(2011) 11 GAU CK 0043

In the Gauhati High Court

Case No : Civil Revision Petition No. 216 of 2011

Bajaj Allianz General Insurance Co.Ltd. APPELLANT

Vs

Smrita Saikia & Anr. RESPONDENT

Date of Decision : 16-11-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 165, 165, 166, 166

Citation : (2011) 5 GLT 563

Hon'ble Judges : U.B.Saha, J

Bench : Single Bench

Advocate : Advocates appeared for the Petitioner: Mr. S. Dutta, Mrs. U. Dutta & Mr. A. Goswami, Advocates appeared for the Respondents: Mr, S. Das & Ms. R.T. Das, Advocates appearing for Parties

Judgement

U.B. Saha,J.

1. The instant revision petition is filed under Article 227 of the Constitution of India challenging the judgment dated 08.04.2011 passed by the learned Member, Motor Accident Claims Tribunal (for short, ''Tribunal'') Lakhimpur at North Lakhimpur in MAC Case No. 12 of 2009 whereby and whereunder the Tribunal directed the petitionerInsurance Co. for making payment of the contractual amount to the claimant at the earliest along with interest @ 9% per month from the date of filing of the case till payment.

2. Heard Mr. S. Dutta, learned counsel appearing for the petitionerInsurance Co. and Mr. S. Das, learned counsel for the respondentclaimants.

3. Brief facts needed to be discussed are as follows:

That the respondents as claimants had instituted a Motor Accident Claim Case No. 31/2009 before the learned Tribunal, Lakhimpur seeking compensation on account of the death of Lt Ajit Saikia which allegedly occurred in a motor accident on 27.12.2008 while he was driving the vehicle owned by him, which on the relevant date stood insured with the present petitionerInsurance Company.

The Insurance Company filed a written statement challenging the claim of the petitioner before the Tribunal.

4. Based on the pleadings of the parties concerned the learned Tribunal framed the following issues:

(i) Whether there is cause of action for the claim?

(ii) Whether the claim is maintainable?

(iii) Whether the claimant is entitled to compensation for the death of her son?

(iv) What other relief relieves the parties are entitled to?

While adjudicating the issues by the Tribunal the petitioner raised the question of maintainability of the claim petition stating inter alia, that the deceased was himself the insured under the policy and hence not a third party and therefore there was no cause of action for the claimant against the Insurance Company and deceased being the owner of the vehicle cannot be treated to be a third party within the meaning of the Motor Vehicles Act and as such the Tribunal constituted for deciding the third party claim has no jurisdiction to try and entertain the claim since the Act covers only the risks of the third party. The learned Tribunal after hearing the parties held that the deceased son of the claimant was not only the owner but also the driver, thus the claim of the claimantmother is justified one and ultimately passed the impugned judgment, as stated supra.

5. Being aggrieved, the Insurance Company filed the instant revision petition. Mr, Dutta while urging for setting aside the impugned judgment would refer to the provisions of Section 165 of the Motor Vehicles Act and contended that the Motor Accident Claims Tribunal is constituted for deciding the claim far compensation in respect of accidents involving the death of, forcibly injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both. Thus a claims tribunal has no jurisdiction to decide any claim for compensation relating to first party risk under the provisions of Section 165 of the Motor Vehicles Act and on that sole ground the impugned judgment should be set aside.

6. In support of his aforesaid contention, he placed reliance on a decision of the Division Bench of this Court in Jahar Deb Vs. National Insurance Co. Ltd. & Ors., 2006 (4) GLT292 as well as the decision in the New India Assurance Co. Ltd Vs. Imkhong Toshi Jamir @ Toshi Jamir, 2006 (3) GLT 379.

He further submits that even if for argument sake it is considered that the claimant is entitled to the risk coverage relating to first party that can be claimed only with the Insurance Company but not before the Tribunal and if the Insurance Company denied to make any payment then the claimant can approach the appropriate forum but not by way of claim petition before the Tribunal.

7. Mr. Das while supporting the impugned judgment would contend that the deceased son of the claimant was not only an insured as an owner but also a driver. A owner may not come within the purview of third party as referred in Section 165 of the Motor Vehicles Act, but obviously a owner cum driver comes within the purview of third party and thus the learned Tribunal did not commit any wrong.

As Mr, Dutta raised the question of jurisdiction of the learned Tribunal referring Section 165 of Motor Vehicles Act, it would be proper for this Court to reproduce Section 165 of the said Act. Accordingly, the same is reproduced hereinunder.

" 165. Claims Tribunals(1) A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (hereafter in this Chapter referred to as Claims Tribunal) for such area as may be specified in the notification for the purpose of adjudication upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both."

8. In Jahar Deb (supra) this Court considered the provisions of Section 165 of Motor Vehicles Act and held that a bare reading of the provisions contained in subsection (1) of Section 165 of the MV Act makes it cear that a Tribunal, constituted under Section 165, can adjudicate upon the damage caused to the property of a third party. Section 165 does not empower such a Tribunal to adjudicate upon any claim for damage to the property of the insured or of the 1s1 party.

9. In New India Assurance Co. Ltd. (supra) a Division Bench of this Court while answering the question, inter alia, whether an insurer can be made liable to pay compensation for the injuries sustained by the owner of a vehicle, particularly, when the owner himself was driving the vehicle stated that the answer to this question is no longer res integra that the liability of an insurer is only to indemnify the insured against the liabilities, which the insured may incur towards a third person or in respect of damage to property. In New Insurance Assurance Co. Ltd. (supra) the Division Bench also considered the decision of the Apex Court in Dhanraj Vs. New India Assurance Co. Ltd. & Anr., (2004) 8 SCC 553 wherein the Apex Court has observed and held as follows:

"8. Thus, an insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an owner of the goods or his authorized representative) carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle. Section 147 does not require an insurance company to assume risk for death or bodily injury to the owner of the vehicle.

9. In the case of Oriental Insurance Co. Ltd. Vs. Sunita Rathi it has been held that the liability of an insurance company is only for the purpose of indemnifying the insured against liabilities incurred towards a third person or in respect of

damages to property. Thus, where the insured i.e.an owner of the vehicle has no liability to a third party the insurance company has no liability also."

10. In view of the above position, according to this Court, the learned Tribunal committed an error in passing the impugned judgment directing the petitionerInsurances Company to make payment of the contractual amount to the claimant at the earliest along with interest @ 9% per month from the date of filing of the case till payment.

It is settled by this time that when a Court or tribunal is established for a particular purpose that has to act only for the said purpose and not for any other purpose.

11. Now question remains that when as per the terms of the policy an insurer is liable to pay the 1st party risk coverage to the insured as mentioned in the policy, if the deceased is the owner cum driver then in that case how the legal heirs of the insured will get the benefit of the policy.

12. According to this Court, the legal heirs of the deceased insured has the right to claim in the insurance coverage as mentioned in the policy to the Insurance Copetitioner and the Insurance Company is also liable to discharge its duties as per the terms and conditions of the policy. As the same is not the issue before this Court, the Court is not expressing any opinion regarding the claim of the respondentclaimant Before the petitionerInsurance Company.

13. As the learned Tribunal acted beyond its jurisdiction there is no other alternative before this Court except to set aside the impugned judgment dated 08.04.2011. Accordingly, the same is set aside and in the result the instant revision petition is allowed.

14. However, setting aside of the impugned judgment would not debar the claimantrespondents to claim the risk coverage for death of deceased insured owner and driver of the offending vehicle before the petitionerInsurance Company.

