

(2023) 01 GAU CK 0007

Gauhati High Court

Case No: MACApp. No. 468 Of 2019

National Insurance
Company Limited

APPELLANT

Vs

Dinesh Talukdar @
Dinesh Ch. Talukdar
And 2 Ors

RESPONDENT

Date of Decision: Jan. 4, 2023

Acts Referred:

- Indian Penal Code, 1860 - Section 279, 337, 338

Hon'ble Judges: Malasri Nandi, J

Bench: Single Bench

Advocate: S Roy, R Ali

Final Decision: Allowed

Judgement

1. Heard Mr. S. Roy, learned counsel for the appellant. Also heard Mr. R. Deka, learned counsel for the claimants/respondents.

2. This appeal is filed by the appellant/insurance company challenging the judgment and award dated 20.09.2016 in MAC case No. 1486/2013 passed

by the Id. Member, MACT No.2, Kamrup(M), Guwahati, awarding an amount of Rs.2,62,480/- in favour of the injured/claimant.

3. The brief facts of the case is that on 21.03.2013 at about 11 a.m. while the claimant/respondent was proceeding from his residence towards his

office by riding his Scooter bearing Regd. No. AS-25-A-9076 and on the way to his office at Dispur, Lakhiminagar Tiniali, one Auto Van bearing

Regd. No. AS-15C-4438 coming from the same direction in a rash and negligent manner knocked him down as a result of which, he sustained

grievous injuries on his person. Immediately, after the occurrence, he was taken to Dispur Hospital, where he was treated as an indoor patient.

4. After the accident, one case was registered vide Hatigaon P.S. case No. 99/2013 under Sections 279/337/338 IPC. At the relevant time of

accident, the alleged offending vehicle was duly insured with National Insurance Company Ltd.

5. The learned counsel for the appellant has argued that in the instant case, the claim petition, Form 54, seizure list and MVI report show that the

driving licence bearing No. 1858/NB/06/MISC was valid upto 24.10.2012, whereas the accident took place on 21.10.2013, which shows that at the

time of accident, the offending vehicle was driven by a driver who had no valid driving licence and as such, there is a violation of policy condition but

the Id. Tribunal did not consider the same and most illegally fastened the liability upon the insurance company to pay the awarded amount. In that view

of the matter, the judgment and award is liable to be set aside.

6. It is also the submission of the learned counsel for the appellant that the vouchers and bills submitted by the clamant are not genuine, some of them

are not having the name of the patient and some of them are not having any seal and signature of the issuing person and some of the bills are not

supported with any doctor's prescription and many of the bills/cash memos were issued after a long gap of the alleged accident i.e. after 9 months

to 12 months and even after more than one year which are not related to the injuries caused to the alleged accident. But the learned tribunal in spite of

that anomalies in the vouchers and bills, considered those vouchers and bills and awarded compensation accordingly.

7. On the other hand, the learned counsel for the respondents/claimants argued that the respondent No. 1 has submitted cash memos/vouchers

amounting to Rs.2,41,370/- and he is entitled to get the said amount which he spent for his treatment.

8. Admittedly there is no dispute regarding accident or the involvement of the alleged vehicle. The only contention raised by the learned counsel for

the appellant is that the driving licence of the driver was not valid on the date of the accident. The documents available in the record show that the

driver of the alleged offending vehicle was not having effective and valid driving licence at the relevant time of the accident.

9. In this case, the name of the driver of the offending vehicle is Mizunur Rahman. The insurance company examined one witness Shri Ajoy Saha as

DW1 who is the insurance investigator. He deposed in his evidence that he is the insurance investigator by profession and has been duly appointed as

a investigator by the National Insurance Company Ltd. to investigate MAC Case No. 1486/2013 arising out of Hatigaon P.S. case No. 99/2013 in

connection with a vehicular accident which took place on 21.03.2013 at Lakhiminagar Tiniali, Hatigaon causing injury to one Dinesh Talukdar @

Dinesh Ch. Talukdar by involving a scooter bearing Regd. No. AS-25A-9076 and a auto van bearing Regd. No. AS-15-C-4438, as per claim petition

filed by the claimant. During the course of investigation, he visited the office of Id. CJM, Kamrup(M) and collected certified copies of seizure list and

MV report of the offending vehicle bearing Regd. No. AS-15-C-4438, Auto van and came to know that the driving licence vide No.

1858/NB/06/MISC carried by the driver of the Auto van, Mizunur Rahman on the date of the alleged accident was valid upto 24.10.2012, whereas the

date of accident was 21.03.2013.

10. According to DW1, during investigation, he also visited the office of the DTO, Nalbari to verify the genuinity and authenticity of the driving licence

No. 1858/NB/06/MISC. He gave a written letter to the DTO, requesting him to verify and give details of the said driving licence. Then on the face of

his letter, the DTO, Nalbari gave the detail information about the said driving licence as per his written information dated 06.09.2014. From the report,

it shows that the driving licence No. 1858/NB/06/MISC was issued by their office in the name of Naba Kumar Kalita on 21.03.2002 and was valid

upto 27.02.2009. It is also stated that no any driving licence was issued in the name of Mizunur Rahman.

11. The factum of accident has not been challenged in this case. There is also no allegation against the Id. Tribunal in respect of awarding

compensation in favour of the claimant, the only contention was raised by the Id. Counsel for the insurance company is that the driver was not having

valid driving licence at the relevant time of accident as such, the insurance company is not liable to pay any compensation. However, the owner is liable to pay compensation.

12. The learned counsel for the insurance company has argued that it is not a case of fake licence because as per evidence, the licence was issued to one Naba Kumar Kalita which was valid from 21.03.2002 up to 27.02.2009, so it is a case of no licence.

13. The learned Tribunal has considered that matter and held that the driving license produced by driver Mizunur Rahman is a fake one. Thereafter, following the ratio laid down by the Hon^{ble} Supreme Court in National Insurance Co. vs. Swaran Singh, reported in (2004) vol. 3 SCC 297, the

Id. tribunal fastened the appellant Insurance Company with the liability to pay the compensation. Though learned counsel for the appellant has

submitted that it is not a case of fake licence but it is a case of no licence but the learned counsel for the respondent/appellant has submitted that

insurance company cannot be permitted to avoid its liability on the ground that at the time of the accident, the driver did not have a valid licence.

14. In the case of Pepsu RTC v. National Insurance Co., reported in (2013) vol. 10 SCC 217 which is reproduced as follows-

“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 a defence is taken, the onus is on the insurer. But even after it is proved

that the licence possessed by the driver was 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 the driver has a valid driving licence. Thereafter he has to satisfy

himself as to the competence of the driver. If satisfied in that 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

verifying the genuineness of the driving licence with the licensing authority before hiring the services of the driver. However, the situation

would be different if at the time of insurance of the vehicle or thereafter the insurance company requires the owner of the vehicle to have the licence duly verified from the licensing authority or if the attention of the owner of the vehicle is otherwise invited to the allegation that the licence issued to the driver employed by him is a fake one and yet the owner does not take appropriate action for verification of the matter regarding the genuineness of the licence from the licensing authority. That is what is explained in Swaran Singh case. If despite such information with the owner that the licence possessed by his driver is fake, no action is taken by the insured for appropriate verification, then the insured will be at fault and, in such circumstances, the Insurance Company is not liable for the compensation.

15. I have considered the submissions of learned counsel for the parties and I have also perused the judgment and award dated 20.09.2016 passed by Member, MACT No. 2, Kamrup(M), Guwahati in MAC Case No. 1486/2013 and the documents available thereon.

16. According to the Pepsu RTC (supra), at the time of hiring a driver, the owner has to satisfy himself that the driver had a valid driving licence and the owner is not expected to go beyond that exercise. The owner is not expected to verify the genuineness of the driving licence.

17. In the instant case, the driving licence produced by the driver Mizunur Rahman, as per evidence of DW1, was issued by DTO, Nalbari to one Naba Kumar Kalita and which was valid from 2002 to 2009. The accident occurred in the year 2013 i.e. after four years before the accident took place. Therefore, at the time of accident, the alleged driver never had a driving licence. Therefore, I am not in agreement with the judgment of the Tribunal which held that the licence to be a fake one and fastened the liability on the insurance company to pay the compensation. In fact, on the date of the accident, there was no licence of the driver of the offending vehicle Mizunur Rahman. Hence, it is a case of driving without a driving licence and in that case the insurance company cannot be held liable to pay compensation.

18. In the result, the appeal is allowed and the award stands modified to the extent that the appellant/ insurance company is not liable to pay the

compensation to the respondent. It is the owner of the Auto van bearing Regd. No. AS-15-C-4438 who is liable to pay compensation to the respondent/claimants.

19. The insurance company is at liberty to recover the amount, if paid earlier.

20. Statutory amount in deposit be refunded to the Insurance Company.

21. Send back the LCR.