(2007) 10 GAU CK 0029

Gauhati High Court (Aizawl Bench)

Case No: MAC App No. 45 0/2005

Oriental Insurance Co.Ltd.	APPELLANT
Vs	
Oriental Insurance Co.Ltd.	RESPONDENT

Date of Decision: Oct. 3, 2007

Acts Referred:

- Motor Vehicles Act, 1988 - Section 166, 166

Citation: (2008) 2 GLR 825

Hon'ble Judges: H.Baruah, J

Bench: Single Bench

Advocate: A.K.Rokhum, S.N.Meitei, Advocates appearing for Parties

Judgement

1. Heard Mr. S.N. Meitei, learned counsel for the appellant. Also heard Mr. A.K. Rokhum, learned counsel for the respondent No. 1. None appears for the respondent No. 2.

2. The Oriental Insurance Co. Ltd. Zarkawt Aizawl filed this appeal under the provisions of section 173 of the M.V. Act, 1988 for setting aside and/or modifying the final order and award dated 13.12.2004 passed in MACT Case No. 41/01 by the learned Member MACT Aizawl. By the impugned award the learned tribunal awarded an amount of Rs. 2,52,425 to the claimant inclusive of the interim award amounting to Rs. 25,000.

3. Before entering into merit of this appeal perhaps it would be appropriate for this court to project the case of the respondent No. 1claimant. Respondent No, 1Vanlalhliri is the wife of late Sapliana, a resident of Bungkawn Nursery Aizawl. The respondent No. 1claimant and her late husband Sapliana were passenger of a Maruti Van bearing registration No. ASII/11315 along with some other passengers. The said Maruti Van was taken on hire by the passengers including the respondent No. 1 and her late husband. It was traveling toward Shillong from Silchar at about 4:00 A.M. This Maruti Van met with an accident by colliding with a truck bearing

registration No. AS01/F5088 at Bapung Village in Jaintia Hills, Meghalaya on 2.4.2000. As a result of head on collision all the passengers of the said Maruti Van sustained injuries on their persons. All the injured persons were removed to Woodland Hospital, Dhanketi, Shillong before arrival of the Police personnel. The officer incharge of Laitumkhrah Police Station had taken immediate steps and made an enquiry of the accident and during the said enquiry, it was found that the accident occurred due to rash and negligent driving of the accident vehicle by the driver. The driver who was driving the Maruti Van had a valid driving licence with him at the time of accident. It is contended in the claim petition by the respondentclaimant that all the injured persons were proceeding to B. Baruah Cancer Institute, Gauhati for treatment. As a result of such accident the claimant suffered fracture injury in her sixth ribs and fracture of both the bones of the left leg. After release from the Woodland Hospital on 15.4.2000, the claimant respondent had also got admission into the Civil Hospital, Aizawl for further treatment. The doctor who attended and treated the claimantrespondent issued a certificate showing 12% permanent disablement. The claimant, therefore, in view of the receipt of the injuries on her person due to the accident filed a claim petition exhibit C/l, under section 166 of the M.V. Act.

4. Pursuant to the filing of this claim petition and notice so issued, the appellant being the insurer of the offending vehicle and the owner of the offending vehicle contested the claim by filing written statement.

5. The learned tribunal, having considered the averment(s) made in the pleadings of the either party framed the following issues :

(1) Is the claim petition is maintainable in law and in fact ?

(2) Is the claim petition barred by limitation and by principles of estoppel, waiver and acquiescence ?

(3) Was the accident caused due to rash and negligent driving by the driver/opposite party of the vehicle

(4) Is the claimant is entitled to compensation as claimed for ? If so, what extent ?

(5) Are the opposite parties liable to pay the compensation ? If not, who else?

(6) To what other relief, if any, is the claimant entitled ?

6. Inquiry commenced the claimant who is the respondent No. 1 herein put herself into the witness box in support of her claim petition. During the course of enquiry, the claimant has proved some documents marked as exhibits C/l C/17.

7. No evidence either oral or documentary has been adduced either by the appellant or the owner of the offending vehicle. At the conclusion of the inquiry learned tribunal awarded compensation to the tune of Rs. 2,52,425 in all. Now the insurance company, the insurer of the offending vehicle filed this instant appeal not being

satisfied with the award so passed by the learned tribunal.

8. Mr. S.N. Meitei, while arguing this appeal criticized the judgment and award passed by the learned tribunal on the following grounds :

(1) that the respondent No. 1claimant failed to prove negligent on the part of the driver which is mandatory on the part of the claimant when a claim is sought under the provisions of section 166 of the Act, 1988;

(2) that the learned tribunal committed error in not taking into consideration the fact of collision of the Maruti Van in which the claimant and her late husband and other were passengers with the truck bearing registration No. AS01/F5088. No attempt was made by the claimantrespondent to implead the owner of the offending truck nor there was any attempt on the part of the tribunal to take recourse to the fact of contributory negligence, when the facts in the face of record go to show that there was a collision between the two vehicles ;

(3) that the documents which are proved and marked as exhibit to are all Photostat copies and the same are not certified true copy of the originals. The learned tribunal failed to see the question of admissibility of these documents in evidence. Xerox copy of a particular document according to Mr. Meitei cannot be admitted in evidence in respect of the facts contained therein ;

(4) that the insurance company, the appellant is not liable to pay compensation since the offending vehicle in which they were traveling is a private car and not a commercial vehicle. No premium is paid by the owner and the policy is found to be silent in respect of payment of premium.

9. It is an admitted fact that the claim petition is under section 166 of the M.V. Act. When a claim is made under this specific provision the burden is on the claimant to prove the negligence on the part of the driver of the offending vehicle. Referring to the evidence of PW/1, the claimant, it is argued by Mr. Meitei that her evidence is very much silent in respect of negligence on the part of the driver who drove the Maruti Van, which met with an accident. No other evidence is available except her evidence and the documents proved and marked as exhibit C/l to C/17. It is argued by Mr. Meitei that when there is no evidence to hold that the driver of the offending vehicle drove the vehicle in rash and negligent manner, which resulted the accident, the claim petition under section 166 cannot be allowed. While referring the evidence of PW/1 by Mr. Meitei, this court carefully has gone through the same and found that the claimant nowhere stated that the accident did occur as a result of rash and negligent driving of the driver of the said vehicle. It is found from the impugned judgment that the learned tribunal took the assistance of exhibit C/3 and also the evidence of the claimant in respect of proof of negligence on the part of the driver. Exhibit C/3 is a Photostat copy of the Lakrumbai Police General Daily Entry No. 24 dated 22.4.2000 wherein the manner of accident has been described. Since the exhibit C/3 is a Photostat copy and not a document certified to be true of the GDI

No. 24 dated 22.4.2000, the view taken by the learned tribunal that the accident did occur as a result of negligent driving on the part of the driver is not correct. That apart, no attempt was made by the learned tribunal for a just decision of the case to examine the police officer who made such entry. The learned tribunal has committed error in adopting a view in favour of the claimantrespondent that the accident took place as a result of rash and negligent driving of the vehicle. Mr. Meitei in support of his contention relied on in para 52 of the judgment in the case between Deepal Girishbhai Soni and Others v. United Insurance Co. Ltd. reported in AIR 2004 SC 2107, which speak as under : "52. It may be true that section 163B provides for an option to a claimant to either go for a claim under section 140 or section 163A of the Act, as the case may be, but the same was inserted ''exabundanticautela'' so as to remove any misconception in the mind of the parties to the Us having regard to the fact that both relate to the claim on the basis of nofault liability. Having regard to the fact that section 166 of the Act provides for a complete machinery for laying a claim on fault liability, the question of giving an option to the claimant to pursue their claims either under section 163A or section 166 does not arise. If the submission of the learned counsel is accepted the same would lead to an incongruity."

10. The scheme of section 166 of the M.V. Act being dependent upon fault liability the burden is on the claimant to prove negligence on the part of the driver. Herein our case we have found that the claimant has failed to prove the negligence on the part of the driver of the offending vehicle in which they were passengers and, therefore, the finding of the learned tribunal cannot be accepted on the ground that the claimant is able to prove the negligence. Per contra to the submission so advanced by Mr. S.N. Meitei, learned counsel for the appellant submitted that the evidence of PW/1 the claimant and document C/3 are much sufficient to prove the negligence. As already criticized by the learned counsel for the appellant that exhibit C/3 is not a document certified to be true copy of the original, exhibit C/3 does not have any evidentiary value. In view of the facts and circumstances of the case appearing and evidence on record, this court appreciate the argument so advanced by Mr. Meitei, learned counsel for the appellant.

11. From the facts of the case appearing in the face of the record and the & impugned judgment, it is found that the accident took place as a result of collision between the Maruti Van and the truck, but this aspect of the matter was not taken into consideration by the learned tribunal while making the enquiry on the basis of the claim petition under section 166 of the Act. That apart, no effort was made by the claimant to implead the owner of the truck with which the Maruti Van collided. When two vehicles collided each other and when there is no evidence, which of the vehicle was in fault the finding of the learned tribunal that the accident took place as a result of negligence on the part of the driver of the Maruti Van is not sustainable. In the face of the facts appearing both the vehicle collided each other as a result of which the claimant and others sustained injuries. The learned tribunal ought to have

considered whether the driver of the truck was also at fault and he contributed accordingly towards the accident. The findings in respect of contributory negligence if there was any is missing in the judgment itself.

12. There is no objection from the side of the respondent that the documents marked as exhibits C/l to C/17 are not Photostat copy of the original. Documents can be admitted in evidence by resorting to two methods (i) primary evidence, (ii) secondary evidence. Secondary evidence can be produced by a party to a suit or a proceeding when the original is not available. In such circumstance the party who seeks to prove the document by way of secondary evidence, is to obtain leave from the court for proof of such documents. Here in our case we have found that all the documents are photostat copies of the originals and the same are not certified to be true. During the inquiry when the claimant wanted to prove these documents in support of her claim, the appellantcompany did not raise any objection as to the admissibility of those documents, the claimant having found the scope merrily proved those documents marked as exhibits C/l to C/17. Even if no objection was raised by either of the opposite party in respect of the admissibility of these documents, the learned tribunal ought to have insisted the production of the originals if not the certified copy of the same and the proof of the same by resorting to the proof of documents by means of secondary evidence.

13. Exhibit C/10 is the photostat copy of the insurance policy which is valid up to 6.4.2004 taking aid of this exhibit C/10 it is argued by Mr. Meitei that Maruti Van which met with an accident on 2.4.2000 is a private car and the policy exhibit C/10 does not speak that the owner of the said vehicle paid premium for such passengers. According to the policy exhibit C/10 premium was paid for the paid driver and workman No. 1 and TPPD covered for unlimited amount. There is no mention in exhibit C/10 that premium had been paid by the owner of the vehicle in respect of the passengers. In the above facts situation it is argued that the insurance company is not liable to pay any compensation to the claimant for injury sustained as a result of the accident while driving the Maruti Van which is/was a private car not a commercial vehicle.

14. I have scrutinized all the facts available, the documents proved and marked as exhibit C/l to C/17 and the impugned judgment passed by the learned tribunal. Learned tribunal, while passing the award failed to adhere to the issues now raised by the appellant and thus committed error and illegality in computing the compensation in favour of the respondentclaimant. Learned tribunal, thus, seem to have ignored specific evidence of PW/1 in respect of negligence on the part of the driver which can be held to have gone against the claimant. The learned tribunal also committed error and illegality in allowing proof of the documents exhibit C/l to C/17, which are all photostat copies of the originals without adhering to the provisions incorporated in the Evidence Act for proof of such documents. Learned tribunal also failed to see the facts incorporated in the insurance policy in respect of

premium paid by the owner of the said vehicle together with the fact of collision of both the vehicles.

15. From the reading of the materials in entirety this court is of humble opinion that the award so passed by the learned tribunal cannot sustain in law. The award is passed basing on no legal evidence. The award requires interference from this court and it is accordingly, interfered.

16. In the result, the judgment and award passed by the learned tribunal is set aside. The case is remanded back to the learned tribunal with the following directions : (i) that the learned tribunal shall endeavour to examine the other copassengers of the Maruti Van and the Police Officer who made the GD Entry and conducted enquiry thereto, (iij that the learned tribunal shall direct the claimantrespondent either to produce the original of the exhibits minus exhibit C/l or the copies certified to be true of those documents and prove it accordingly as per law, (iii) that the learned tribunal shall also direct the claimant to implead the owner of the truck and the insurer of the said truck as party to the case and shall offer opportunity to contest the claim, (iv) when all these directions are done the learned tribunal shall dispose of the claim petition as per law.

17. With these directions this appeal is disposed of.