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(2012) 08 GAU CK 0026

Gauhati High Court

Case No: MAC Appeal No. 121 of 2007

Padam Bahadur Rana		APPELLANT
	Vs	
National Insurance Company		RESPONDENT

Date of Decision: Aug. 16, 2012

Acts Referred:

- Motor Vehicles Act, 1988 - Section 149, 163A, 163A, 166

Citation: (2013) 1 ACC 685 : (2013) 1 GLT 792

Hon'ble Judges: Anima Hazarika, J

Bench: Single Bench

Advocate: K. Bhattacharjee, Mr. S. Khan and Mr. S. Ghose, for the Appellant; R. Goswami, B.I. Ghosh, T. Kalita and Mr. I. Barroah, for the Respondent

Final Decision: Dismissed

Judgement

Anima Hazarika, J.

In this appeal the appellant/claimant has challenged the judgment dated 30.7.2007 passed in MAC Case No. 203/2005 by the learned Member, Motor Accidents Claims Tribunal, ("MACT" for short), Sonitpur, Assam. Brief fact of the case is that on 17.5.2004 the appellant was riding his scooter bearing registration No. AS 12B 4220 from Lokra towards Tezpur. When the appellant reached Khelmati NH 52 at about 10 AM, suddenly a cow appeared before the running scooter and while the appellant was trying to save the cow, his scooter got capsized and he fell down. As a result, he sustained grievous injuries on his person and was taken to Kanaklata Civil Hospital at Tezpur by the local people. He was treated for about 6 months by different doctors and spent about Rs. 50,000/- for such treatment. The accident caused multiple injuries on different parts of his body for which he could not do any hard work which has affected his earning. His scooter was insured with National Insurance Company Limited, Tezpur Branch, Tezpur vide policy No. 200201/31/04/6700756 for the period w.e.f. 13.05.2004 to 12.05.2005.

2. Relying on the insurance policy the appellant filed a claim petition u/s 163 (A) of Motor Vehicles Act, 1988 ("the Act" for short) before the MACT, Tezpur claiming compensation of Rs. 2,00,000/- from the Opposite party, i.e. National Insurance Company Limited. In the said claim petition, the appellant has shown himself as owner and driver of the scooter. The aforesaid claim petition was registered as MAC Case No. 203/2005.

3. The opposite party after receiving the notice in the case, submitted its written statement thereby raising the question of maintainability of the claim petition and also denied the claim made therein by the respondent Insurance Company. Paragraphs 3, 4 and 5 of the written statement are quoted hereinbelow:

3. That the claimant has no Locus Standi to file the instant claim against this opp. party in the Hon''ble Tribunal. It may be mentioned herein that the claimant himself is the owner of the accident vehicle as well as the insured of this opp. party and as such he is in no way a third party in respect of the accident vehicle and that being so, he can not claim compensation under the provisions of law laid down in the Motor Vehicles Act, 1988 for third party claim.

4. That it is further submitted that the claimant is the owner of the accident vehicle which is insured with this opp. party and that being so, the claimant, being the insured of this opp. party, can not recover any compensation, whatsoever, from this opp. party by way of third party claim. It may be mentioned herein that u/s 149 of the M.V. Act an insurer is duty bound to satisfy judgments and awards against persons insured in respect of third party risks; but, here, in the instant claim, the person insured himself is the claimant and as such the instant claim is not maintainable in law at all.

5. That this opp. party being, in no way in law, liable to pay any compensation, whatsoever, to the claimant on account of the alleged accident, the instant claim is liable to be dismissed with costs.

4. During the trial, learned tribunal framed following two issues:

(1) Whether the alleged accident took place due to rash and negligent driving by the driver of the vehicle No. AS 12B 4220 (scooter)?

(2) Whether the claimant is entitled to any compensation and if yes, what will be the quantum of compensation and by which of the respondents this amount shall be paid?

5. So far the issue No. 1 is concerned, the learned Tribunal answered the same in the affirmative with a finding that claimant was involved in the aforesaid accident which occurred on 17.5.2004 and sustained injures arising out of use of his own vehicle (scooter) bearing No. AS 12B 4220 and the accident occurred due to his own fault.

In respect of issue No. 2, the learned Tribunal after making elaborate discussion regarding the claim and submissions made by both the parties, answered the issue No. 2

in the negative and in favour of the Insurance Company by holding that claimant being registered owner, sustained injuries for his own fault and thus not entitled to get compensation from the insurance Company and the Insurance Company is also not at all liable to pay any compensation as claimed.

The learned Tribunal has also considered and taken into account the decision of this Court in New India Assurance Co. Ltd. Vs. Imkong Toshi Jamir alias Toshi Jamir, as well as decision of the Apex Court in Dhanraj Vs. New India Assurance Co. Ltd. and Another, cited by the learned counsel for the respondent while passing the judgment dated 30.7.2007 in MAC Case No. 203/2005.

6. I have heard Mr. K. Bhattacharjee, learned counsel for the appellant as well as Mr. R. Goswami, learned counsel for the respondent, Insurance Company. Also perused and considered the written arguments submitted by the learned counsel appearing for the parties.

7. Before delving into the merits of the case, it is necessary that certain clarifications are made for a better grasp of the case at hand. First, the insurance policy of the appellant which, after all, forms the basis of the case, is not an ''act-only'' policy, rather it is a ''package policy'' providing not only the compulsory third party insurance and personal accident cover for owner-driver but also providing for own damage coverage. Therefore, as regards this aspect, the learned Tribunal was clearly in error while rendering its judgment. Secondly, claim was made by the appellant before the learned Tribunal u/s 163A of the Act and not u/s 166 of the act and thus, negligence need not be proved in the present case.

8. Now, coming to the crux of the case, the Court feels that the first issue that the Court ought to adjudicate upon is as to whether the learned Tribunal at all had the jurisdiction to entertain a claim u/s 163A of the act by an owner-driver seeking compensation for an accident where no other person besides him was involved even though the insurance policy provided for personal accident cover for owner-driver. If the answer to this question is in the affirmative, then this Court, in its capacity as an appellate court, has to proceed on to the next stage to decide upon the merits of the case; on the other hand, if the Court concludes that the learned Tribunal did not indeed have the jurisdiction to adjudicate upon the matter at hand, then nothing remains in the appeal other than to dismiss the same.

9. In this regard, the counsel for the appellant has vehemently contended that the India Motor Tariff (''MT'' for short) having made personal accident cover compulsory for the owner-driver in a motor insurance policy apart from the already existing statutory requirement of third party insurance, this automatically implies that an owner-driver is entitled to approach the learned Tribunal in case he suffers an accident.

10. On the other hand, the counsel for the respondent insurance company has urged that even in case of an insurance policy providing personal accident cover for owner-driver, the learned Tribunal is not the proper forum for the same and hence, the claim petition was not maintainable at all.

11. It is true that under an insurance policy having personal accident cover for owner-driver, like the policy in this appeal, even if the driver gets into an accident by himself without involving any vehicle other than his own, he is entitled to claim insurance under the terms of the policy from the insurance company and if the insurance company refuses to compensate him in adequate terms, he can very well approach a judicial forum. The short question, though, is- which judicial forum? In the situation described above, can such a person approach the learned Motor Accident Claims Tribunal or is the learned Tribunal bereft any power to adjudicate upon such a case?

12. To answer this question, the heading of Chapter XI of the Act in which Section 163-A is contained has to be adverted to. The heading of Chapter XI of the Act runs as follows;-

INSURANCE OF MOTOR VEHICLES AGAINST THIRD PARTY RISKS

13. This heading in itself makes it abundantly clear that all the sections contained in this chapter including Section 163-A relates to third party risks.

14. Sub-section (2) of Section 163-A further drives home the point as regards the fact that this section deals with third party risks. Thus, it states that claimant claiming compensation under the structured formula basis as laid down in Sub-section (1) of this Section need not prove negligence or wrongfulness or default on the part of the owner of the vehicle. Thus clearly, the wordings of Subsection (2) prove that the claimant and the owner are two separate persons.

15. Clearly therefore, it is apparent from the provisions of the Act itself that Section 163-A also relates to third party insurance, meaning thereby that only a third party can claim compensation u/s 163-A of the Act.

16. A recent decision of this Court itself reported in 2011 (5) GLT 563: Bajaj Allianz Insurance Co. Ltd.. Vs. Smrita Saikia & Anr. also serves to illustrate this very point. In this case, the learned Tribunal had passed an award for the death of his son, who was driving the vehicle at the time of accident. However, the Court held that the learned Tribunal had acted beyond its jurisdiction and set aside its judgment and award.

17. The counsel for the appellants, in a valiant attempt to convince the Court, has finally relied upon a decision of the Punjab and Haryana High Court reported in United India Insurance Company Limited Vs. Kusum Sood and Others, This is a Letters Patent Appeal (hereinafter "L.P.A." in brief) which has arisen from decision of a learned Single Judge of the Punjab and Haryana High Court in the F.A.O. No. 989 of 1984 (Kusum Sood -vs-United India Insurance Company Ltd.) which, in turn, had been preferred from an

award of the learned Motor Accident Claims Tribunal, Ropar dated 30.09.1984. Having perused both the F.A.O. and the L.P.A., the fact that emerges is that this was a matter relating to collision between two vehicles (a truck and a car) and the learned Tribunal had even given a finding to the effect that the accident was the result of composite negligence of the drivers of the truck and the car. Moreover, the car was a taxi owned by the deceased (whose heirs were the claimants) and the accident that lead to the death of the owner had occurred when the car was being driven by an authorized person who was an employee of the deceased. Therefore, it is abundantly clear that the facts of the present appeal before the Court are not similar to that of the aforesaid L.P.A. and its preceding F.A.O.

18. Thus, it is clear that the claim filed by the appellant u/s 163-A of the Act seeking compensation against his own insurance policy for his own accident caused while he was driving his own scooter is not maintainable in the learned Tribunal. Thus, the court upholds the conclusion of the learned Tribunal although for different reason.

19. However, there is no bar for the appellant to approach other authorities or judicial forums which do have jurisdiction to adjudicate upon the matter. Considering the facts and circumstances of the case, the Court also holds that if the appellant does seek to have his grievance redressed in the appropriate forum, the period beginning from the date of filing the claim in the learned Tribunal till the date on which the certified copy of this order is ready be not taken into account while counting the period of limitation.

20. Before parting with the case, it needs to be stated that the counsel for both the parties have very diligently produced various case laws for the perusal of the court during the course of their arguments. But unfortunately, the case laws that were so produced varied in some material particulars with the case at hand, e.g. some of the case laws dealt with Section 166 of the Act, some dealt with insurance policies with not personal accident cover, etc. As such, these cases have not been reproduced herein as they would merely burden the judgment.

21. Continuing in the same vein, the parties have also made various other submissions before the court in defence of their respective stands, e.g. the counsel for the respondent has submitted that the appellant is not entitled for compensation as he has not suffered injuries serious enough to bring him into the scope of the IMT. Since the Court has held that the claim petition of the appellant is not maintainable before the learned Tribunal although it may very well be maintainable in some other forum; therefore, the Court has consciously avoided adjudicating upon or commenting on the other submissions made by the learned counsel.

22. Consequently, in light of the above discussion, the appeal is dismissed.

23. The parties are left to bear their own costs. Send down the lower Court records.