

(2016) 03 GAU CK 0082
In the Gauhati High Court
Case No : M.A.C. Appl. No. 201 of 2014

Mrs. Deba Lata Devi and another	Vs	APPELLANT
Kandru Orang and another		RESPONDENT

Date of Decision : 14-03-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2016) 162 AIC 742 : (2016) 2 AnWR 352 : (2016) 4 GauLJ 688 :
(2016) 4 GauLR 743 : (2016) 3 TAC 438 : (2016) 2 TNMAC 309

Hon'ble Judges : Suman Shyam, J.

Bench : Single Bench

Advocate : S.C. Biswas and Ms. S. Devi, Advocates, for the Appellant; N. Ahmed and A. Sharma, Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

Suman Shyam, J. (Oral) - Heard Mr. SC Biswas, learned counsel appearing for the appellants. Also heard Mr. N Ahmed, learned counsel appearing for Respondent Nos.1 and 2 and Mr. A Sharma, learned counsel appearing for Respondent No.3.

2. The present appeal has been preferred against the judgment and award dated 6.5.2014 passed by the learned Member, MACT, Kamrup, Guwahati, in connection with MAC Case No.82/2010 thereby awarding compensation for an amount of Rs.14,85,000/- in favour of the appellants/claimants along with the interest at the rate of 6% per annum from the date of filing the claim petition i.e. 12.1.2010 till payment. By the impugned judgment the learned Tribunal had however, directed the amount to be paid by the owner of the vehicle thereby relieving the Insurance Company from its liability on the ground that the offending vehicle did not have a valid road permit on the date on which the accident had taken place.

3. Mr. SC Biswas, learned counsel for the appellants submits that the instant appeal has been preferred on a limited point assailing the direction given by the

learned Tribunal for payment of the compensation amount by the owner of the vehicle instead of the Insurance Company. He submits that the claimants being the old parents of the deceased, are not in a position to recover the awarded amount from the owner of the vehicle.

4. By referring to a recent decision of the Hon''ble Supreme Court rendered in the case of S. Iyyapan v. M/s United India Insurance Company Ltd. and another reported in 2013 (3) TAC 392 (SC), Mr. Biswas submits that in the instant case it has not been conclusively proved that the offending vehicle did not have a valid road permit on the date on which the accident had occurred. However, even assuming that no valid road permit was available in respect of the offending vehicle on the relevant date, even in that case, in view of the law laid down by the Apex Court in the case of S. Iyyapan (supra), the insurer would be required to make payment to the claimants and thereafter, recover the said amount from the owner of the vehicle. He submits that the mere fact that the insurer cannot be made liable for payment of the compensation in such cases, cannot be a ground to compel the claimants to proceed against the owner of the vehicle for recovery of the amount when he had a valid insurance claim covering the third party liability in respect of the offending vehicle.

5. Mr. A Sharma, learned counsel appearing for the Respondent No.3 submits that Respondent No.3 would not have any difficulty in making payment of the amount of compensation awarded by the Tribunal subject to the owner furnishing sufficient security before the amount is paid by the Insurance Company. By referring to a decision of Hon''ble Supreme Court in the case of National Insurance Co. Ltd. v. Challa Upendra Rao and others reported in (2004) 8 SCC 517, Mr. Sharma submits that it has been held by the Hon''ble Apex Court that in cases where the insurer does not have any liability to pay compensation on account of violation of the terms and conditions of the insurance by the owner, liability does not shift to the Insurance Company but, the Insurance Company would satisfy the award subject to its right to recover the same from the owner. Mr. Sharma further submits that taking note of the decision of the Hon''ble Apex Court in the case of S. Iyyapan (supra), a Division Bench of this Court has also taken similar view in the case of New India Assurance Co. Ltd. v. Lalnunthara and another reported in (2005) 3 GLR 714. The learned counsel further prays that the Insurance Company be given the liberty to take all such protective measures as permissible in terms of the observations made by the Hon''ble Apex Court in the case of Challa Upendra Rao (supra).

6. Mr. Ahmed, learned counsel appearing for the owner of the vehicle submits that his client had made an application before the Road Transport Authorities seeking renewal of the road permit which was pending before the authorities at the relevant point of time. As such, the Insurance Company would be liable to pay the amount of compensation in the facts and circumstances of the present case.

7. I have considered the submissions made by the learned counsel appearing for

the parties and have also gone through the materials available on record. Since the Respondent No.2 i.e. owner has not preferred any appeal against the impugned judgment and award dated 6.5.2014, the argument made by Mr. Ahmed need not be considered by this Court at this stage. In view of the submissions made by the learned counsels appearing for the parties, the only question that falls for consideration of this Court in this case is as to whether in the facts and circumstances of the case, the Insurance Company can be directed to make payment of the compensation amount with liberty to recover the same from the owner of the vehicle.

8. In the case of *S. Iyyapan* (supra), the Apex Court by interpreting the provisions of Sections 146 and 147 of the Motor Vehicles Act, 1988 had categorically observed that in certain circumstances the insurer's right may be safeguarded but in any event the insurer has to pay compensation when a valid certificate of insurance is issued notwithstanding the fact that the insurer may proceed against the insured for recovery of the amount. Similar view have been expressed by the Apex Court in the case of *Challa Upendra Rao* (supra) wherein it was held that considering the beneficial object of the Act it would be appropriate for the Insurer to satisfy the award although in law it has no liability. In paragraph 13, the Hon'ble Apex Court has observed as follows:

"13. The residual question is what would be the appropriate direction. Considering the beneficial object of the Act, it would be proper for the insurer to satisfy the award, though in law it has no liability. In some cases the insurer has been given the option and liberty to recover the amount from the insured. For the purpose of recovering the amount paid 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 offending vehicle shall furnish security for the entire amount which the insurer will pay to the claimants. 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 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 i.e. the insured. In the instant case, considering the quantum involved, we leave it to the discretion of the insurer to decide whether it would take steps for recovery of the amount from the insured."

9. From the aforesaid authoritative pronouncement of the Apex Court what, therefore, follows is that even in cases where the insurer may not have any liability under the law, the award can be directed to be satisfied by the insurer with liberty to recover the amount from the insured. The aforesaid view has also

been adopted by this Court in the case of Lalnunthara and another (supra). In view of the above, I have no hesitation in holding that the learned Tribunal had erred in directing the amount to be paid by the owner of the vehicle by rejecting the prayer of the claimants for payment of compensation by the Insurance Company even though it has no liability under the law. Such being position, the impugned award dated 6.5.2014 is hereby modified and a direction is issued to the Insurer to make payment of the amount of compensation to the claimants/appellants within a period of 90 (ninety) days from today. Liberty is, however, given to the Insurance Company to take appropriate steps for obtaining security against the said amount, in terms of the observations made by the Apex Court in paragraph 13 in the case of Challa Upendra Rao (supra) as quoted above, by moving appropriate application before the Executing Court, if so advised, within the aforesaid period of time.

10. With the above observation and modification, this appeal stands disposed of.

11. Send back the lower court records.