

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 1045 OF 2017
(Arising out of SLP (C) No. 26242 of 2013)

SANKAR BARMAN

... Appellant

VERSUS

NEW INDIA ASSURANCE COMPANY LTD. & ORS.

... Respondents

O R D E R

Leave granted.

The instant matter is filed against judgment dated 29.06.2012 of the High Court at Calcutta allowing the appeal preferred by the respondent No. 1 herein.

The brief facts involved in the instant matter are that the appellant, on 30.05.2000, at about 12.30 a.m., while driving a Maruti Car from Darjeeling to Calcutta along with two passengers viz., Suresh Chandra Lakhotia (deceased) and Mohan Chirimar, met with an accident whereby the Maruti car dashed into a standing lorry. It is the claim of the appellant that the lorry was parked in the middle of the road on the turn without backlights or any indicators and that it was drizzling at that time. He tried to stop his vehicle and applied sudden brake but the tyre slipped and the car dashed the back portion of the said truck. It is further stated that at the time when he was turning his vehicle, the speed was 34 to 40 k.m. per hour. As a result of the accident, all

the boarders of the car got injured, of whom, Suresh Chandra Lakhotia, one of the passengers in the car, died.

Respondent Nos. 2 to 5 (widow and the sons of the deceased) filed a petition before the Motor Accidents Claims Tribunal (hereinafter referred to as 'MACT') claiming compensation for the death of the deceased to the tune of Rs.1,70,00,000/-.

The MACT took into consideration the evidence of the witnesses and other relevant material available on record. The MACT took note of the testimonies of the Driver and the Khalasi of the truck. It is stated by Driver of the truck (DW-1) that there was back light, side lights and lightening indicator when the vehicle was standing. He has further stated that many vehicles passed through the said road by keeping safe distance from his lorry and that the maruti car was running in high speed and in a zigzag manner and so it dashed the back portion of the lorry to his own fault. MACT further noted that in his cross examination, DW-1 has stated that he is not aware of the contents of the affidavit in chief. DW-2 who supported the facts stated by DW-1, in the cross examination, stated that he does not know about any affidavit-in-chief. MACT observed that from the cross examination of defence witnesses, it revealed that they did not know as to what is written in their Affidavit-in-Chief and accordingly, their Affidavit-in-Chief had lost efficacy and their statement could not be believed as their own

voluntary statements and that on this count, both the defence witnesses were disbelieved regarding the factual aspects stated by them in Affidavit in Chief.

MACT observing that as the lorry was stationary and the maruti car dashed it from behind, attributed contributory negligence on the maruti car as well as the truck. It awarded the claimants a compensation of Rs.1,30,00,000/- subject to adjustment of the statutory compensation under Section 140 under the Motor Vehicles Act, 1988, if awarded. It directed respondent No. 1, as the insurer of the lorry, to pay 75% of the awarded sum and also to pay 25% of the sum holding it to be the insurer of the Maruti car also, to the claimants.

Respondent No. 1 challenged the said award of MACT before the High Court of Calcutta.

The High Court allowed the petition of respondent No. 1 relying upon the depositions of DW-1 and DW-2. It has observed in the impugned order that even if it give full credence to what Sankar (appellant herein) had said in his deposition, a vehicle coming with a speed of thirty-four to forty k.m. per hour could not have dashed a lorry having a repercussion causing all the boarders of the car receiving injury including one who succumbed to the injury and that the Maruti car could have avoided the accident. It held Maruti car primarily responsible for the accident making the truck secondarily responsible for the same. It fixed the

apportionment of liability as 25:75 instead of 75:25 as held by the MACT making insurance company to pay 75% of the sum and the owner of the maruti van to pay 25%.

Challenging the aforesaid order of the High Court, the appellant herein has approached this Court by filing the instant special leave petition in which leave has been granted by us as hereinabove.

We have heard learned counsel for the parties and have gone through the material available on record.

We feel that the High Court has erred in not appreciating that the version of DW-1 and DW-2, as per their own admission of not knowing about their Affidavit-in-Chief, could not be relied upon. Further, the observation of the High Court that Maruti car moving at a speed of 34-40 k.m. per hour could not have dashed into a lorry causing injuries to all the boarders and death of one of them, or that even if the truck was standing in the middle of the road, the Maruti car could have avoided the accident, cannot be completely countenanced.

The deposition of the appellant herein (the driver of the car) inspires more confidence which remained intact during cross examination also. Thus, the view taken by MACT holding the standing lorry as primarily responsible for the accident and dividing the liability between the lorry and the Maruti car in the ratio of 75:25 appears to be reasonable.

Further, the High Court absolving the insurance company

from bearing any liability towards the Maruti car has also been challenged. It is contended by respondent No. 1 in its written statement that it did not secure the interest of the Maruti car at the time of the accident. As could be seen from the order of the MACT, no issue on the said aspect had been framed. Respondent No. 1's application under Section 151 of the Code of Civil Procedure, 1908 to bring on record additional documents to show that the appellant's interest was not covered by the insurance policy, was dismissed by MACT vide order dated 25.06.2007 and the same remained unchallenged. It may also be noted that the claim of the appellant that his interest was secured by the insurance policy remained unrebutted for want of cross examination.

For the reasons stated above, the instant appeal stands allowed.

....., J.
[A.K. SIKRI]

....., J.
[R.K. AGRAWAL]

New Delhi;
January 27, 2017.

ITEM NO.38

COURT NO.7

SECTION XVI

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No. 26242/2013

(Arising out of impugned final judgment and order dated 29/06/2012
in FMA No. 1608/2008 passed by the High Court of Calcutta)

SANKAR BARMAN

Petitioner(s)

VERSUS

NEW INDIA ASSURANCE COMPANY LTD. & ORS.

Respondent(s)

(With office report)
(For final disposal)

Date : 27/01/2017 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE R.K. AGRAWAL

For Petitioner(s)

Mr. Gaurav Mitra, Adv.
Mr. Saurabh Seth, Adv.
Ms. Deepali Dwivedi, Adv.
Mr. Anil Kumar Tandale, Adv.

For Respondent(s)

Mr. Vishnu Mehra, Adv.
Ms. Manjeet Chawla, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal stands allowed in terms of the signed order.

(Nidhi Ahuja)
Court Master

(Mala Kumari Sharma)
Court Master

[Signed order is placed on the file.]