

New India Assurance Co. Ltd. Vs Sangzuali and Another

Court: Gauhati High Court (Aizawl Bench)

Date of Decision: July 21, 2000

Acts Referred: Motor Vehicles Act, 1988 " Section 140(2), 141(3), 149(2), 170, 173

Citation: (2000) 3 GLT 248

Hon'ble Judges: P.C. Phukan, J

Bench: Single Bench

Advocate: G. Raju, for the Appellant; A.R. Malhotra, for the Respondent

Final Decision: Dismissed

Judgement

P.C. Phukan, J.

This is an appeal u/s 173 of the Motor Vehicle Act, 1988 directing against the impugned judgment and order passed on

28.7.99 by learned Presiding Officer, MACT, Aizawl in MACT Case No. 86/97 wherein the Appellant was directed to pay a sum of Rs.

6,57,600/- to the claimant as compensation.

2. I have heard Mr. G. Raju, learned Counsel for the Appellant as well as Mr. A.R. Malhotra, learned Counsel for the Respondents.

3. The brief facts of the case are that the Respondent No. 2 is the owner of the Maruti Taxi MZ-01/6891 which met with an accident in between

Selesih and Sihphir on 31.5.97 around 6 PM causing the death of the husband of the Respondent No. 1 who was one of the passengers. The

claimant Respondent No. 1 filed a claim petition before the learned Motor Accident Claims Tribunal, Aizawl claiming Rs. 17,82,000/- (Rupees

Seventeen lakhs Eighty Two thousand) as compensation for the death of her husband. The said claim petition was registered as MACT Case No.

86/97. The present Appellant Insurance Company as Opposite party No. 2 contested the claim by filing a written statement After considering the

evidence on record and hearing the learned Counsel for the parties learned Presiding Officer, Motor Accident Claims Tribunal, Aizawl awarded an

amount of Rs. 6,57,600/- as final compensation to the claimant Respondent No. 1 and the Appellant was directed to pay the amount within a

period of one month, failing which to pay interest at the rate of 12% per annum from the date of filing of the claim petition till realisation-hence this

appeal u/s 173 of the Motor Vehicles Act, 1988 before this Court.

4. At the outset Mr. Malhotra, learned Counsel for the Respondents has raised a technical objection that this appeal u/s 173 of the Motor Vehicles

Act is not maintainable since the Appellant did not invoke the provisions of Section 170 of the Motor Vehicles Act in the Motor Accident Claims

Tribunal and that he cannot file this appeal except on the grounds enumerated in Sub-section (2) of Section 149 of the Motor Vehicles Act. On

perusal of the memorandum of appeal, I have found this appeal has not been preferred on the grounds so enumerated. In support of his contention

Mr. Malhotra has relied upon a decision of the Supreme Court in Shankarayya and Another Vs. United India Insurance Co. Ltd. and Another,

wherein it has been held:

It clearly shows that the Insurance Company when impleaded as a party by the Court can be permitted to contest the proceedings on merits only

of the conditions precedent mentioned in the section are found to be satisfied and for that purpose the Insurance Company has to obtain order in

writing from the Tribunal and which should be a reasoned order by the Tribunal. Unless that procedure is followed, the Insurance Company cannot

have a wider defence on merits than what is available to it by way of statutory defence. It is true that the claimants themselves had joined

Respondent 1, Insurance Company in the claim petition but that was done with a view to thrust the statutory liability on the Insurance Company on

account of the contract of the insurance. That was not an order of the court itself permitting the Insurance Company which was impleaded to avail

of a larger defence on merits on being satisfied on the aforesaid two conditions mentioned in Section 170. Consequently, it must be held that on the

facts of the present case, Respondent 1, Insurance Company was not entitled to file an appeal on merits of the claim which was awarded by the

Tribunal.

5. Mr. Malhotra, learned Counsel for the Respondents, has referred to a decision of this Court reported in 1999 (2) GLT 235 (Oriental Insurance

Co. Ltd. v. Member MACT) which has referred to the above mentioned decision of the Supreme Court. Another decision of this Court referred

to by Mr. Malhotra is one reported in 1999 (1) GLT 440 (Kamakhya Das and Anr. v. Upen Baruah and Ors. wherein it has been held:

It is now to be considered whether the appeal preferred by the Oriental Insurance Company is maintainable in view of this specific provision

incorporated in Section 149(2) of the Act. A reading of Sub-section (2) of Section 149 would show that the Insurance Company is entitled to

prefer an appeal against an award on certain specific circumstances and not otherwise. The grounds of appeal as have been incorporated in the

memo of appeal do not attract any of the permitted grounds. The law is well settled that the Insurance Company is entitled to challenge an award

only on any of those conditions incorporated in the aforesaid section and not otherwise. This appeal by the Insurance Company is, therefore, not

maintainable.

In the instant case also the grounds of appeal as have been incorporated in the memo of appeal do not attract any of the permitted grounds as

mentioned.

Therefore, this appeal u/s 173 of the Motor Vehicles Act is not maintainable. Accordingly this appeal stands dismissed. Considering the facts and

circumstances of the case, I leave the parties to bear their respective costs.

6. Before parting, it has been submitted by Mr. Raju, learned Counsel for the Appellant, that there has been a mistake in calculation of the amount

Rs. 6,48,100/- against item No. 4 which should have been Rs. 5,48,100/- Mr. Raju further submits that the Appellant has already paid to the

Respondents an amount of Rs. 50,000/- as compensation on the principle of no fault u/s 140(2) of the Motor Vehicle Act, 1988. Learned Counsel

Mr. Raju submits that after correction in calculation as aforesaid the total compensation amount would stand at Rs. 5,57,600/- and deducting

therefrom the already paid amount of Rs. 50,000/- u/s 141(3Xa) the Appellant shall be liable to pay Rs. 5,07,600/- (Rupees Five Lakhs Seven

Thousand Six Hundred) only. Mr. Malhotra, learned Counsel for the Respondents, has fairly conceded to the submission of Mr. Raju, learned

Counsel for the Appellant. In view of such submission made at the bar, the total amount the Appellant is liable to pay shall stand modified to Rs.

5,07,600/-. The Motor Accident Claims Tribunal's order as to the rate of interest is left undisturbed and such interest shall be on the modified

amount only.

7. The appeal stands dismissed subject to what has been stated above. No costs.