

North Goalpara Motor Workers" Cooperative Society Ltd. Vs New India Assurance Co. Ltd. and Others

Court: Gauhati High Court

Date of Decision: Aug. 10, 1999

Acts Referred: Explosive Substances Act, 1908 â€” Section 3, 4
Terrorist and Disruptive Activities (Prevention) Act, 1987 â€” Section 3

Citation: (2000) ACJ 1051 : (1999) 3 GLT 176

Hon'ble Judges: D.N. Choudhury, J

Bench: Single Bench

Advocate: A.S. Choudhury, R. Mazumdar, I. Hussain and S. Seal, for the Appellant; S.K. Barkataki and D. Sharan, for the Respondent

Final Decision: Allowed

Judgement

D.N. Choudhury, J.

The issue raised in this petition pertains to claim for compensation against an insurance policy which has been repudiated by the insurance company in the following circumstances:

The petitioner is a registered cooperative society which happens to be the owner of a public transport vehicle, registered and numbered as AMG

629. The said vehicle was used by the petitioner for carrying passengers in different routes in the District of Bongaigaon. The vehicle in question

was insured with the respondent No. 1, the New India Assurance Co. Ltd., which is also represented by respondent Nos. 2 and 3. Director of

Public Grievance, Cabinet Secretariat, New Delhi, has been impleaded as respondent No. 4 and the Branch Manager, SBI, Abhayapuri Branch,

has been impleaded as pro forma respondent No. 5. According to the petitioner, the aforesaid vehicle was purchased by the petitioner society on

obtaining a loan of Rs. 2,17,000 from the State Bank of India, Abhayapuri Branch, and it was insured with the respondent No. 1, which was

renewed from year to year. The vehicle in question was initially insured for the period 5.8.1988 to 4.8.1989 vide policy No. 315112000533. At

that period, the Bongaigaon District was not declared as a terrorist affected area and it was declared as such only on 6.7.1989. That on

10.2.1989, the bus while on its way from Sidli side to Dhaligaon, it stopped at Baikhagaon for a short while and while the bus was standing, a

severe explosion took place inside it as a result of which the bus was completely damaged and eleven persons lost their lives while twenty-six

persons were severely injured. The facts about the accident were brought to the notice of Divisional Manager, New India Assurance Co. Ltd.,

Bongaigaon Division, by the Secretary of the petitioner society on 11.2.1989, as also about the damage caused to the vehicle (bus). The police

investigated into the matter and registered Dhaligaon Police Station Case No. 18 of 1989 (BGR Case No. 999 of 1990) u/s 34 of the Explosive

Substances Act read with Section 3 of TADA (P) Act and arrested some persons. However, the police after investigation submitted final report on

the matter on 6.11.1991 and the learned Chief Judicial Magistrate dropped the case by order dated 11.3.1992. The petitioner association moved

the respondent insurance company for settling the claim of compensation as per the insurance policy so that the petitioner could repay the

outstanding loan amount of Rs. 1,50,960 to the State Bank and also submitted various vouchers along with the claim. Despite numerous reminders,

the respondent insurance company refused to attend to the claim/representation of the petitioner association. Finally, the respondent insurance

company issued the impugned communication dated 10.6.1993 under the signature of the Asstt. Manager vide Memo. No.

BDO:CLAIMS:93:788, which reads as follows:

Please note that the competent authority has decided to repudiate the above claim as the cause of the accident was viewed as terrorism which was

not an insured peril.

Hence, as per the terms and conditions of the policy the claim is not payable, accordingly we have closed the file as "NO CLAIM" which please

be noted.

Hence this writ petition.

2. The respondent insurance company has submitted affidavit and disputed and denied its liability to pay compensation as per the terms of the

insurance policy. According to the insurance company, the accident was an act of terrorism and as per the terms and conditions of the policy, the

claim of the petitioner association for compensation under such circumstances, was/is not covered by the policy. That the respondent insurance

company appointed a surveyor to investigate into the damage caused to the vehicle in question in the bomb explosion and to estimate the loss, who

in his report stated that the accident was purely an act of terrorism done by the terrorists and, therefore, question of payment of compensation did

not arise as the insurance policy did not cover "terrorist risk". The insurance policy is cited as Annexure-1 to the writ petition, the relevant clause of

which as regards "Loss or damage" reads as follows:

(1) The company will indemnify the insured against loss of or damage to the motor vehicle and/or its accessories whilst thereon;

(a) by accidental external means;

(b) by fire, external explosion, self-ignition, lightning or burglary, house-breaking or theft;

(c) by malicious act;

(d) whilst in transit by road, rail, inland waterway, lift, elevator or air....

3. According to the learned counsel for the petitioner, the bus was damaged due to explosion that took place inside the bus and that it was not

damaged due to any other reason. The learned counsel for the petitioner further submitted that the vehicle was standing by the road with

passengers in it at village Baikhagaon when the explosion occurred; and that in these circumstances, the occurrence took place while the vehicle

was "in use" within the meaning of the provisions of the Motor Vehicles Act. In support of his contentions, the learned counsel for the petitioner

referred to a decision of the Apex Court in Samir Chanda Vs. Managing Director, Assam State TPT. Corpn., In the aforesaid case an ASTC bus

on reaching its destination, the passengers were alighting from the said bus when a bomb exploded as a result of which, the appellant therein

sustained injuries on his legs; other passengers were also injured. In the said case, the appellant was awarded compensation. The ASTC preferred

an appeal against the award before the High Court. The High Court did not disturb the findings of the Tribunal on facts. However, the High Court

held that there was no negligence on the part of the driver or the owner of the vehicle and, therefore, question of paying compensation did not

arise. The Supreme Court set aside the aforesaid order of the High Court on appeal preferred by the appellant, and held that the accident arose

out of the use of the motor vehicle justifying the claim of the appellant.

4. The policy indicated in the aforesaid case covers the cases for compensation in motor vehicle accidents. The words "use of a motor vehicle"

cover accidents which occur both when the vehicle in question is in motion as also when it is stationary. Here in the instant case, the bomb

exploded inside the bus when it was standing/ stationary and, therefore, the accident had arisen out of the use of the vehicle in question. That apart,

when the accident took place on 10.2.89, the Bongaigaon District was not declared as a terrorist affected area and the vehicle was duly covered

by the insurance policy, without any default on the part of the owner in payment of the insurance premia; nor had the insurance lapsed during the

relevant period of time. The insurance company in the circumstances cannot avoid its liability of payment of compensation.

5. In view of the foregoing discussions and reasons, the impugned communication under Memo. No. BDO:CLAIMS:93:788 dated 10.6.1993

issued by the respondent insurance company is set aside and the respondent insurance company is directed to make necessary payment, in terms

of the policy, of the compensation due to the petitioner association without being influenced by the earlier report of the surveyor in accordance with

the rules as expeditiously as possible, preferably within a period of two months from the date of receipt of certified copy of this order.

6. Mr. Hussain, the learned counsel for the petitioner association at this stage submits that the respondent insurance company may be directed to

pay interest as per the provisions of the Act. However, I am of the view that no such direction is necessary at this stage. While disposing of the

claim of the petitioner, the respondents, it is expected, shall award interest as per the accepted norms.

7. Subject to the above, this writ petition stands disposed. No order as to costs.