
(2012) 09 GAU CK 0066
In the Gauhati High Court
Case No : MAC App. No.113 of 2006

Naher Namichand Prasad

APPELLANT

Vs

Kiran Mazumdar and Ors.

RESPONDENT

Date of Decision : 28-09-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 147(1)(b), 147(1)(b)

Citation : (2013) 1 GLR 186

Hon'ble Judges : S.Talapatra, J

Bench : Single Bench

Advocate : Mr. DP. Chaliha for the appellant. Mr. R. Goswami for the respondents., Advocates appearing for Parties

Judgement

1. This is an appeal under section 173 of the Motor Vehicles Act, 1988 by the owner against the judgment and award dated 28.4.2003 passed by the Motor Accident Claims Tribunal, Tinsukia in MACT Case No. 12 of 2001.
2. The findings as returned by the Tribunal as regards the accident that occurred on 20.4.2000 for rash and negligent driving of the vehicle bearing registration No.AS23/8858 (Mini Truck, 709), grievous injury as received by the claimant and the insurance coverage of the vehicle by the New India Assurance Company Ltd., the Opp. Party No.2 are not in dispute by either of the parties or in the appeal. As such, those findings stand affirmed and further appraisal thereof is dispensed with.
3. The solitary question that has been projected in the appeal is that despite the vehicle having been duly insured, whether the Tribunal was correct in shifting the liability of payment of the award on the appellant. Additionally, another question has also been raised as to the assessment of the monthly income by the Tribunal.
4. Mr. Chaliha, learned senior counsel for the appellant seriously criticized the findings of the Tribunal wherein it has been held that the insurer has no liability to satisfy the award. However, the factum of the case is not disputed. The PW1

has categorically stated that he suffered injuries and has become physically handicapped. He has filed the copy of the certificate issued by Dr. R.K. Boruah, MBBS, MS (Ortho), Associate Professor, Assam Medical College. As per the certificate the claimant has suffered 50% permanent disability from the said road traffic accident. The driver and the owner of the vehicle are held liable to pay the compensation. Learned counsel for the appellant made a reference to a decision of the Apex Court as rendered in *Oriental Insurance Co. Ltd. v. Vevireddy Kanda Reddy and Others*, AIR 2003 SCW 513, where it has been held that:

"The difference in the language of goods vehicle" as appearing in the old Act and "goods carriage" in the New Act is of significance. A hare reading of the provisions makes it clear that the legislative intent of new Acdt was to prohibit goods vehicle from carrying any passenger. This is clear from the expression "in addition to passengers" as contained in definition of goods vehicle" in the old Act. The position becomes further clear because the expression used in New Act is "goods carriage". Goods carriage is solely for the carriage of goods. Carrying of passengers in a goods carriage is not contemplated in the Act. There is no provision similar to clause (ii) proviso appended to section 95 of the old Act prescribing requirement of insurance policy. Even section 147 of the Act New Act Mandates compulsory coverage against death of or bodily injury to any passenger of "public service vehicle". The proviso makes it further clear that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in goods vehicle would be limited to liability under the Workmen's Compensation Act, 1923, there is no reference to any passenger in "goods carriage". The inevitable conclusion, therefore, is that provisions of the new Act do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods carriage and the insurer would have no liability therefor."

5. Mr. Chaliha, learned senior counsel for the appellant further submitted that there had been misreading of the evidence and if the evidence was properly read, it would emerge that the claimant was travelling with goods namely bags of sugar while the accident occurred. Therefore, the findings of the trial court are without any evidence and hence, liable to be interfered with.

6. On the other hand, Mr. Goswami, learned counsel for the Opp. Party No.2 supported the findings of the trial court holding that the Opp. Party No.1 was travelling by the offending vehicle as a gratuitous passenger, not as fare paid passenger. As such the insurance company has no liability to make good the damage as suffered by the Opp. Party No.1. Mr. Goswami, learned counsel further submitted that from the first information report it is evident that there was at least five passengers who were travelling by the said vehicle and there was no proof that the respondent No.1 was travelling with the bags of sugar as referred. In support of his contention, Mr. Goswami, learned counsel has relied the decision of the Apex Court as rendered in *National Insurance Co. Ltd. v. Rattani and Others*, 2009 ACJ 925 where it has been held that passengers in a

goods" vehicle is not liable to be covered by the insurance company under a policy as contracted. Mr. Goswami, learned counsel has also relied the decision of the Apex Court as rendered in Pramod Kumar Agrawal and another v. Mushtari Begum (Smt.) and Others, (2004) 8 SCC 667 where it has been held that fare paid passengers carried in a goods" vehicle when fell victim to a motor accident, the insurance company is not liable to indemnify the owner against such damages as emerged from the accident. Profitably Para10 of the said decision is reproduced hereunder :

"10. It is to be noted that in Ramesh Kumar v. National Insurance Co. Ltd. it was held that though the vehicle concerned was a goods vehicle yet the liability of the insurance company was not wiped out. The decision was subsequently reversed by a threeJudge Bench of this court in New India Assurance Co. Ltd. v. Asha Rani which was followed in Oriental Insurance Co. Ltd. v. Devireddy Konda Reddy. Recently in National Insurance Co. Ltd. v. Baljit Kaur the effect of the 1994 amendment visavis section 147 of the Act was considered. It was observed as follows: (SCC pp. 78, paras 17 and 1920).

"17. By reason of the 1994 amendment what was added is "including owner of the goods or his authorised representative carried in the vehicle". The liability of the owner of the vehicle to insure it compulsorily, thus, by reason of the aforementioned amendment included only the owner of the goods or his authorised representative carried in the vehicle besides the third parties. The intention of Parliament, therefore, could not have been that the words "any person" occurring in section 147 would cover all persons who were travelling in a goods carriage in any capacity whatsoever. If such was the intention, there was no necessity of Parliament to carry out an amendment inasmuch as the expression "any person" contained in subclause (i) of clause (b) of subsection (1) of section 147 would have included the owner of the goods or his authorised representative besides the passengers who are gratuitous or otherwise.

19. In Asha Rani it has been noticed that subclause (i) of clause (b) of subsection (1) of section 147 of the 1988 Act speaks of liability which may be incurred by the owner of a vehicle in respect of death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place. Furthermore, an owner of a passengercarrying vehicle must pay premium for covering the risks of the passengers travelling in the vehicle. The premium in view of the 1994 amendment would only cover a third party as also the owner of the goods or his authorised representative and not any passenger carried in a goods vehicle whether for hire or reward or otherwise.

20. It is, therefore, manifest that in spite of the amendment of 1994, the effect of the provision contained in section 147 with respect to persons other than the owner of the goods or his authorised representative remains the same. Although the owner of the goods or his authorised representative would now be covered by the policy of insurance in respect of a goods vehicle, it was not the intention

of the Legislature to provide for the liability of the insurer with respect to passengers, especially gratuitous passengers, who were neither contemplated at the time the contract of insurance was entered into, nor was any premium paid to the extent of the benefit of insurance to such category of people."

7. It is admitted position that the insurance company did not lead any evidence in the Tribunal either to show the goods carriage was carrying the gratuitous passengers or the fare paid passengers. But from the evidence as led by the claimant opposite party No.1 it appears that the claimant opposite party No.1 was travelling with sugar bags for his shop. Even in the written statement, the opposite party No.2 nowhere stated that the opposite party No.1 was travelling by the offending vehicle not as the owner of the goods but as a gratuitous passenger. The claimant deposed in the Tribunal that he was proceeding from Tinsukia towards Doomdooma by the offending vehicle with sugar bags for his shop and he was sitting near the driver's seat. Two other persons, namely, Kamal Talukdar and Bhupen Deka accompanied him, the driver of the vehicle drove the vehicle in excessive speed and when the vehicle reached at Hangabari it met with the accident. As a result, he suffered physical disability and he was also under treatment for three and half months. The opposite party No.1 categorically stated on denying the suggestion that he did not board the truck as a simple passenger as he was carrying goods. Even from the ejahar it is found that the vehicle was carrying bags of sugar at the time of accident.

8. In absence of the evidence in contrary thereto, it would be very difficult to sustain the findings as returned by the trial court and as such the finding of the trial court is set aside. The Apex Court decision as relied by Mr. Goswami, learned counsel for the opposite party No.2 are set up in a different fact situation where either the passenger was a fare paid passenger or a gratuitous passenger, not the owner of the goods. As such, those decisions are not relevant in the present context.

9. On consideration of the evidence and also on appreciating the submissions as made by the learned counsel appearing for the parties, this court is prompted to hold that the opposite party No. 1 was travelling as the owner of goods in the said offending vehicle and as such he is entitled to the entire compensation as passed by the Tribunal not 50% of the award as has been deducted as the contributory negligence for travelling by a goods" carriage. Since there is no other appeal against the findings, this court will not reassess the loss of earning as determined by the Tribunal to the extent of Rs.3,41,500 with interest @ 9% per annum from the date of filing of the claim petition till the payment is made. The opposite party No.2, namely, New India Assurance Company shall pay the entire awarded sum as stated with interest to the Opp. Party No.1 within a period of two months from today in the Tribunal below on deducting the sum if any has already been paid.

10. For the reasons as aforesaid, this appeal stands allowed to the extent as indicated above. However, there shall be no order as to cost.

The statutory deposit be returned to the appellant forthwith. Send down the LCRs forthwith.