
(2005) 03 GAU CK 0094
In the Gauhati High Court
Case No : MAC Appeal No. 50 of 2001

Chakreswar Kalita

APPELLANT

Vs

Bimala Kachari and Others

RESPONDENT

Date of Decision : 01-03-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 168

Citation : (2005) 2 GLR 686 : (2005) GLT 144 Supp

Hon'ble Judges : B.K. Roy, C.J;D. Biswas, J

Bench : Division Bench

Advocate : S.K. Barkataki, D. Sarmah and R. Baruah, for the Appellant; B. Dutta, J. Singh, P. Singh, A. Ahmed and A. Das, for the Respondent

Final Decision : Allowed

Judgement

D. Biswas, J.—This appeal arises out of an award dated 22nd June, 2001 parsed by the learned Member, Motor Accident Claims Tribunal, Golaghat in MAC Case No. 125/99 settling the claim of compensation at Rs. 7,75,000 to be paid by the owner (Appellant herein) of the offending vehicle with interest @ 9% per annum from the date of filing the claim petition.

2. Being aggrieved thereby, the owner has preferred this appeal. The facts of the case in a narrow compass are recapitulated herein below : -

3. The husband of the claimant was on his way to Dergaon in a Truck bearing Registration No. AS-14/4343 on 6.10.1999. It met with an accident at Bohora Bazar over National Highway-37 in the District of Golaghat, as a result of which, her husband succumbed to the injuries. Thereafter, the claimant filed the claim petition for a compensation of Rs. 4,86,000. The learned Tribunal, after conclusion of the trial, settled the compensation amount as stated above with direction to the appellant owner to pay the same.

4. We have heard Mr. SK Barkataki, learned counsel for the appellant; Ms B. Dutta, learned counsel for the respondent No. 1 (Claimant) and also Mr. A.

Ahmed, learned counsel for the Insurance Company.

5. The only question urged before us by the learned counsel for the appellant is with regard to the direction given by the learned Tribunal calling upon the appellant (Owner) to pay the compensation. The appellant seeks a direction for payment by the insurance at the first instance with whom the truck was insured.

6. It is argued that the learned Tribunal erred in law in giving the direction to the owner to pay the aforesaid amount. Referring to a decision, particularly its para-21 of the Supreme Court in National Insurance Co. Ltd. Vs. Baljit Kaur and Others, , the learned counsel for the appellant submitted that the question regarding payment of compensation to the gratuitous passengers was considered in the aforesaid case where the Hon"ble Supreme Court clarified the legal position in the following terms :

"21. The upshot of the aforementioned discussions is that instead and in place of the insurer the owner of the vehicle shall be liable to satisfy the decree. The question, however, would be as to whether keeping in view the fact that the law was not clear so long such a direction would be fair and equitable. We do not think so. We, therefore, clarify the legal position, which shall have prospective effect. The Tribunal as also the High Court had proceeded in terms of the decision of this Court in Satpal Singh. The said decision has been overruled only in Asha Rani. We, therefore, are of the opinion that the interest of justice will be subserved if the appellant herein is directed to satisfy the awarded amount in favour of the claimant, if not already satisfied, and recover the same from the owner of the vehicle. For the purpose of such recovery, it would not be necessary for the insurer to file a separate suit but it may initiate a proceeding before the executing court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. We have issued the aforementioned directions having regard to the scope and purport of Section 168 of the Motor Vehicles Act, 1988, in terms whereof, it is not only entitled to determine the amount of claim as put forth by the claimant for recovery thereof from the insurer, owner or driver of the vehicle jointly or severally but also the dispute between the insurer on the one hand and the owner or driver of the vehicle involved in the accident inasmuch as can be resolved by the Tribunal in such a proceeding."

7. Mr. Ahmed, learned counsel for the Insurance Company placed before us the decision, particularly its para-12 of the Hon"ble Supreme Court rendered in Sri Pramod Kumar Agrawal and Another Vs. Smt. Mushtari Begum and Others, wherefrom we find that in terms of the decision in Baljit Kaur (supra) the Supreme Court directed the Insurance Company to pay the quantum of compensation fixed by the Tribunal authorising the Insurance to recover the same from the owner of the vehicle without filing a suit. The observations/directions of the Hon"ble Supreme Court are quoted below :

"12. Therefore, while upholding the judgment of the High Court we direct in terms of what has been stated in Baljit Kaur case that the insurer shall pay the quantum of compensation fixed by the Tribunal, about which there was no dispute raised, to the respondent claimants within three months from today. For the purpose of recovering the same from the owner the insurer shall not be required to file a suit. It may initiate a proceeding before the executing court concerned as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the claimants, owner of the vehicle, i.e. Appellant 1 shall furnish security for the entire amount, which the insurer will pay to the claimant. The offending vehicle shall be attached, as a part of the security. If necessity arises, the executing court shall take assistance of the Regional Transport Authority concerned. The executing court shall pass appropriate orders in accordance with law as to the manner in which the owner of the vehicle, i.e. Appellant 1 shall make payment to the insurer. In case there is any default, it shall be open to the executing court to direct realisation by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured (Appellant 1).".

8. We have therefore no doubt that the law as on date authorised the Tribunal to direct the Insurance Company to pay the awarded amount at the first instance with right reserved to recover the same from the owner of the offending vehicle in accordance with the procedure indicated in para-12 of the judgment as quoted above.

9. Accordingly, we allow the appeal to the extent as indicated above. However, considering the facts and circumstances of the case we make no order as to costs.