(2025) 10 GAU CK 1131

In the Gauhati High Court

Case No : MACApp. 4 Of 2016

National Insurance Company Limited — APPELLANT

Vs

Dilip Das And Anr — RESPONDENT

Date of Decision : 14-10-2025

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2025) 10 GAU CK 1131

Hon'ble Judges : Robin Phukan, J

Bench : Single Bench

Advocate : A Sharma, B J Mukherjee, S S Sharma, L Sharma, S Sarmahr, A T Sarkar, A Deb, S Ali, J P Chauhan, A Sarma

Final Decision : Disposed Of

Judgement

Robin Phukan, J

1. Heard Mr. H. Buragohain, learned counsel for the appellant and Mr. A. T. Sarkar, learned counsel for the respondent No. 1.

2. In this appeal, under Section 173 of the Motor Vehicles Act, 1988, the appellant, namely, National Insurance Company Limited has challenged the Judgment and Award, dated 20.07.2015, passed by the learned Additional District Judge No. 2, Kamrup (M), Guwahati, in MAC Case No. 2209 of 2013.

3. It is to be noted here that vide the impugned Judgment and Award, dated 20.07.2015; the learned Tribunal has directed the appellant herein to pay a sum of Rs. 1,65,300/- to the respondent No. 1, together with interest @ 6% per annum; from the date of filing of the claim petition till realization.

4. The background facts, leading to filing of the present appeal, are briefly stated as under -

"On 30.09.2013, the respondent No. 1/claimant, namely, Sri Dilip Das, was proceeding towards Maligaon Chariali from Kamakhya Gate, by driving a scooter.

When he reached Maligaon Gate No. 3, near the Police Point, one motor cycle, which was driven in a very rash and negligent manner; dashed against his scooter from behind. The said motor cycle was carrying one LPG cylinder. As a result of the dash, the claimant fell down and sustained grievous head injury and other injuries, including fracture of left hand. Immediately, after the incident, he was taken to Sanjeevani Hospital with the help of Traffic Police, where surgical operation was done on the fracture of his hand and after being discharged from the hospital, he was advised to take bed rest, but he did not fully recover and was undergoing treatment. However, the claimant was working as a motor cycle mechanic in his own workshop and due to the injuries sustained by him; he could not attend his duty. Thereafter, the claimant had filed one claim petition, under Section 166 of the Motor Vehicles Act, upon which, MAC Case No. 2209/2013, has been registered and the respondent No. 2 herein, Sri Abani Sarma, in spite of receipt of notice, failed to turn up; however, the insurer, the National Insurance Company Limited entered appearance and filed a written objection, upon which, the learned Tribunal has framed the following issues –

(i) Whether the claimant, Dilip Das sustained injuries in the alleged road accident, dated 30.09.2013, involving the vehicle No. AS-01-AV-3859 (motor cycle) and whether the said accident took place due to rash and negligent driving of the driver of the offending vehicle?

(ii) Whether the claimant is entitled to receive any compensation and if yes, to what extent and by whom, amongst the opposite parties, the said compensation amount will be payable?

Thereafter, considering the evidence, adduced by the parties and hearing their arguments, the learned Tribunal had decided both the issues in favour of the claimant and thereafter, determined the compensation amount @ Rs. 1,65,300/- and directed the appellant herein to pay the amount with 6% interest per annum, from the date of filing of the claim petition till payment."

5. Being highly aggrieved, the appellant herein had preferred the present appeal, on the following grounds –

(i) That, when the accident took place, the insurance policy had already expired and Exhibit-'A' is the copy of the said expired policy, which was duly proved by DW-1.

(ii) That, the learned Member was not justified to ignore the said policy, i.e., Exhibit-'A', on the ground that the policy and the Cover Note contained two numbers.

(iii) That, the reason assigned to disregard Exhibit-'A' is not proper, just, logical or rational and as such, the impugned award, based upon such conclusion, is not sustainable in law and is liable to be set aside.

(iv) That, the learned Member ought to have held that on the basis of Exhibit-'A', at the time of the accident, there was no subsisting policy cover and that it had expired long back and hence, the award could not have been passed against the appellant, as insurer of offending vehicle.

(v) That, the award ought to have been passed against the owner of the offending vehicle, since he drove the same without any legal, valid and subsisting insurance policy; and that the quantum of the award is high, disproportionate and not tenable in law; and under such circumstances, it is contended by the appellant to allow this appeal, by setting aside the impugned Judgment and Award, dated 20.07.2015.

6. Mr. Buragohain, learned counsel for the appellant, referring to the evidence of DW-1 and the Exhibit-A, submits that the accident took place on 30.09.2013, whereas Exhibit-A, i.e., the insurance policy, was valid from 20.06.2012, to midnight of 19.06.2013, and as such, on the date of the accident, the policy was not in force and the same has duly been proved by DW-1, who was examined by the appellant herein; and as such, fastening the liability upon the appellant herein by the learned Tribunal is unsustainable and is liable to be interfered with.

6.1 Mr. Buragohain further submits that the learned Tribunal, in the impugned Judgment and Award, had held that the DW-1 has exhibited the policy as Exhibit-A, which shows that the certificate number given in the policy is the same as policy number in the Accident Information Report, exhibited by the claimant and in cross-examination, he had admitted that the cover note and policy number of the Insurance Policy are different numbers and in view of this admission, it is possible to accept the Exhibit-'A' in respect of policy number, mentioned in the Accident Information Report and as such, the finding recorded by the learned Tribunal that the plea of insurer that the policy of insurance was not valid on the date of the accident is illegal and unsustainable and thereafter, fastening the liability upon the appellant herein; and the reasons assigned by the learned Tribunal, according to Mr. Buragohain; is illegal and arbitrary and the same is liable to be interfered with and accordingly, it is contended by Mr. Buragohain to allow this appeal.

7. Per contra, Mr. A. T. Sarkar, learned counsel for the respondent No. 1, supported the impugned Judgment and Award. However, Mr. Sarkar submits that if the insurer cannot be made liable to make payment of the awarded amount, then the same has to be paid by the owner of the motor cycle, i.e., the respondent No. 2 herein and under such circumstances, Mr. Sarkar has contended to dismiss the appeal.

8. Having heard the submissions of the learned counsel for both the parties, I have carefully gone through the memo of appeal and the grounds mentioned therein, and also perused the impugned Judgment and Award, dated 20.07.2015.

9. The basic facts here in this appeal are not in dispute. The claimant had sustained injuries in the accident involving the Motor Cycle, bearing registration No. AS-01-AV-3859 and he incurred expenditure during treatment and upon the evidence adduced the learned Tribunal had assessed the quantum of

compensation at Rs. 1,65,300/-. Further, the award and its quantum have not been challenged by the appellant herein. What is being challenged in this appeal is fastening of the liability of payment of the awarded amount upon the appellant herein, as on the relevant date of accident, there was no valid policy in force of the offending motorcycle, bearing registration No. AS-01-AV-3859.

10. I have carefully gone through the evidence of DW-1 and the Exhibit-A and I find sufficient force in the submission of Mr. Buragohain, learned counsel for the appellant.

11. A careful perusal of the policy, bearing No. 35100731126200705817, indicates that the same was in force, w.e.f. 20.06.2012 till midnight of 19.06.2013. And it appears from the Accident Information Report (Exhibit-1), the claim petition and also from the evidence of the claimant, that the accident took place on 30.09.2013, at about 4:45 PM, at Kamakhya Gate. That being so, on the date of accident the said policy was not in force.

12. However, the learned Tribunal had fastened the liability upon the appellant herein, only on the ground that in cross-examination, the DW-1 admitted that the Cover Note and Policy Number of an Insurance Policy are different and on such admission, the learned Tribunal disbelieved the Exhibit-'A' and fastened the liability upon the appellant herein. However, eschewed consideration of what the learned Tribunal is that the documentary evidence will always prevail over the oral evidence. While the documentary evidence, i.e., the policy, Exhibit-'A', clearly indicates that the policy stands expired on midnight of 19.06.2013, the accident took place on 30.09.2013 and on that day, there was no valid policy in force. Mere admission in cross-examination by the DW1 that Cover Note and Policy Number is different does not change the position that on the date of accident the policy was not in force.

13. There is no statement, averment or any evidence adduced by the owner of the motorcycle, being respondent No. 2 herein; that after the policy being expired on 19.06.2013, the same was demonstrate renewed. In absence of such evidence and contention, and also on the face of the insurance policy, being Exhibit-'A'; fastening of liability upon the appellant herein, by the learned Tribunal is erroneous and unsustainable in law. And under such circumstances, the Judgment and Award, directing the appellant to make payment of the awarded amount is unjustified and is liable to be interfered with and accordingly, the same stands interfered with.

14. There is no dispute that the respondent No. 2 herein, Sri Abani Sarma, is the owner of the motorcycle, bearing registration No. AS-01-AV-3859 and since, he plied the motor cycle without there being any valid insurance policy, the liability of payment of the awarded sum has to be fastened upon him.

15. But, it appears that the respondent No. 2, Sri Abani Sarma had not contested the claim petition before the learned Tribunal, in spite of receipt of notice. He also did not contest this present appeal, though one Vakalatnama has been filed

by him on 08.08.2016, engaging one Suranjana Sarmah as his advocate.

16. Under the given facts and circumstances, this appeal stands allowed. The Judgment and Award, directing the appellant herein to make payment of the awarded sum, stands set aside and quashed. However, the liability is now fastened upon the respondent No. 2 herein, Sri Abani Sarma, who is the owner of the offending motorcycle, bearing registration No. AS-01-AV-3859, on the relevant date of accident.

17. The respondent No. 2, Sri Abani Sarma, is accordingly directed to make payment of the awarded amount before the learned Tribunal, within a period of 1 month from the date of receipt of certified copy of this order. The respondent No. 1 is however granted liberty to proceed against the respondent No. 2, to recover the awarded amount from him.

18. In terms of the above, this appeal stands disposed of.

