
(2009) 09 GAU CK 0003

In the Gauhati High Court

Case No : MAC Appeal No. 03 (SH) of 2008 and Cross Appeal No. 1 (SH) of 2008

National Insurance Co. Ltd.

APPELLANT

Vs

Girija Gopala Krishnan and Another

RESPONDENT

Date of Decision : 16-09-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 118, 166, 170, 173
Road Regulations, 1989 — Regulation 2, 4, 5

Citation : (2009) 4 GLT 839

Hon'ble Judges : H. Baruah, J

Bench : Single Bench

Advocate : P.D.B. Baruah, for the Appellant; V.K. Jindal and S. Dey, for the Respondent

Judgement

H. Baruah, J.—The appeal and the cross appeal indicated above have arisen from the same judgment and award dated 25.3.2008 passed in MAC Case No. 85 of 2005 whereby and whereunder an amount of Rs. 1,51,603/- was awarded by the learned Member, MACT, Shillong to the claimant on account of injury sustained by him with interest at the rate of 8% per annum from the date of filing of the claim petition. M/s. National Insurance Co. Ltd., one of the opposite parties to the claim petition was directed to deposit the above sum before the tribunal with 8% interest from the date of filing of the claim petition till payment within one month of the order.

2. Opposite party, M/s. National Insurance Co. Ltd. being aggrieved by and dissatisfied with the judgment and award passed by the tribunal preferred the appeal as indicated above u/s 173 of the Motor Vehicles Act, 1988 (for short, the Act) challenging its legality and correctness while the cross appeal as indicated above has been filed for enhancement of the award as calculated by the learned tribunal. Since the appeal and the cross appeal have arisen from the same judgment and since both are circumscribed by same facts, this Court proposes to dispose of both the appeals by this common judgment.

3. The brief facts in a short campus can be described as under:

Maruti car bearing registration No. ML-05-C-3592 was owned by the husband of the claimant-Respondent No. 1 herein and on 24.2.2005 at about 7.30 am while she was driving the maruti car as aforesaid from Beltola side to Ahomgaon opposite Balaji temple met with an accident dashing against a truck bearing registration No. AS-01-R2197 coming from the opposite direction. As a result, the claimant-Respondent No. 1 sustained injury and vehicle got damaged. The truck was insured with the M/s. National Insurance Co. Ltd., the Appellant herein under Policy No. 200100/31/04/6/0315 valid up to 27.11.2005. A police case was registered. The claimant-Respondent on account of sustention of injuries on her person filed a claim petition u/s 166 of the Act claiming compensation to the tune of Rs. 11,68,743/ -. Usual notices were sent to the owner of the vehicle, the Respondent No. 2 and the Appellant. Respondent No. 2 in spite of receipt of the notice failed to contest the claim and as such an application u/s 170 of the Act was filed to take defence on all grounds available to the owner which was allowed by the tribunal. The Appellant, the insurer of the vehicle contested the claim by filing written statement. On the pleadings the tribunal framed as many as six issues for decisions. During inquiry The tribunal received evidence from both the sides and awarded the compensation to be paid by the Appellant as indicated above with interest from the date of the filing of the petition until realization.

4. In the matter of both the appeals Mrs. PDB Baruah, learned Counsel for the Appellant (in MAC Appeal No. 03(SH) of 2008) and Respondent (in Cross Appeal No. 1 (SH) of 2008) and Mr. V.K. Jindal, learned Sr. Counsel assisted by Mr. S. Dey, learned Counsel for the Respondents (in MAC Appeal No. 3(SH) of 2008) and Appellant (in Cross Appeal No. 1(SH) of 2008) were heard at length.

5. Mrs. PDB Baruah, learned Counsel for the Appellant, M/s. National Insurance Co. Ltd. assailed the judgment and award mainly on one ground that the learned tribunal failed to appreciate the evidence of CW-2, the claimant-Respondent No. 1 herein in its proper perspective and erroneously held that the driver of the truck was rash and negligent in driving the vehicle which resulted the accident as stated above resulting injury to the claimant -Respondent No. 1 while deciding the issue No. 4. It was argued by her that the learned Member, MACT ought not to have held the driver of the truck bearing Registration No. AS-01 -R-2197 responsible for the accident in view of the self contradictory evidence of the complainant-Respondent No. 1. While arguing as such, Mrs. Baruah led this Court through the evidence of the claimant-Respondent No. 1 which finds place in the lower Court records. She argued that the claimant-Respondent No. 1 blew hot and cold in the same breath which, however, cannot render her evidence reliable and acceptable. In view of the above submission, this Court is constrained to make a survey of the evidence of claimant-Respondent No. 1 appearing in examination-in-chief and cross-examination. From its perusal it is noticed that the claimant Respondent No. 1 in her examination-in-chief stated as

under :

I was on my right lane. It was light drizzling. Suddenly one Truck No. AS-01 - R-2197 coming from the same direction zoomed in a high speed and in a rash and negligent manner hit on the right side of my vehicle. I tried to save by taking my vehicle on the pavement but the truck came to hit my vehicle on the pavement. I and my vehicle was sandwich between the truck and the pavement.

While in her cross-examination she stated as under :

I was going from Beltola side to the airport side, the truck came from the left side, I tried to save the vehicle and in the process I hit the pavement on the left side and the back side of the truck hit the right side of my car.

So, from the above evidence it can be seen that while she was driving her vehicle (Maruti Car) she was on the right lane. Suddenly a truck being registration No. AS-01-R-2197 coming from the same direction zoomed in a high speed and in a rash and negligent manner hit on the right side of her vehicle. She tried to save by taking her vehicle on the pavement but the truck came and hit her vehicle on the pavement which sandwiched the vehicle driven by her. But she in her cross examination resorted to a different version and said that truck came from the side and when she tried to save the vehicle, it hit the pavement on the left side and the back side of the truck hit the right side of her car. Therefore, her evidence appears to be inconsistent in regard to the accident that allegedly caused by the truck.

6. Now, let us see the evidence of the claimant-Respondent No. 1 with reference to her description. In a two lane road when a vehicle is going by the right lane, another vehicle coming from same direction certainly cannot hit the right side of the vehicle coming by the right lane unless it overtakes. It ought to have hit either on the rear side of the vehicle coming by right lane or left side of it if the vehicle coming from the same side was trying to cross the same by the left lane over taking it. But in the cross examination she has projected differently, the manner of accident saying that the offending truck being Registration No. AS-01-R-2197 insured with the Appellant came from the left side towards the same direction and when she tried to save the vehicle it hit the pavement on the left side and the back side of the truck hit right side of the Maruti car.

7. Now, let us see how far the evidence of the claimant-Respondent No. 1 can be accepted in view of the report proved as Paper Mark I. The author of the report appears to be a traffic in-charge of Basistha Police Station and the same was prepared on 11.5.2005. This report is in reference to Basistha P.S. Traffic Branch vide G.D. Entry No. 673 of 2005 dated 26.4.2005. In the report it is indicated that one stone loaded truck bearing registration No. AS-01-R-2197 which was proceeding from the opposite direction knocked down a Maruti car bearing Registration No. ML-05-C-3592. As a result the Maruti car got badly damaged and the driver of the said Maruti car Smt. Girija Gopalakrishnan, the claimant-Respondent No. 1 herein sustained grievous injury on her person. So, from this

report Paper Mark-I it has become apparent that the accident took place due to head on collision between the truck and the Maruti car. This report, therefore, gives a complete go by of the evidence of the claimant-Respondent No. 1 who claimed that the offending truck was coming from the same direction.

8. Accident was, however, not denied but there appears stiff resistance in regard to the fault liability of the respective vehicle. Mrs. PDB Baruah, while arguing the case also brought to the knowledge of this Court that before the tribunal when the Appellant filed an application for impleadment of the insurance company of the Maruti car, the tribunal was pleased to reject the same on the ground that the apprehension of Opposite party, National Insurance Co. Ltd., now, Appellant is not well founded under the facts and circumstances of the case. It was argued further by Mrs. PDB Baruah that in view of the evidence of the claimant appearing in the face of the record both in examination-in-chief and cross-examination and the report submitted by the traffic incharge, Basistha Police station dated 11.5.2005, the learned tribunal committed grave error and illegality saddling the liability on the shoulder of the M/s. National Insurance Co. Ltd., the Appellant herein. From the evidence and the report of the traffic branch as indicated above, according to Mrs. PDB Baruah, learned Counsel for the Appellant it was not wise on the part of the tribunal to put the entire responsibility of rash and negligent driving on the driver of the offending truck bearing registration No. AS-01-R-2197. In the fact situation as appeared in the face of the record according to Mrs. PDB Baruah it would be a hard nut to crack which of the vehicles was at fault. If the report of the traffic branch dated 11.5.2005 is to be accepted then and then evidence of the claimant herself would suffer a serious jolt in the context of the accident that allegedly occurred in the manner as described by her. According to Mrs. PDB Baruah, it would not be safe for ends of justice to saddle the Appellant with liability alone. According to her it manifestly requires interference from this Court in view of contradictory evidence and the facts appearing in the face of the record.

9. Mr. V.K. Jindal, learned Sr. Counsel assisted by Mr. S. Dey, learned Counsel for the claimant-Respondent No. 1 supported the judgment and award rendered by the learned tribunal. It was argued by Mr. Jindal, learned Sr. counsel that though there appears some self contradiction in the evidence of claimant herself, the negligence on the part of the driver of the offending truck cannot be brushed aside and such accident and damage are possible when two vehicles are coming from same direction. This argument cannot get any assistance from the other angles more particularly, Paper Mark-I, the report of the traffic in charge, Basistha Police station dated 11.5.2005. The exhibit as indicated above formed a part of the record and the learned tribunal while rendering the judgment and award also had taken into consideration of the same. When two opposite version in respect of a single accident are forthcoming from the face of the records it would perhaps not be safe to allow the judgment and award at rest holding that the driver of the offending truck was alone rash and negligent. The Rules incorporated in the Rules of The Road Regulations, 1989 were enacted by the

Central Government in exercise of the power conferred by Section 118 of the Act, 1988 to regulate the driving of the motor vehicles which came into force on the 1st day of July 1989. The driver while plying a vehicle on the road is to observe the regulations framed thereunder. Rule 2 speaks that the driver of a motor vehicle shall drive the vehicle as close to the left hand side of the road as may be expedient and shall allow all traffic which is proceeding in the opposite direction to pass on his right hand side. Regulations 4 of the Regulations, 1989 also speaks as under:

4. Passing to the right. -- Except as provided in regulation 5, the driver of a motor vehicle shall pass to the right of all traffic proceeding in the same direction as himself.

Except as provided in Regulation 5, the driver of a motor vehicle shall pass to the right of all traffic proceeding in the same direction as himself. Therefore, per regulations 2 and 4 all vehicles coming either from the opposite or from the same direction ought to be allowed to be passed to the right side keeping his or their vehicle on the left side of the road. If these regulations are taken into consideration, the claimant herself also seemed to have violated the regulations of the Rules of the Road Regulations, 1989 by driving her own vehicle by the right lane of the road. Apparently neither of the vehicles followed the regulation of the Rules of the Regulations, 1989.

10. This Court, therefore, in view of the conflicting facts and evidence on record does not like to enter into the merit of the judgment and award in detail. In the face of the conflicting facts and evidence on record, this Court sees good ground to remand the matter again to the tribunal to make a complete survey of the fault liability of the vehicles and render a judgment and award afresh. Accordingly, the matter is remanded back to tribunal for fresh inquiry, while doing so, the learned tribunal shall afford opportunity to the parties to implead necessary party for the just decision of the claim and adduce evidence both oral and documentary, if so advised. The impugned judgment and award are accordingly set aside and quashed.

11. In view of the setting aside and quashment of the judgment and award, the cross appeal filed by the claimant-Respondent No. 1 turns infructuous. It is accordingly dismissed as infructuous.

12. This exercise shall be completed by the tribunal within a period of three months from the date of the receipt of the LCRs from this Registry. Registry shall transmit the LCRs forthwith.

13. The appeal and the cross appeal are accordingly disposed of. Parties are to bear their own cost.