



GAHC010011052014

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

Case No. : MACApp./151/2014

NATIONAL INSURANC CO. LTD.,
A GOVT. OF INDIA UNDERTAKING CO. HAVING ITS REGISTERED OFFICE
AT NO. 3, MIDDLETON STREET, KOLKATA AND ONE OF THE REGIONAL
OFFICE SITUATED AT G.S ROAD, BHANGAGARH, GUWAHATI 781005,
INSURER OF VEHICLE NO. AS 23E-8029

VERSUS

DIPJYOTI RAJKHOWA and 8 ORS,
W/O LT. DIBYA RAKHOWA

2:VIVEK RAJKHOWA

S/O LT. DIBYA RAJKHOWA

3:SMTI CHITRANI RAJKHOWA

D/O LT. DIBYA RAJKHOWA

4:DIGVIJOY RAJKHOWA

S/O LT. DIBYA RAJKHOWA
ALL ARE RESIDENT OF MILAN NAGAR
DIBRUGARH
DIST. DIBRUGARH

ASSAM. THE RESPONDENT NO. 2 TO 4 BEING MINORS ARE
REPRESENTED BY THEIR MOTHER SMT. DIPJYOTI RAJKHOWA
RESPONDENT NO. 1

5:DHRUBA KUMAR GURUNG

S/O LT. G.B. GURUNG



R/O VILL. and P.S. TEZU
DIST. LOHIT
ARUNACHAL PRADESH
OWNER OF VEHICLE NO. AS-23-E-8029

6:KIRAN RAI

S/O SANTOSH RAI
R/O 28 MILE
GOHAIGAON
P.O. GOHAIGAON
P.S. TEZU
DIST. LOHIT
ARUNACHAL PRADESH DRIVER OF VEHICLE NO. AS 23 E 8029

7:MADAN DUTTA

S/O LAKHESWAR DUTTA
R/O GANDHI NAGAR
P.S. MAKUM JN. DIST. TINSUKIA
ASSAM
OWNER OF VEHICLE NO. AS-23F-4205

8:MANJIT SINGH

S/O LT. MAHENDRA SINGH
R/O A.T. ROAD
MAKUM JN.
DIST. TINSUKIA
ASSAM DRIVER OF VEHICLE NO. AS-23F-4205

9:RELIANCE GENERAL INSURANCE CO. LTD.

BEING REPRESENTED BY ITS MANAGER
TINSUKIA BRANCH 2ND FLOOR
L.N. JALLAN COMPLEX
G.N.B. ROAD
P.O. and DIST. TINSUKIA
ASSAM INSURER OF VEHICLE NO. AS-23F-4205 COVERED UNDER POLICY
NO. 20070105351

Advocate for the Petitioner : MS.U K PURKAYASTHA

Advocate for the Respondent : MR.I ALAM

:::BEFORE:::**HON'BLE MR. JUSTICE NANI TAGIA****Date of hearing : 02-06-2022****Date of Judgment & Order : 15-06-2022****JUDGMENT & ORDER (CAV)**

Heard Ms. R. D. Mozumdar, learned counsel for the appellant/Insurance Company. Also heard Mr. M. K. Choudhury, learned senior counsel for respondents No. 1 to 4/claimants; and Mr. R. Goswami, learned counsel for respondent No. 9/Reliance General Insurance Company Ltd..

2. This appeal under Section 173 of the Motor Vehicles Act, 1988, preferred by the appellant/Insurance Company, is directed against the judgment & award, dated 20.06.2013, passed by the learned Member, Motor Accident Claims Tribunal, Tinsukia, Assam, in M.A.C. Case No. 50/2009, seeking for setting aside of the judgment & award, dated 20.06.2013, on the ground that the learned Tribunal failed to award just compensation and awarded Rs. 40,54,000/- to the claimants No. 1 to 4/respondents No. 1 to 4, herein, which is purportedly on the higher side and also that the learned Tribunal ought to have apportioned the liability between the appellant/Insurance Company and respondent No. 9/Reliance General Insurance Company Ltd., equally, by holding that there was composite liability by both the vehicles involved in the accident.

3. The facts leading to the filing of the instant appeal, briefly stated, are as follows:

The claimant No. 1, namely, Smt. Dipjyoti Rajkhowa(wife of deceased Dibya Rajkhowa); the claimant No. 2, namely, Sri Vivek Rajkhowa(son of deceased Dibya Rajkhowa); the claimant No. 3, namely, Smt. Chitrani Rajkhowa(daughter of deceased Dibya Rajkhowa); and the claimant No. 4, namely, Shri Digvijoy Rajkhowa(son of

deceased Dibya Rajkhowa); all of them arrayed as respondents No. 1 to 4 in this appeal; had instituted a claim petition being MACT Case No. 50 of 2009, praying for compensation on account of the death of Lt. Dibya Rajkhowa, who, on 14.08.2008, while travelling in a Tata Sumo Spacio vehicle bearing Registration No. AS-23E-8029 which was going from Tinsukia to Tezu, at about 6.30am, had met an accident with a Maruti Van bearing Registration No. AS-23F-4205 coming from the opposite direction at Makum Road on National Highway 37, near Hukanpukhuri T.E., as a result of which, he died.

The owner of Tata Sumo Spacio vehicle bearing Registration No. AS-23E-8029 (Opposite Party No. 1/respondent No. 5 in this appeal); the owner and driver of Maruti Van vehicle bearing Registration No. AS-23F-4205 (Opposite Parties No. 4 & 5, /respondents No. 8 & 7, respectively, in this appeal); the Reliance General Insurance Company Ltd., the insurer of Maruti Van vehicle bearing Registration No. AS-23F-4205 (Opposite Party No. 6/ respondent No. 9 in this appeal), and the National Insurance Company Ltd.(Opposite Party No. 3/appellant herein); had contested the claim petition by filing their respective written statements.

On the basis of the rival pleadings, the learned Tribunal had framed 4(four) issues for determination, which are, as under:

- “1. *Whether the deceased Dibya Rajkhowa died as a result of negligent driving of Tata Spacio vehicle bearing No. AS-23-E-8029 on 14.8.08 by the O.P. No. 2?*
2. *Whether three vehicles are involved in the accident?*
3. *Whether the claimants are entitled to get the claim amount, if so from whom?*
4. *To what other relief's the parties are entitled?”*

During the trial, the claimants had examined 4 witnesses. CW-1, namely, Smt. Chitrani Rajkhowa who is the daughter of the deceased Dibya Rajkhowa, on the basis of the information received from one Shri Ranjit Dev, the co-passenger of the Tata Sumo Spacio vehicle bearing Registration No. AS-23E-8029, had stated in her evidence

that while her father, an Assistant Engineer in RWD of the Government of Arunachal Pradesh, was proceeding from Tinsukia to Tezu in the Tata Sumo Spacio vehicle bearing Registration No. AS-23E-8029, on 14.08.2008, had died as a result of a collision with a Maruti Van bearing Registration No. AS-23F-4205, which took place at about 6.30am near Hukhan Pukhuri T.E.. The CW-4, Sri Ranjit Dev, who is the eye-witness of the accident, had stated in his evidence that while he was also travelling along with the deceased in the Tata Sumo Spacio vehicle bearing Registration No. AS-23E-8029 towards Tezu, and when the vehicle which was on the wrong side, reached Hukanpukhuri T.E., upon noticing a Maruti Van coming from the opposite direction, the driver of the Tata Sumo Spacio vehicle bearing Registration No. AS-23E-8029 became nervous and while trying to get through the side of the Maruti Van, on its left side, the said Maruti Van bearing Registration No. AS-23F-4205 dashed against the Tata Sumo Spacio vehicle bearing Registration No. AS-23E-8029. According to CW-4, both vehicles were driven in a high speed.

The learned Tribunal after taking note of the Accident Information Report pertaining to the accident on the basis of which information, Tinsukia PS Case No. 517/2008 was registered u/ss. 279/304A of the IPC; the related charge-sheet submitted in the case, and also basing on the evidence of CW-4 as well as relying on other documents; had answered the issue No. (1) in affirmative and issue No. (ii) in negative, and came to the conclusion that the Tata Sumo Spacio vehicle bearing Registration No. AS-23E-8029 was clearly involved in the accident which caused the death of Dibya Rajkhowa and the claimants who are the legal representatives of the deceased Dibya Rajkhowa, are, therefore, entitled for compensation, and a compensation amount was determined at Rs. 40,54,000/- under the following heads:

Loss of income, including future prospect	:	Rs. (26,193/- + 0.3 x Rs.26,193/-) x $\frac{3}{4}$ x 12 = Rs. 39,83,955/- rounded
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		39,84,000/-
Funeral Expenses	:	5,000.00
Loss of Estate	:	5,000.00
Loss of Consortium	:	10,000.00
Loss of love and affection	:	50,000.00
Total	:	Rs. 40,54,000.00

4. While placing her case strenuously on behalf of the appellant/Insurance Company, Ms. Mozumdar, learned counsel, has submitted that :-

(i). The learned Member, Motor Accident Claims Tribunal, Tinsukia, Assam, in M.A.C. Case No. 50/2009, had erred in law as well as facts while passing the impugned judgment & award, dated 20.06.2013, by the learned Member, Motor Accident Claims Tribunal, Tinsukia, Assam, in M.A.C. Case No. 50/2009. The learned Tribunal had arrived at a wrong finding that the accident, in question, had occurred due to rash and negligent driving of Tata Sumo Spacio vehicle bearing Registration No. AS-23E-8029 though CW-4 has stated in his evidence that the Maruti Van bearing Registration No. AS-23F-4205 coming from the opposite side had dashed the Tata Sumo Spacio vehicle bearing Registration No. AS-23E-8029 at Seat No. 10 due to which, the Tata Sumo Spacio vehicle bearing Registration No. AS-23E-8029 turned turtle and the deceased Dibya Rajkhowa who was the occupant of Seat No. 10, succumbed to his injuries.

(ii). The judgment & award, dated 20.06.2013, passed by the learned Member, Motor Accident Claims Tribunal, Tinsukia, Assam, in M.A.C. Case No. 50/2009, is bad in law, as the learned Tribunal ought to have appreciated the evidence of CW-4 who had stated that both vehicles were in high speed and the drivers of both vehicles had

composite negligence in the accident and therefore, liabilities ought to have been fixed upon the owners, drivers, and insurers of both the vehicles. That apart, the learned Tribunal also failed to acknowledge the fact there was another vehicle(Bus) which was involved in the accident.

(iii). Insofar as the quantum is concerned, it is submitted that the learned Tribunal ought to have selected 11(eleven) as multiplier since the age of the deceased Dibya Rajkhowa, according to the Date of Birth revealed from the Service Record, was 01.03.1998, and he was more than 50 years of age on the date(14.08.2008) of the accident instead of using the 13(thirteen) multiplier which is in contravention of the decision rendered by the Hon'ble Apex Court in ***Sarla Verma v. Delhi Transport Corporation & anr.***, reported in ***(2009) 6 SCC 121***. Moreover, the learned Tribunal ought to have deducted 30% from the income of the deceased towards the income tax, etc., which having not been done, the judgment & award, dated 20.06.2013, passed by the learned Member, Motor Accident Claims Tribunal, Tinsukia, Assam, in M.A.C. Case No. 50/2009, suffers from legal infirmities and the compensation so awarded by the learned Tribunal is, therefore, on the higher side instead of awarding a just compensation as required under the provisions of the Motor Vehicle Act, 1988.

(iv). Instead of awarding the compensation amount to the tune of Rs. 40,54,000/-, vide impugned judgment & award, dated 20.06.2013; the learned Member, Motor Accident Claims Tribunal, Tinsukia, Assam, ought to have awarded a sum of Rs. 30,52,012/-, as compensation to the claimants No. 1 to 4/respondents No. 1 to 4, to be paid by the appellant/Insurance Company as the multiplier 11(eleven) instead of multiplier 13(thirteen) has to be employed in the present case taking into consideration, the age of the deceased Dibya Rajkhowa as more than 50 years on the date of the accident (14.08.2008) as his date of birth is recorded as 01.03.1958 as per the Service Record of the deceased Dibya Rajkhowa.

(v). That as there are many glitches in the impugned judgment & award, dated

20.06.2013, passed by the learned Member, Motor Accident Claims Tribunal, Tinsukia, Assam, in M.A.C. Case No. 50/2009, therefore, the judgment & award, dated 20.06.2013, passed in M.A.C. Case No. 50/2009, may be set aside and the matter may accordingly be remanded back to the Tribunal for a fresh decision within an outer limit of 3(three) months from the date of receipt of this order along with the connected LCRs.

(vi). That there is a composite negligence on the part of the 2(two) vehicles involved in the accident and therefore, the judgment & award, dated 20.06.2013, passed by the learned Member, Motor Accident Claims Tribunal, Tinsukia, Assam in M.A.C. Case No. 50/2009, is bad in law and the same may be set aside and quashed.

5. That apart, Ms. Mozumdar, learned counsel, submits that an amount of Rs. 20,27,000/- which has been deposited by the appellant/Insurance Company before the Registry of this Court in terms of the Court's order, dated 19.08.2009, passed in MC 1767/2014, has already been withdrawn by the claimants No. 1 to 4/respondents No. 1 to 4.

Ms. Mozumdar, learned counsel for the appellant/Insurance Company, in support of her contentions, has placed reliance on a decision of the Hon'ble Apex Court rendered in ***Bijoy Kr. Dugar v. Bidyadhar Dutta & ors.***, reported in **(2006) 3 SCC 242** and also on a decision of this Court rendered in ***New India Assurance Co. Ltd. v. Jahura Khatoon & ors.***[MAC.A. 526/2017].

6. Mr. Choudhury, learned senior counsel for respondents No. 1 to 4/claimants, on the other hand, submits that there is no contributory negligence, in the instant case, as would be apparent from the evidence of CW-4 who is the eye-witness of the accident who had stated that at the time, the accident took-place; though both the vehicles were in high speed but the Tata Sumo Spacio vehicle bearing Registration No.

AS-23E-8029 in which the deceased and CW-4 were travelling, was categorically stated to have been driven on the wrong side of the road and when the Maruti Van bearing Registration No. AS-23F-4205 appeared on the other side, the Tata Sumo Spacio vehicle bearing Registration No. AS-23E-8029 tried to get to the left side of the road and in the process, the said accident occurred and there was a collision between the two vehicles. Thus, it is evident from the evidence of CW-4 that the accident in question, had occurred when the Tata Sumo Spacio vehicle bearing Registration No. AS-23E-8029 which was being driven on the wrong side of the road, was negotiating to come to the left side of the road resulting in the collision between the two vehicles which is an indicative of the fact that the Tata Sumo Spacio vehicle bearing Registration No. AS-23E-8029 was solely responsible for the accident.

Mr. Choudhury, learned senior counsel, further submits that since the age of the deceased has been determined to be 50 years at the time of the accident on basis of the evidence tendered by the CW-1; a daughter of the deceased, which remained unshaken in the cross-examination, the learned Tribunal has correctly calculated the age of the deceased at the time of the accident as 50 years and also the learned Tribunal has correctly applied the multiplier factor of 13 as explained by the Hon'ble Apex Court in **Sarla Verma**(supra) and accordingly, there is no infirmity in the quantum of compensation awarded by the learned Tribunal insofar as the loss of income including the future prospect is concerned.

Mr. Choudhury, learned senior counsel, also submits that apart from the evidence of CW-1 as regards the age of the deceased at the time of the accident, there is no other evidence brought on record by duly exhibiting it before the learned Tribunal to indicate contrary age of the deceased at the time of the accident. The appellant/Insurance Company also did not adduce any evidence regarding the age of the deceased at the time of the accident. The documentary evidence not exhibited before the learned Tribunal, cannot be taken into consideration for determining the age of the deceased at the time of the accident and therefore, in the absence of any

contrary evidence brought on record by duly exhibiting it, which would indicate the age of the deceased at the time of the accident as above 50 years; the contention raised by the learned counsel for the appellant/ Insurance Company, cannot be accepted.

In support of his contention that the documents not exhibited, cannot be taken into consideration for determining the the age of the deceased at the time of the accident; Mr. Choudhury, learned senior counsel, has relied on 2(two) decisions of the Hon'ble Apex Court rendered in **AIR 2015 SC 3796 [Nandkishore Lalbhai Mehta v. New Era fabrics P. Ltd.]** and **(2013) 10 SCC 758 [Kaliya v. State of Madhya Pradesh]**. The learned senior counsel accordingly submits that no interference is called for to the judgment & award passed by the learned Tribunal.

7. Mr. Goswami, learned counsel for the respondent No. 9, the other Insurance Company i.e. Reliance General Insurance Company Ltd. which is the insurer of Maruti Van bearing Registration No. AS-23F-4205, has submitted that the respondent No. 9/Reliance General Insurance Company Ltd. had examined one Shri Samrat Borua, Senior Executive(Legal) of the respondent No. 9/Reliance General Insurance Company Ltd., denying the issuance of insurance policy against the Maruti Van bearing Registration No. AS-23F-4205, which, however, was not at all considered and discussed by the learned Tribunal in the impugned judgment & award and accordingly, there is no question of composite liability by the respondent No. 9/Reliance General Insurance Company Ltd. in the instant case.

8. Upon hearing the rival contentions advanced by the learned counsels for the contesting parties; 2(two) issues that requires determination by this Court, are, as under:-

(i). Whether the accident that took-place on 14.08.2008 due to the collision

between the Tata Sumo Spacio vehicle bearing Registration No. AS-23E-8029 and the Maruti Van bearing Registration No. AS-23F-4205 resulting in the death of the deceased, was result of a composite negligent driving by the aforesaid 2(two) vehicles? And

(ii). What multiplier should, in the instant case, be applied for determination of loss of income including the future prospect; whether it should be 13 as have been employed by the learned Tribunal, or, 11, as is contended by the appellant/Insurance Company?

9. Since there is no dispute as regards the death of the deceased due to the accident occurred on 14.08.2008 at 6.30am, near Hukanpukhuri T.E.; what assumes importance is the determination as to what should be the multiplier adopted in the instant case, for providing just compensation to the legal representatives of the deceased insofar as the loss of income including the future prospect is concerned. For that, the determination of the correct age of the deceased at the time of the accident is crucial and relevant as held by the Hon'ble Apex Court in the decision rendered in **Sarla Verma**(supra).

10. To examine as to whether the deceased was aged 50 years at the time of the accident as determined by the learned Tribunal; when the impugned judgment and award of the learned Tribunal is perused; insofar as the determination of the age of the deceased at the time of the accident is concerned; it is noticed in paragraph No. 10 of the impugned judgment and award that while holding the age of the deceased at the time of the accident to be 50 years; the learned Tribunal has relied on the evidence of CW-1, the daughter of the deceased; who had deposed in the examination-in-chief that her father was aged 38 years at the time of the accident which evidence, the learned Tribunal had taken note of as well as the certificate

available on record according to which, the age of the deceased at the time of the accident, was aged 15 years in 1973.

11. Having taken note of the statement of CW-1 and the purported certificate available on record as highlighted hereinabove; the learned Tribunal came to the finding in paragraph No. 10 of the impugned judgment & award that the age of the deceased at the time of the accident was aged 50 years as per the certificate of the age of the deceased available on record. Thus, the determination of the age of the deceased at the time of the accident as 50 years by the learned Tribunal is based on the certificate of the age of the deceased available on record.

12. I have perused the record. On perusal of the record, insofar as the certificate referred to by the learned Tribunal that the age of the deceased at the time of the accident was aged 15 years in 1973, is concerned; I find there is a High School Leaving Certificate Examination issued to the deceased by the Assam Board of Secondary Education, Assam, dated 21.07.1973, certifying that the deceased Dibya Rajkhowa was aged 15 years on the 1st of March, 1973, referred to above; which appears to have not been exhibited before the learned Tribunal. If the age of the deceased at the time of the accident recorded in the aforesaid certificate certifying that the deceased was aged 15 years on 01.07.1973, which, appears to be the basis, on which the learned Tribunal has recorded the age of the deceased at the time of the accident as 50 years, the deceased could not have been 50 years of age at the time of the accident which took-place on 14.08.2008.

13. Apart from the discussion of the evidence of CW-1 as regards the age of the deceased at the time of the accident who has stated that the deceased was aged 38 years at the time of the accident and the certificate discussed hereinabove; there is no

other evidence considered by the learned Tribunal. Thus, the age of the deceased at the time of the accident on basis of the aforesaid evidence, could not have been 50 years at the time of the accident, either, in terms of the certificate referred to by the learned Tribunal, or, the evidence of CW-1, the daughter of the deceased; who had stated her father to be aged 38 years at the time of the accident.

14. To provide just and adequate compensation to the legal representatives of the deceased as provided under the M.V. Act, the application of correct multiplier is crucial which again is dependent on the correct determination of the age of the deceased at the time of the accident. In the instant case, in the light of the discussions made as above and insofar as the determination of the age of the deceased at the time of the accident by the learned Tribunal is concerned; this Court is of the considered opinion that there was no evidence available on record to come to a finding that the deceased was aged 50 years at the time of the accident.

15. Insofar as the composite negligence of the 2(two) vehicles are concerned; it is noticed from the record that the respondent No. 9/Reliance General Insurance Company Ltd. had adduced evidence by examining one Shri Samrat Borua on behalf of respondent No. 9/Reliance General Insurance Company Ltd., denying issuance of any policy in respect of Maruti Van bearing Registration No. AS-23F-4205 which again has not been discussed and considered by the learned Tribunal in the impugned judgment & award.

16. Since there has not been a proper determination with regard to the age of the deceased at the time of the accident and also there has been no discussion of the evidence tendered by the respondent No. 9/Reliance General Insurance Company Ltd. denying issuance of any policy in respect of the Maruti Van bearing Registration No.

AS-23F-4205 which would have a bearing on the contention of the appellant/Insurance Company regarding composite negligence on the part of the 2(two) vehicles involved in the accident; I am of the considered view that the ends of justice would be met if the matter is relegated back to the Tribunal for re-determination of the age of the deceased at the time of the accident and also the composite negligence of the 2(two) vehicles involved in the accident, if any, by reconsideration of the evidence already brought on record and also by providing adequate opportunity to the parties to adduce further evidence in the matter for the purpose of determination of the age of the deceased at the time of the accident as well as the composite negligence of the 2(two) vehicles involved in the accident. It is ordered accordingly.

17. Since the accident took-place in the year 2008; the Tribunal shall make an endeavour to complete the entire exercise within a period of 3 months from the date of appearance of the parties before the Tribunal. The parties shall accordingly appear before the learned Tribunal on 26th July of 2022.

18. The amount deposited by the appellant/Insurance Company and already withdrawn by respondents No. 1 to 4/claimants, shall be subject to the fresh award that may be passed by the learned Tribunal after the exercise undertaken in terms of this Court's order.

19. The appeal stands allowed partly and disposed of with no order as to costs.

20. Since the appeal has been disposed of; Rs. 25,000/- which was deposited by the appellant/Insurance Company as the statutory deposit, shall be refunded to the



appellant/Insurance Company, forthwith.

21. Send down the connected LCRs immediately.

JUDGE

Comparing Assistant