(2022) 11 GAU CK 0048

Gauhati High Court

Case No: MAC Appeal No. 51 Of 2002

United India Insurance Co. Ltd.		APPELLANT
	Vs	
Tilak Das		RESPONDENT

Date of Decision: Nov. 29, 2022

Acts Referred:

- Motor Vehicle Act, 1988 - Section 166, 173

Hon'ble Judges: Nani Tagia, J

Bench: Single Bench

Advocate: M. Choudhury, D. Baruah, S. Dutta, S. Kaur, S. Choudhury, F. Begum, S. Sahu, A. Hussain, A. Mobaraque, B. Sinha

Final Decision: Allowed

Judgement

1. Heard Mr. S. Dutta, learned senior counsel for the appellant/United India Insurance Company Ltd. Also heard Mr. A. Mobaraque, learned counsel

for the respondents No.1 & 3 and Ms. B. Choudhury, learned counsel for the respondents No.4(a) to 4.8.

2. This appeal under Section 173 of the Motor Vehicles Act, 1988, has been filed by the appellant/United India Insurance Company Ltd., challenging

the judgment and award dated 26.02.2002, passed by the learned Member, Motor Accident Claims Tribunal, Nalbari, in MAC Case No.25/1992,

whereby an amount of Rs.2,00,000/-(Rupees Two lakhs only), have been awarded as a compensation to be paid to the claimants, who are the

respondents No.1 and 3 herein, in equal proportion by the appellant/Insurance Company as well as the respondent No.4, the owner of the offending

vehicle, who is now represented by the legal heirs.

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

The respondents No.1, 2 and 3 as claimants had filed a claim petition under Section 166 of the Motor Vehicles Act, registered as MAC Case

No.25/1992, before the learned Member, Motor Accident Claims Tribunal, Nalbari, stating that on 18.12.1991, while the driver Shri Khitish Das, theÂ

respondent No.5 herein, of bus bearing registration No.ASU-4081 was plying the bus from Chamata side towards Nalbari town and when the bus

arrived near Chamata P.H.C., due to rash and negligent driving, the deceased, late Dipak Das, who was the handiman of the bus fell down and the

rear wheels of the left side of the bus ran over the deceased who died on the spot. The claimants in the claim petition filed, stated that the deceased

handiman was aged about 20 years, whose monthly income was Rs.1500/- per month and the claimants, who are the brothers and sister of the

deceased were dependent on the income of the deceased, and therefore, a sum of Rs.2 lac was claimed as a compensation.

4. The appellant/Insurance Company, the opposite party No.3 in the claim petition, contested the claim petition by filing a written statement, stating

that the claim petition is bad for non-joinder of necessary parties, that the case is bad for waiver, estoppel, acquiescence, etc., and therefore, the

claimants are not legally entitled to the claimed made in the claim petition.

5. The appellant/Insurance Company, the opposite party No.3 in the claim petition is stated to have filed an additional written statement, wherein a

stand was taken that at the time the accident took place, there was no insurance coverage of the offending vehicle, which, however, appears to have

not been taken into consideration by the learned Tribunal as the same has not been discussed in the impugned judgment and award.

6. The owner of the offending vehicle, the respondent No.4 herein, who was also the respondent No.4 in the claim petition did not contest the claim

petition before the learned Tribunal.

7. On the basis of the rival pleadings filed by the parties, the learned Tribunal had framed 2(two) issues for determination, which are as under:

(i) Whether the claimant is entitled to get any compensation and if so, to what extent and against whom?

(ii) What other relief or reliefs the claimant is entitled to?

8. In support of the claim petition, the claimants had examined 2(two) witnesses.

P.W. No.1 is Shri Tilok Das, who is one of the brother of the deceased and the P.W. No.2 is Nirmal Das, who was a co-passenger, travelling in the

same bus when the accident took place, therefore, an eye witness.

P.W. No.1 had deposed before the learned Tribunal that the deceased was his younger brother, who died on a road traffic accident on 18.12.1991. He

also stated that when the bus took a turn, the deceased was thrown over and was ran over by the left side of rear wheels of the said bus.

P.W. No.2 had deposed before the learned Tribunal that he was travelling on the date of accident in the bus. The name of the bus was â€˜Jayaâ€™.

He stated that in the month of December 1991, while he was travelling by the said bus and when the bus arrived near Chamata P.H.C., the driver

suddenly applied the break and as a result thereof, the deceased late Dipak Das fell down from the bus and was ran over by the bus.

9. The appellant/Insurance Company, the opposite party No.3 in the claim petition, while contesting the claim petition had examined one D.W., Shri

Ramesh Chandra Das, who was the Branch Manager of the United India Insurance Company Ltd., Nalbari Branch.

D.W No.1, Shri Ramesh Chandra Das, who was working as a Branch Manager of the appellant/Insurance Company at Nalbari Branch had deposed

before the learned Tribunal that the owner of the offending vehicle bearing registration No. ASU-4081 was Pobitra Sarma. He stated that he was the

Branch Manager of the United India Insurance Company Ltd., Rangia Branch at the time when the accident took place and from the record, he

deposed that the proposal for insurance of the vehicle was made by the owner on 18.12.1991 at 2.15 pm at Rangia Branch through an agent A. K.

Jain. The proposal was accepted and the policy was issued on the same day.

10. On the basis of the evidence adduced by the parties as above, the learned Tribunal had come to a finding that the accident in question, took place

on 18.12.1991 at 9.10 am and the proposal for insurance of the vehicle was made by the owner of the vehicle at 2.15 pm on 18.12.1991, which goes to

show that the vehicle had no insurance coverage at the time of the accident and hence, the Insurance Company, the opposite party No.3 is not liable

to pay the compensation as claimed by the claimants.

11. Despite the aforesaid finding recorded by the learned Tribunal, the learned Tribunal went onto held that the owner of the offending vehicle, who is

from the Chamata village under Belson P.S. did not got his vehicle registered at the nearest office of the Insurance Company at Nalbari and went

onto got his vehicle registered at Rangia, by suppressing the fact of the accident that took place in the morning, where the deceased died and that the

opposite party No.3, the Insurance Company was also negligent to the extent that the Insurance Company did not bother to make enquiry about any

accident in the immediate past in which the vehicle may have been involved and thereby, holding the owner as well as the Insurance Company to have

acted in a negligent manner, awarded the compensation amount of Rs.2 lac to the claimants vide impugned judgment and award.

12. Assailing the impugned judgment and award passed by the learned Tribunal, Mr. Dutta, learned senior counsel for the appellant has submitted that

the learned Tribunal, after having recorded the finding to the extent that the accident in which the deceased died, took place at Chamata near P.H.C.

on 18.12.1991 at 9.10 am and that the proposal for insurance of the vehicle by the owner having been made at 2.15 pm of 18.12.1991 and, thereby, the

offending vehicle had no insurance coverage at the time the accident took place could not have held the appellant/Insurance Company liable for the

accident that took place prior to the policy of insurance coverage in respect of the offending vehicle, was issued by the appellant/Insurance Company.

13. The learned senior counsel for the appellant has also drawn the attention of this Court to the insurance policy, which has been exhibited as Ext.1 to

contend that the period of insurance of the offending vehicle commenced from 2.15 pm of 18.12.1991 to midnight of 17.12.1992.

14. Mr. Mobaraque, learned counsel for the claimants, representing the respondents No.1 and 3 has submitted that the matter may be remanded back

to the learned Tribunal, by specifying the specific time frame for re-determination of the claim petition.

15. Ms. Choudhury, learned counsel for the respondents No.4(a) to 4.8, who are the legal representatives of the owner of the offending vehicle(bus)

has submitted that since the owner of the offending vehicle did not contest the claim petition before the learned Tribunal, the owner of the offending vehicle had no opportunity to cross-examine the D.W No.1, as a result of which, a finding to the extent that the insurance policy was effected from 2.15 pm of 18.12.1991 came to be recorded by the learned Tribunal. Ms. Choudhury, further submits that in the first written statement filed by the Insurance Company, the fact that the offending vehicle was not covered by an insurance policy at the time of the accident was not taken thereof, and the same having been taken in the additional written statement filed subsequently, which have not even been discussed by the learned Tribunal, the finding recorded by the learned Tribunal on the basis of the deposition made by the D.W No.1 that the insurance policy of the offending vehicle was with effect from 2.15 pm of 18.12.1991 could not be sustained. She accordingly, submits that under the aforesaid circumstances, the Insurance Company would be liable to indemnify the claim made by the claimants on behalf of the owner of the bus.

16. Rival contentions advanced by the learned counsels appearing for the parties have received due consideration of the Court and the materials made available on record including the LCR received, have been perused.

17. Upon hearing the learned counsels appearing for the parties, and on perusal of the materials available on record, it has remained un-disputed, as would be evident from the claim petition filed by the claimants, that the deceased late Dipak Das, the brother of the claimants, who was working as a handiman of the said bus bearing registration No.ASU-4081 died on 18.12.1991 at 9.10 am as a result of the accident that took place near Chamata P.H.C., where the deceased had fell down from the bus and was ran over by the left side rear wheels of the said bus.

18. Since the deceased died as a result of falling down from the bus bearing registration No.ASU-4081 in an accident that took place on 18.12.1991 at 9.10 am near Chamata P.H.C. remains established, what requires for further determination by this Court is, as to whether at the time of the accident, whether the bus bearing registration No.ASU-4081 was insured with the appellant/Insurance Company or not?.

19. As regards the timing when the vehicle came to be insured with the appellant/Insurance Company, the evidence that has been brought on record

by the appellant/Insurance Company, the opposite party No.3 in the claim petition is by producing D.W. No.1, Shri Ramesh Chandra Das, the Branch

Manager of the appellant/Insurance Company before the learned Tribunal, who had stated that the proposal for insurance of the vehicle was made by

the owner on 18.12.1991 at 2.15 pm at Rangia Branch, through an agent A. K. Jain.

20. Since the owner of the bus did not contest the claim petition before the Tribunal, the deposition made by the D.W No.1 went unrebutted. The

deposition made by the D.W. No.1 that the proposal for insurance of the vehicle was made by the owner on 18.12.1991 at 2.15 pm at Rangia Branch

through an agent A. K. Jain is also corroborated and duly supported by the Ext.1, which is the policy of insurance issued pursuant thereto.

21. On perusal of the policy of insurance, which is Ext.1, it is noticed that the offending vehicle bearing registration No.ASU-4081 was insured with

the appellant/Insurance Company for a period of 1(one) year commencing from 2.15 pm of 18.12.1991 to midnight of 17.12.1992. As such, there

remains no manner of doubt that the offending vehicle bearing registration No.ASU-4081 came to be validly insured with the appellant/Insurance

Company on and from 2.15 pm of 18.12.1991 and the accident having taken place at 9.10 am on 18.12.1991, which is prior in point of time when the

offending vehicle came to be validly insured with the appellant/Insurance Company, the learned Tribunal could not have held the appellant/Insurance

Company liable for the accident that took place prior to the offending vehicle was insured with the appellant/Insurance Company.

22. Under the circumstances, since the evidence on record leaves no manner of doubt that the offending vehicle bearing registration No.ASU-4081

was insured with the appellant/Insurance Company on and from 2.15 pm of 18.12.1991 and the accident where the deceased had died having taken

place at 9.10 am of 18.12.1991 near Chamata P.H.C., I am of the view that the learned Tribunal vide the impugned judgment and award, dated

26.02.2002, could not have held the appellant/Insurance Company liable to the extent indicated in the impugned judgment and award.

23. Accordingly, the impugned judgment and award dated 26.02.2002, passed by the learned Member, Motor Accident Claims Tribunal, Nalbari, in

MAC Case No.25/1992, to the extent the appellant/Insurance Company has been held to be liable is hereby interfered with.

24. The appeal is allowed to the extent indicated above.

25. The statutory deposit made by the appellant while filing the instant appeal be refunded.

Send back the LCR.