(2018) 08 GAU CK 0002

In the Gauhati High Court

Case No : MACApp. 304 of 2014

Bajaj Allianz General Insurance Co. Ltd. APPELLANT

Vs

Momi Boruah RESPONDENT

Date of Decision : 02-08-2018

Acts Referred:
Motor Vehicle Act, 1988 — Section 147, 163A, 165

Citation : (2018) 08 GAU CK 0002

Hon'ble Judges : RUMI KUMARI PHUKAN, J

Bench : Single Bench

Advocate : R Goswami

Final Decision : Disposed Off

Judgement

1. Heard Mr. R. Goswami, the learned counsel appearing for the appellant Bajaj Allianz General Insurance Co. Ltd. (hereinafter referred as â??the

Insurance Companyâ??). Also heard Mr. K.R. Patgiri, the learned counsel appearing for the respondent.

2. This Appeal is preferred against the judgment and award dated 20-12-2012, passed by thelearned Member, Motor Accident Claims Tribunal,

Lakhimpur at North Lakhimpur, in the MAC Case No.71/2009.

3. The brief facts of the case is that one Smti Momi Boruah preferred a claim petition underSection 163A of the Motor Vehicle Act, praying for

compensation for the death of her husband Pradip Boruah, in a motor vehicle accident on 16.12.2008, involving the vehicle No.AS-07/C-0119

(winger). The deceased was the owner cum driver of the offending vehicle and the same was insured with the Bajaj Allianz General Insurance Co.

Ltd.

4. The learned counsel for the appellant Mr. R. Goswami pointed out that the present claim hasbeen preferred by the legal heirs of the deceased who

was the owner cum driver of the offending vehicle who died in the accident, was not a third party in the said case and being a policy holder, he is not

entitle to the amount against the premium so paid by him, under the policy i.e. Rs.2 lakh.

5. However, the claim has been preferred by the wife of the said deceased (owner cum driver ofthe vehicle), under Section 163A of the Motor

Vehicle Act, whereas such a claim petition could have been preferred by the legal heirs of the deceased before the Insurance Company for realization

of the amount, so entitled.

6. Mr. K.R. Patgiri, the learned counsel for the respondent is also agreeable to the said positionthat the deceased was the owner cum driver of the

vehicle. The vehicle was insured with the Bajaj Allianz General Insurance Co. Ltd. It is also stated that the deceased had the requisite driving license

at the time of incident.

7. It may be mentioned that the claimant Smti Momi Boruah preferred the claim petition underSection 163A of the Motor Vehicle Act, claiming for

compensation of Rs.2,20,000/-, for the death of her husband Pradip Boruah in a motor vehicle accident that took place on 16.12.2008, in front of

Subansiri College at Milanpur on National Highway 52, under Boginodi P.S. It was her case that while driving the vehicle by the said Pradip Boruah,

bearing registration No.AS-07/C-0119 (winger), the vehicle slipped of the road and dashed against a road side tree resulting the death of her husband

on the spot.

8. The claim petition was resisted by the Insurance Company by filing their written statement thatthe claim for death of owner/driver of the vehicle

under the P.A. coverage and cannot be settled in the Motor Accident Claims Tribunal and the nominee and the legal heirs of the deceased can apply

for the same directly from the Insurance Company.

9. The learned Tribunal however decided the matter ignoring the submissions that was made bythe Insurance Company.

10. It is a settled position of law that the owner cum driver of the vehicle is the first party and he isliable only to the benefit under the policy and the

Insurance Company is liable to pay any compensation under Section 165 of the

Motor Vehicle Act to the third party and at any stress of imagination,

the owner cannot be a third party to prefer a claim under Section 163A of the Motor Vehicle Act.

11. By referring to the decision rendered in AIR 2009 SC 3056 (Ningamma and another vs. United India Insurance Co. Ltd.) and AIR 2009 SC 1788

(New India Assurance Company Ltd. vs. Sadanand Mukhi and others), it has been submitted that when the driver is the owner of the vehicle in that

case, the owner could not himself be a recipient of compensation, as the liability to pay the same is on him.

12. In New India Assurance Company Ltd. (Supra), similar situation has been discussed, where themotorcycle was taken out by the son of the

insured/owner and while riding the motor cycle, the son met with an accident resulting death, it was held that the insurer is not liable to pay

compensation, as the deceased does not come within the purview of the term person within Section 147 of the Motor Vehicle Act. Insurer would be

liable to cover the risk of 3rd party and not the others who would not otherwise come within the purview thereof.

13. In Nigamma and another (Supra), it has been discussed where the deceased was not theowner of the vehicle in question but he borrowed the

same from its real owner, the said deceased cannot be held to be an employee under the owner of the motor bike although he was authorized to drive

the vehicle by its owner and therefore, he would step into the shoes of the owner of the motor bike. Accordingly, the legal representatives of the

deceased who have stepped into the shoes of the owner of the motor vehicle would not have claimed compensation under Section 163A of the Motor

Vehicle Act.

14. The present case is squarely covered by the decisions rendered by the Honâ?? ble Apex Court andthe legal heir of the deceased is entitled to the

same under the P.A. coverage i.e. Rs.2 lakh and the Insurance Company is agreeable to pay the said amount. However the claimant being the wife

of the deceased, has prayed for certain amount on account of interest for the long delay in disposal of the matter, while the occurrence took place on

16.12.2008 and decided on 2012 and still the claimant did not get any sort of compensation.

15. Taking into account all above, the present appeal stands disposed of with

direction to theInsurance Company to deposit the amount of Rs.2 lakh,

before the Registry of the High Court under the P.A. coverage, within a period of two months. In making the deposit, the Insurance Company shall be

at liberty to adjust the amount, if already paid to the claimant. In addition to the above, the Insurance Company shall consider the prayer so made by

the claimant, for extending further compensation which is permissible under the terms and conditions of the policy. It is ordered accordingly.

16. The appeal stands disposed of with above direction. Return the LCR immediately.