
(2006) 06 GAU CK 0029
In the Gauhati High Court
Case No : Regular First Appeal No. 31 of 2001

Jahar Deb

APPELLANT

Vs

National Insurance Company Ltd. and Others

RESPONDENT

Date of Decision : 08-06-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 19
Motor Vehicles Act, 1988 — Section 165, 165(1), 175

Citation : (2007) ACJ 2169 : AIR 2006 Guw 143 : (2006) 4 GLT 292

Hon'ble Judges : Iqbal Ahmed Ansari, J;A.B. Pal, J

Bench : Division Bench

Advocate : P. Deb Roy and P.B. Mazumder, for the Appellant; P. Roy Barman, for the Respondent

Judgement

I.A. Ansari, J.—We have heard Mr. P. Deb Roy, learned Counsel for the plaintiff, appellant, and Mr. P. R. Barman, learned Counsel appearing on behalf of the financier respondent No. 3.

2. The appellant instituted, as plaintiff, Money Suit No. 11 of 1998, seeking decree for, inter alia, compensation of a sum of Rs. 30,00,000/- from the respondent Nos. 1 and 2 herein, as defendants, the case of the plaintiff-appellant being briefly stated, thus. With the help of the defendant No. 2, (i.e. the respondent No. 3 in the present appeal) as financier, the plaintiff purchased a truck, which came to be registered as AS/01-C-9147. This vehicle was insured with the defendant Nos. 1 and 2 for Rs. 5,60,000/-. On 30-9-1995, when the truck was proceeding from Guwahati to Agartala, it fell into river Borak, under Katigorah Police Station, District Cachar, and washed away. Having lost the vehicle and also the onion, which the vehicle was carrying, the plaintiff claimed the said sum of Rs. 30 lakhs as compensation.

3. The insurer defendant contested the suit by filing their written statement, their case being thus : The financier (i.e., the respondent No. 3 herein) has already settled the claim for a sum of Rs. 3,74,234/- and, hence, the insurer is

not liable to pay any further amount to the plaintiff. The suit is not maintainable inasmuch as the place of the accident was in the District of Cachar, which falls in the State of Assam, whereas the suit has been instituted at West Tripura, Agartala, which falls in the State of Tripura. The suit ought to have been instituted in the Court of competent jurisdiction in the District of Cachar and not in the District of West Tripura, Agartala. This apart, the claim application could have been made by the plaintiff under the provisions of the Motor Vehicles Act, 1988 (hereinafter referred to as "the MV Act") and, hence, no civil suit, in such a case, ought to have been instituted claiming compensation.

4. Based on the pleadings of the parties concerned, the learned trial Court framed the following issues for determination in the suit:

A. Is the suit maintainable and has the plaintiff cause of action for the present suit?

B. Whether the vehicle No. AS 01 (C) 9147 involved in the accident and the truck was untraceable after the accident?

C. Is the plaintiff entitled to get compensation from the defendant if so, what is the quantum of compensation?

D. What other relief(s) the parties are entitled in this suit?

5. As all the issues were decided against the plaintiff, the suit of the plaintiff failed and the same was accordingly dismissed on 31-7-2001 and the impugned decree followed. Aggrieved by the dismissal of the suit, the plaintiff has preferred the present appeal.

6. While considering the present appeal, we notice that the learned trial Court has taken the view that since the accident had not taken place within its territorial jurisdiction, the suit was not maintainable. While considering this finding, reached by the learned trial Court, what may be noted is that u/s 19 of the Code of Civil Procedure, where a suit is for compensation for wrongs done to the person or to movable property, if the wrong was done within the local limits of the jurisdiction of one Court and the defendant resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of another Court, the suit may be instituted at the option of the plaintiff, in either of the said Courts.

7. From a careful reading of Section 19, what transpires is that when damages is done to a moveable property, such as a vehicle, within the local limits of jurisdiction of one Court and the defendant resides, or carries on business, or personally works for gain within the local limits of the jurisdiction of another Court, the suit, at the option of the plaintiff, may be instituted in either of the said Courts.

8. In the light of the provisions of Section 19 of the Code of Civil Procedure, it is clear that though it is clear that the accident had taken place, in the present

case, in the district of Cachar, which falls within the State of Assam, the fact remains that the insurer defendants, admittedly, carry on their business at Agartala too. Hence, in the facts of the present case, the suit, in question, could have been instituted either at the place where the wrong to the truck was done or at Agartala, where the defendant carries on business. The suit of the plaintiff was, therefore, maintainable within the local limits of the jurisdiction of West Tripura, Agartala.

9. Let us, now, turn to the question as to whether the MV Act bars suit for compensation of damage caused to the vehicle of the person, who claims compensation from his own insurer, when the damage to the vehicle of such a person has not been caused by use of another vehicle in a public place? While considering this question, it is important to note that a Tribunal is constituted, u/s 165 of the MV Act, for the purpose of adjudicating 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 damage to any property of a third party so arising, or both. A bare reading of the provisions contained in Sub-section (1) of Section 165 of the MV Act makes it clear that a tribunal, constituted u/s 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 1st party.

10. It, thus, becomes transparent that for the damage caused to a person's vehicle by use of his own vehicle cannot be adjudicated upon by a Tribunal constituted under the MV Act. The Tribunal, constituted u/s 165, can adjudicate upon only the claims of third party.

11. Coupled with the above, it is also worth noticing that Section 175 of the MV Act bars jurisdiction of the Civil Court in respect of only those claims, which can be adjudicated upon by the Tribunal constituted u/s 165. When a Tribunal, constituted u/s 165, is not legally entitled to adjudicate upon a claim for certain damage, Section 175 cannot bar institution of civil suits for such claims.

12. What logically follows from the above discussion is that in the case at hand, the plaintiffs vehicle had not been damaged or lost due to use of another vehicle in a public place. The damage to the vehicle, in question, in the present case, was not damage to the vehicle of a third party. A claim for compensation of such a case could not have been adjudicated upon by a Tribunal constituted u/s 165. As a natural corollary thereto, we have no hesitation in holding that the plaintiff was entitled, in the facts of the present case, to institute a civil suit.

13. In short, thus, the suit instituted by the plaintiff was maintainable in law.

14. When we turn to the question as to what reliefs, if any, the plaintiff was entitled to, we notice that the vehicle, in question, stood insured for a sum of Rs. 5,60,000/-. In the absence of any evidence adduced to the contrary by the insurer, it was clear that the plaintiff, as the insured, was entitled to receive the said assured amount of Rs. 5,60,000/-. The insurer, however, assessed the loss

to the tune of Rs. 3,74,234/-. This amount, it, now, transpires, has already been paid to the financier (i.e. the respondent No. 3), on 28-12-2001, (i.e. after passing of the impugned judgment and decree). The said amount cannot be paid, once again, to the plaintiff. Thus, out of the total amount of Rs. 5,60,000/-, the plaintiff is entitled to receive the balance amount of Rs. 1,85,766/-. As regards the plaintiffs claim that the insurer was liable to pay compensation for the onions, which the vehicle was carrying, we find that under the covenant of insurance, which the plaintiff had with the insurer, no such liability can be imposed on the insurer. In fact, we do not find that the insurer is liable to pay anything other than total loss of the vehicle, in question.

15. In the case at hand, we also notice that the insurer had no valid reason for not making payment of the assured sum of Rs. 5,60,000/-, particularly, when it is not the case of the insurer that the premium, in respect of the sum so assured, had not been paid by the plaintiff. In such circumstances, the insurer is liable to pay the said sum of Rs. 5,60,000/- with interest @ Rs. 12% per annum from the date of the said accident, i.e., on 30-7-1995, until realization of the entire amount, which has been found due to be paid to the plaintiff.

16. In the result and for the reason discussed above, this appeal partly succeeds. The impugned judgment and decree shall stand set aside and the defendant respondent Nos. 1 and 2 are hereby directed, to pay to the plaintiff appellant the said sum of Rs. 1,85,766/- with interest @12% per annum with effect from 30-7-1995 until realization of the entire decretal amount. We further direct that the insurer respondent shall pay to the plaintiff appellant a sum of Rs. 5,000/- as costs of the proceedings.

17. With the above observations and directions, this appeal is disposed of.

18. Send back the LCRs.