

BEFORE THE MEMBER ::::::::::: MACT ::::::::::: DHUBRI

MAC Case No.26/2014

Parties:-

Sakina Khatun
W/O: Hassan Ali Sk @ Mohammad Hassan Ali
VILL: Angerkata Part-II
P.O. & P.S: Bagribari
Dist: Kokrajhar
Present Address:
C/O: Gias Uddin Ahmed
VILL: Simla Kandi
P.O: Jhagarpar
P.S. & Dist: Dhubri, Assam ..Claimant

Vs.

1.Sar Parivahan Pvt Ltd.
(Owner of the Truck No.NL-01-G/6852)

2.Binod Singh
(Driver of the Truck No.NL-01-G/6852)

3.The New India Assurance Company Limited
(Insurer of the Truck No.NL-01-G/6852)

4.United India Insurance Company Limited
Dhubri Branch
GTB Road, Dhubri
Policy No.130603/31/12/01/00000125) ..Opp.

Parties

Present: - Sri Rajib Goswami, Member, MACT, Dhubri

Appearance:-

Sri P. Patwari, Advocate for the claimant

Smt. Prabha Jain, Advocate for OP No.3

Sri Sujit Kumar Saha, Advocate for OP No.4

Date of hearing : 13-10-2017

Date of judgment: 31-10-2017

Judgment

This is an application filed u/s.166 of the M.V. Act, 1988 by the claimant, Sakina Khatun claiming compensation for the death of her husband, Hassan Ali Sk @ Mohammad Hassan Ali in a Road Traffic Accident.

The claimant's case in brief is that on 17-09-2012 while her husband was on his way back home, a truck bearing registration No.NL-01-G/6852 trying to cross over the victim had struck the motor cycle the victim was riding throwing him off the seat of the motor cycle on to the ground. The victim had died succumbing to injuries sustained by him in the accident. The deceased had left behind his wife, three daughters and one son. Following the accident Bagribari P.S. Case No.97/12 u/s 279/304-A IPC was registered against the driver of the offending truck.

OP No.3, New India Assurance Company Limited, insurer of the truck No.NL-01-G/6852 and United India Insurance Company Limited, insurer of the motor cycle had contested the case by submitting their respective written statement. The answering Ops in their respective written statements inter-alia denied the contention raised by the claimant. The answering Ops in their respective written statements further contended that as documents regarding the insured were not made available to them either by the insured as required u/s 134 (c) of the MV Act or by the I.O. of the criminal case within 30 days of recording of the FIR as required u/s 158 (6) of the MV Act, the answering O.P. is not aware of any subsisting contract of insurance with the owner of the offending vehicle as contract of insurance is subject to

compliance of section 64 VB of Insurance Act, proof of payment of premium etc. Further, the answering OP claims protection u/s 170 of the MV Act and the defence of exemption on the proof of breach of specified conditions of policy envisaged in Section 147 and 149 (2) (a) (i) of the M.V. Act. Thus, the answering O.P. is not liable to indemnify the insured in the payment of compensation to the third party.

Upon above pleadings following issues were framed:

- 1 Whether the accident had taken place due to rash negligent driving of the vehicle No.NL-01-G/6852 (Truck) and the claimant's husband had died in the said accident?
- 2 Whether the offending vehicle was insured with M/s. New India Assurance Company Limited at the time of accident?
- 3 What shall be the just and proper compensation and by whom payable?
- 4 Whether the claimant is entitled to get the relief as prayed for?

During the course of the enquiry, the claimant examined herself and three other witnesses. Ops examined one witness.

I have heard Sri P. Patwari, learned counsel for the claimant, Smt. Prabha Jain, learned counsel for OP No.3 and Sri Sujit Kumar Saha, learned counsel for OP No.4.

I have also carefully gone through the case record including the evidence, both oral and documentary.

DECISION AND REASONS THEREOF

ISSUE NO. 1 AND 2 : Both these issues are taken up together as both these issues are inter-related.

CW-1, Sakina Khatun had deposed that deceased Hassan Ali Sk @ Mohammad Hassan Ali who had died on 17-09-2012 at around 5:30 PM in a road traffic accident was her husband and he had died on

the same day succumbing to his injuries. According to CW-1 her husband was a head teacher of 559 Khoraghat JB School and he used to draw a salary an amount of Rs. 25,278/- per month. CW-1 further deposed that she is the only widow of the deceased and the deceased had left behind three daughters and one son as his legal heirs and she claims Rs. 30,00,000/- in compensation. CW-1 had exhibited following documents in her evidence: Accident Information Report, copy of the PM report, certified copy of the FIR, certified copy of the Seizure List, certified copy of the Charge Sheet and copy of the Salary Certificate. Ext-1 to 10 are those documents.

PW-1 in her cross examination admitted not having been an eye witness of the alleged occurrence and also admitted to not having filed any documents in proof of age of her deceased husband. She also admitted to all her children having attained the age of majority with two married daughters. She also admitted that as per particulars revealed in AIR in Form No.54, ext-1 the driver Binod Singh had a license but the validity period of the said license had already expired on 17-09-2012, the day the accident had taken place.

PW-2, Khairuz Zaman had deposed that on 17-09-2012 at about 5:30 PM he was walking by the side of NH-31 near Namasudrapara Kali Mandir when he had seen a truck bearing registration No.NL-01-G/6852 trying to cross over another vehicle on the way had run over the motor cycle bearing registration No.AS-16-A/0866 that the deceased victim was riding at the relevant point of time. According to CW-2, the injured victim was taken to Dhubri Civil Hospital. On the way the victim had died. The CW-2 had attributed the cause of accident to the rash and negligent manner the offending vehicle was being driven at the relevant point of time. CW-2 further stated about registration of a criminal case Bagribari P.S. Case No.97/12 u/s 279/304-A IPC against the driver of the offending truck.

In his cross examination PW-2 denied that the deceased victim was his relative. He reiterated to being an eye witness of the

alleged occurrence. PW-2 also denied the accident having resulted from head on collision between the truck and the motor cycle. According to PW-2 the offending truck while trying to cross over another vehicle on the way had hit the motor cycle. PW-2 denied the suggestion that whatever he had stated is false.

PW-3, Manik Shil, Sub-Inspector of School, Tipkai Circle under Parbatjhora Sub-Division in the district of Kokrajhar had appeared with the photocopy of the service book of the deceased Hassan Ali @ Mohammad Hussain Ali. According to PW-3 the date of birth of the deceased as reflected from the service book is 31-12-1955. His gross monthly salary in August, 2012 was Rs. 25,278/- and net salary was Rs. 23,870/-. Ext-10 is the pay statement exhibited by PW-3 in his evidence. PW-3 had also proved the signature of the principal of 559 Khoraghat Junior Basic School on ext-10. Ext-10 (i) and 10 (ii) are those documents.

In his cross examination PW-3 denied the suggestion that the photocopy of the service book of the deceased victim he had brought was not a photocopy of the original service book. According to PW-3 he could not bring the original service book as same remains in the custody of A/G, Assam. PW-3 denied the suggestion that ext-10 is fabricated.

PW-4, Fatima Begum, Head Mistress of 559 Khoraghat JB School had brought along the original salary register containing particulars of salary that had been last drawn by Hassan Ali @ Mohammad Hassan Ali in the month of August, 2012. According to PW-4 deceased Hassan Ali Sk @ Mohammah Hassan Ali Sk was the head teacher of 559 Khoraghat JB School. PW-4 had identified her signature on ext-10, pay statement as ext-10 (i). According to PW-4 Hassan Ali used to draw Rs. 25,278/- as gross salary per month. Ext-13 is the salary register on basis of which ext-10 salary statement had been prepared.

In her cross examination PW-4 admitted that as per particulars recorded in ext-13 an amount of Rs. 1560/- is shown deducted from the gross salary towards refund of loan from GPF. PW-4 admitted to have put her signature on a blank paper on being insisted by the secretary of the Managing Committee as Head Mistress of 559 number Khoraghat JB School and later ext-10, salary statement had been prepared on the said blank piece of paper on the basis of particulars in ext-13.

Now, in view of the evidence of PW-2, Khairuz Zaman it is quite evident that the accident in which the deceased husband of the claimant had died had been caused due to rash and negligent manner, the offending truck was being driven. I am inclined to rely upon of the evidence of PW-2 as the offending vehicle was on the same direction on which the deceased victim was riding his motor cycle at the relevant point of time and deceased victim was not the only person to have been hit by the offending truck but the said truck according to PW-2, an eye witness had hit another person causing his death. Thus it was the driver of the offending vehicle who with due care could have avoided the alleged occurrence since had it not attempted to cross over another vehicle on the way he could have averted hitting the motor cycle, the deceased victim was riding. Thus issue No.1 is accordingly decided in favour of the claimant.

Coming to issue No.2, the Seizure List, ext-7 reveals that the offending vehicle bearing registration No.NL-01-G/6852 (Truck) had been insured with New India Assurance Company Limited in the name of Sar Parivahan Pvt Ltd located at Lord Singha Road, West Bengal and the insurance policy bearing No.510603/031/12/01/00004678 had been valid up to 28-03-2013, covering the period the accident had taken place. The OP, Insurance Company had not adduced any evidence in rebuttal in declining subsisting contract of insurance with the owner of the above vehicle or for that matter its validity. The issue No.2 is also accordingly decided in favour of the claimant.

ISSUE NO. 3 AND 4 : Both these issues are taken up together as both these issues aim at the same objective, relief.

Now, coming to evaluation of just compensation to be awarded I come down to ext-10, the salary statement of the deceased victim who was the head master of 559 number Khoraghat LP School. Ext-10 reveals that the deceased victim used to receive a gross salary of Rs. 25,278/- per month as per ext-10, salary statement. However, from ext-13 the salary bill for the month of August, 2012 the net salary was Rs. 22,310/- after all deductions and the victim had died on 17-09-2012. Coming to the age of the deceased victim I am inclined to put reliance on the date of birth as revealed from the copy of the service book is 31-12-1955 proved by PW-3, SI of Schools, Bogribari Circle under whose jurisdiction the school the deceased victim last worked in falls. Considering the accident had taken place on 17-09-2012, the age of the deceased victim should be 56 years, 4 months and 16 days and the age revealed in the Post Mortem report, ext-2 is 55 years. As per the Sarla Verma vs. Delhi Transport Corporation Limited the operative multiplier is 9 for the age group 55 to 60 years.

Now, coming to ascertaining the loss of dependency per months is (Rs. 22,310/- + 15% of the monthly income as per Rajesh Vs. Rajbir Singh) - deduction to be made towards personal and living expenses is to be calculated on the basis of units indicated in the decision of Tilok Chandra as per Sarla vs. Delhi Transport Corporation. Since all the dependents of the deceased victim had attained the age of majority on the day of the alleged occurrence the only dependent to be considered is the wife of the deceased victim and the deduction should be $\frac{1}{3}^{\text{rd}}$ of the income. Thus, the monthly loss of dependency comes to Rs. 25,656/- - Rs. 8552/- = Rs. 17,104/-. Thus, the yearly loss of dependency comes to Rs. 17,104/- X 12 = Rs. 2,05,248/-. The total loss of dependency comes to Rs. 2,05,248/- X 9 (multiplier as per Sarla Verma Vs. Delhi Transport Corporation Limited) = Rs. 18,47,232/-. In addition I am inclined to allow Rs. 1,00,000/- on loss of consortium and Rs. 25,000/- on funeral expenses as per Rajesh Vs. Rajbir Singh.

Now, coming to the issue by whom payable the OP No.3, New India Assurance Company Limited had examined DW-1, Shirajul Islam, In-Charge, Dhubri Micro Office had said that as per the Seizure List and Form No.54 the driving license of the driver had expired on the day of the alleged occurrence and as such the OP No.3 is protected u/s 149 (2) (i) (a) of the MV Act from payment of compensation. I have gone through ext-1 and ext-7, AIR in Form No.54 and Seizure List in respect of the offending truck and find that the driving license of the driver of the offending vehicle had expired on 13-08-2012 and the accident had taken place on 17-09-2012.

Now, as per Section 15 of the MV Act, 1988, a 30 days grace period is allowed to the applicant for renewal of his driving license beyond the period of expiry. However, whether non-renewal of driving license by the driver should be an issue for exempting the insurance company from payment of compensation on the ground of violation of specified conditions of the policy by the insured as envisaged in section 149 (2) (a) (ii) of the MV Act. However, Hon'ble Supreme court in its decision in Pepsu Road Transport Corporation Vs. National Insurance Company while discussing the protection extended under section 149(2) of the MV Act, exemption to pay compensation on violation of specified conditions of policy by the insured, envisaged in section 149(2)(a)(ii) of the MV Act, laid down some parameters for the insurance company to adhere before it could avail the protection of exemption to pay compensation. Hon'ble Supreme Court in the light of legal principles discussed by it in its earlier decisions in United Insurance Company Ltd Vs. Leheru and others(2003)3 SCC 338, National Insurance Co. and Ltd Vs. Swaran Singh and others and National Insurance Company Limited V. Laxmi Narayan Dhut had held in para-8 of the decision as such "In a claim for compensation it is certainly open to the insurer under section 149(2)(a)(ii) to take a defence that the driver of the vehicle involved in the accident was not duly licensed. Once such defence is taken, the onus is on the insurer. But even after it is proved that the license possessed by the driver is a fake one,

whether there is liability on the insurer is the moot question. As far as the owner of the vehicle is concerned, when he hires a driver, he has to check whether he has a valid driving license. Thereafter he has to satisfy himself as to the competence of the driver. If satisfied in this regard also, it can be said that the owner had taken reasonable care in employing a person who is qualified and competent to drive the vehicle. The owner cannot be expected to go beyond that, to the extent of the verifying the genuineness of the driving license with the licensing authority before hiring services of the driver.”

This being the position of law, the validity of the insurance cover of the offending vehicle not being the issue, the insurance company cannot resort to the exemption envisaged in Section 149 (2) (a) (ii) to pay compensation on violation of specified conditions of policy without establishing the fact that the owner was required by the company to verify the validity of the driving license from the issuing authority and the owner does not take appropriate action for verification of the matter regarding the genuineness of the license from the licensing authority. Thus, the insurance company is liable to indemnify the insured the owner of the offending three wheeler in payment of compensation to the third party.

ORDER

In the result, claim petition is allowed awarding Rs. 18,47,232/- + Rs. 1,00,000/- + Rs. 25,000/- = Rs. 19,72,232/- (Rupees Nineteen Lakhs Seventy Two Thousand Two Hundred Thirty Two) only to the claimant payable by OP No.3, M/s New India Assurance Company Limited through an account payee cheque. An interest at the rate of 9% per annum is allowed on the total compensation from the date of filing of claim petition i.e. 21-01-2014.

Dictated & corrected by me

Member, MACT, Dhubri.

Member, MACT, Dhubri.

APPENDIX

MAC No.26/2014

Claimant's witness : CW-1 Sakina Khatun
CW-2 Khairuz Zaman
DW-1 Md. Chirajul Islam

Exhibits

Ext-1 No.54	Accident Information Report in Form
Ext-2	Copy of Post Mortem Report
Ext-3 to 5	Certified copy of FIR
Ext-6 & 7	Certified copy of Seizure List
Ext-8 & 9	Certified copy of Charge Sheet
Ext-10	Salary Certificate

Member: MACT: Dhubri.