

(2002) ACJ 1483

Gauhati High Court

Case No: Writ Petition (C) No"s. 4012 and 4155 of 2000

New India Assurance
Co. Ltd.

APPELLANT

Vs

Member, Motor
Accident Claims
Tribunal and Others

RESPONDENT

Date of Decision: May 24, 2001

Acts Referred:

- Motor Vehicles Act, 1988 - Section 140

Citation: (2002) ACJ 1483

Hon'ble Judges: A.K. Patnaik, J

Bench: Single Bench

Advocate: S.N. Sarma and A. Ahmed, for the Appellant; SC, ASEB and J. Mollah, for the Respondent

Judgement

A.K. Patnaik, J.

By these two writ petitions under Article 226 of the Constitution, the petitioner New India Assurance Co. Ltd. has challenged the order dated 12.6.2000 passed by the Member, Motor Accident Claims Tribunal, Kamrup, Gauhati in MAC Case No. 714/99 and MAC Case No. 715/99. By the said impugned order dated 12.6.2000, the Tribunal has directed the petitioner to pay no fault liability to the claimant in respect of an accident which occurred on 8.8.1999 at about 6.30 AM.

2. Mr. A. Ahmed, learned counsel for the petitioner submitted that the claimants were travelling in a Bus (AS-25A/5454) which was proceeding from Latibari via Pub Kasukata near Baralia project. The overhead electric line touched the roof of the bus and as a result the entire vehicle got electrified and while some persons travelling in the bus died on the spot, some others sustained injuries. According to Mr. Ahmed, this was therefore a case of negligence on the part of the authorities of the Assam State Electricity Board and not a

case of negligence of the driver of the bus. Hence, the petitioner who was the insurer of the bus was not in any way liable for compensation and the petitioner could not be saddled with no fault liability u/s 140 of the Motor Vehicle Act, 1988 by the Tribunal. Mr. Ahmed further submitted that the Tribunal under the Motor Vehicles Act had the jurisdiction to decide only claim for compensation arising out of Motor accidents, but did not have any jurisdiction to decide claims for compensation arising out of an electrical accident. Hence, the order passed by the Tribunal was without jurisdiction. Finally, Mr. Ahmed submitted that the Assam State Electricity Board who are under duty to maintain the overhead electric line should have been impleaded as opposite Party in the instant claim petition considering the nature of pleas raised by the petitioner Insurance Co. in its written statement. He cited decisions of the Supreme Court in [Union of India \(UOI\) Vs. United India Insurance Co. Ltd. and Others](#), in support of his aforesaid submissions. He also relied on the decision of the High Court of Madhya Pradesh in *Maniklal Dubey v. Mohd. Ismail and Ors.* 1999 (1) TAC 585 (MP).

3. Mr. Mollah, learned counsel appearing for the claimants/ respondents on the other hand cited the decision of Full Bench of this Court in *United India Insurance Co. v. Smti Suhagini Paul and Anr.* 1997 (1) GLT 352 for the proposition that the Insurance Co. is debarred to raise any plea of its liability at the stage of consideration of matter of no fault liability. He also cited the decision of the High Court of Bombay in [Raphik Mehbub Pakhali Vs. Anantkumar Pravinkumar Jajal and Another](#), in support of his argument that the claimant to succeed under no fault liability has to establish:

(1) the accident has arisen out of use of motor vehicle.

(2) The accident has resulted in a permanent disablement of the person who is making the claim or death of a person whose legal representatives are making the claim ; and

(3) The claim is made against the owner and insurer of the motor vehicle involved in the accident.

4. Mr. Mollah, learned counsel further submitted that all the 3 factors have been established by the claimants before the Tribunal and therefore the Tribunal passed the impugned order for payment of no fault liability by the petitioner.

5. Mr. Mollah also relied on the decision of the High Court of Himachal Pradesh 1996 ACJ 357 for the proposition that while giving the interim compensation u/s 92A of the Motor Vehicles Act, 1939 corresponding to Section 140 of the Motor Vehicles Act, 1988, the Tribunal is not to make an enquiry regarding the merit of the defences available or taken by the insurance Co. and the Insurance Company is liable to pay the compensation awarded under the aforesaid statutory provision. Mr. N. Singha, learned counsel appearing for the ASEB submitted that the liability of the Assam State Electricity Board to pay compensation arise only if an enquiry is conducted into by the Electrical Inspector or any other competent person appointed by the Government, and a report is to be

submitted after such enquiry u/s 33 of the Indian Electricity Act, 1910.

6. In reply, Mr. Ahmed submitted that in [National Insurance Co. Ltd. Vs. Jethu Ram and Others](#), the Supreme Court has held that on interpretation of the provisions of sections 92A and 92B of the Motor Vehicles Act, 1939 that the Insurer was not liable to pay the amount towards no fault liability in case it is ultimately held by the Tribunal that it was not liable for compensation.

7. Section 140 of the Motor Vehicles Act, 1988 is quoted hereinbelow:

"Liability to pay compensation in certain cases on the principle of no fault - (1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under Sub-section (1) in respect of the death of any person shall be a fixed sum of (fifty thousand rupees) and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of (twenty five thousand rupees).

(3) In any claim for compensation under Sub-section (1). the claim shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners, of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under Sub-section (1) shall not be defeated by reason of any wrongful act. neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall be quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

(5) Notwithstanding anything contained in Sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force ;

Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation" payable under this section or u/s 163A."

8. On a plain reading of Sub-sections (1) and (3) of Section 140 quoted above would show that where a permanent disablement of a person resulted from an accident arising out of use of a motor vehicles, the owner of the vehicles shall be liable to pay compensation in respect of such death or disablement in accordance with the provision of the said section. Sub-section (3) of Section 140 further provides that in any claim for

compensation under Sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner of the vehicle or of any other person. It is thus clear from the aforesaid provisions that a no fault liability can be ordered to be paid by the Tribunal only if the death or a permanent disablement has resulted from an accident arising out of use of motor vehicle. Unless such accident occurred, no fault liability can be fastened on the owner of the vehicle or insurer. But at the stage when a claimant for no fault liability is made, a dispute may arise as to whether the accident has arisen out of use of motor vehicle or has arisen de-horse or without use of a motor vehicle, Such dispute can only be decided after evidence is adduced before the Tribunal. Under the aforesaid provisions, the claimant also is not required to prove and establish at the stage of claim for no fault liability that the death or permanent disablement was due to wrongful act, negligence or default of the owner of the vehicle or of any other person. Hence, if a dispute is raised before the Tribunal by the parties that the death or permanent disablement was not due to wrongful act, negligence or default of the owner of the vehicle or any other person. Such dispute may not be adjudicated by the Tribunal at the stage of passing the order for no fault liability. It is for this reason that in the Full Bench judgment of this Court In *United India Insurance Co. v. Smti Suhagini Paul and Anr.* (supra) it was held that at the stage of considering payment towards no fault liability u/s 140 of the Motor Vehicles Act, 1988, the Tribunal may not decide the dispute as to whether or not the accident occurred on account of any wrongful act negligence or default of the owner of the vehicle or the driver of the vehicle or any other person.

9. From the facts in the present case, it appears that the dispute is as to whether the accident arose on account of negligence of the driver of the bus in which the claimants were travelling or arose out of negligence on the part of the authorities of the Assam State Electricity Board and such a dispute is of a factual nature and can only be decided after adducing evidence by the parties. As yet, no evidence has been adduced by the parties in support of their respective pleas before the Tribunal. The Tribunal has passed orders for payment of no fault liability by the petitioner to the claimant according to the said provision of Section 140 of the Motor Vehicles Act. 1988. The petitioner will have to abide by the said order passed by the Tribunal and pay no fault liability to the claimants.

10. This is not to say that ultimately if the Tribunal on the basis of the evidence adduced by the parties comes to the conclusion that the accident was purely an electrical accident or was caused not due to the negligence of the driver of the bus, but due to the negligence of the authorities of the Assam State Electricity Board, the petitioner Insurance Co. will still be liable for no fault liability. The insurer will be liable for compensation only in terms of the policy of Insurance Co. under Motor Vehicles Act and not otherwise. In *National Insurance Co. Ltd. v. Jethu Ram and Ors.*, (supra) cited by Mr. Ahmed, the Supreme Court held that if ultimately the insurer is held not to be liable under the provisions of the Motor Vehicles Act and/or policy of insurance, the compensation towards no fault liability will have to be reimbursed to the insurer from the party who is

held to be liable to compensate the claimants for the death or injury suffered in the accident.

11. Considering the stand taken by the petitioner before the Tribunal in its pleadings that the accident was an electrical accident, the Assam Electricity Board who has to maintain the overhead electric line in the State of Assam will be impleaded as opposite party in the cases before the Tribunal and depending upon the pleadings raised by the ASEB, the Tribunal will decide the dispute between the parties.

12. In the result, the 2 writ petitions are disposed of with the directions indicated above. Considering the facts and circumstances of the case, parties shall bear their own costs.