Assistant