

(2008) 08 GAU CK 0054

In the Gauhati High Court

Case No : Civil Revision No. 11 (K) of 2007 and MAC Appeal No. 21 (K) of 2001

National Insurance Company Ltd.

APPELLANT

Vs

Ltpoktemjen and Others

RESPONDENT

Date of Decision : 04-08-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 227
Motor Vehicles Act, 1988 — Section 149(2), 170

Citation : (2010) 1 GLR 343 : (2008) GLT 480 Supp

Hon'ble Judges : P.K. Musahary, J

Bench : Single Bench

Advocate : B.N. Sarmah, for the Appellant; M.Y. Themjen, for the Respondent

Final Decision : Allowed

Judgement

P.K. Musahary, J.—Heard Mr. B.N. Sarmah, Learned Counsel for the petitioner, and Mr. N.Y. Themjen, Learned Counsel for the respondents.

2. This Civil Revision petition has been filed under Article 227 of the Constitution of India for issuance of appropriate writ of Mandamus/ Certiorari or any other appropriate writ of similar nature for quashing the impugned order dated 4.5.2006 passed by learned Member, Motor Accident Claims Tribunal-II, Dimapur, Nagaland, in MAC Case No. 105/04 rejecting the prayer of the petitioner insurer u/s 170 of the Motor Vehicles Act (hereinafter referred as the Act for short) to contest the claim on all grounds.

3. Little advertence to the short facts of the case is indispensable for disposal of this petition. On 1.1.2004 at about 11.30 A.M., a Motor cycle bearing registration No. AS-3-7143 proceeding towards Anaki village from Tuli was hit by a Truck bearing Registration No. NL-02-D-5055 coming from the opposite direction in the Tuli-Anaki road under Rs. Tuli, Mokokchung District, Nagaland. In the said accident, the pillion rider of the ill-fated Motor cycle, Shri Lipoktemjen sustained serious injury leading to amputation of his right leg. Hence, he alongwith his wife

Smt. Ayangla claimed compensation amounting to Rs. 14,24,260 from the defendants by filing MAC case No. 105 of 2004. In the MAC case the driver Shri Okendra Singh and owner Shri Imti Longkumer of the offending truck were joined as defendant Nos. 1 and 2 respectively. The National Insurance Company Ltd., is the Insurer of the said truck and therefore, its Development Officer, Sibsagar and the Branch Manager, Dimapur, were joined as respondent Nos. 3 and 4 respectively. The rider/driver namely Shri N. Meri Longkumer and the owner Md. Rofiquil Hussain of the Motor cycle were joined as pro forma defendant Nos. 5 and 6 respectively.

4. The Insurer of the offending Motor vehicle was not impleaded as a party in the MAC proceedings. The defendant Nos. 1 and 2 (driver and the owner of the truck) filed a joint written statement admitting inter alia the allegation of rash and negligent driving by the driver of the truck and also shifted the entire liability of compensation to the defendant Insurance Company. The pro forma defendant No. 6 sent written statement through registered post stating inter alia that the claimant purchased the Motor cycle from him prior to the accident and signed the Form No. 29 and 30 for effecting transfer of ownership of the said Motor cycle and therefore, he is not liable to pay compensation. The pro forma defendant No. 5 rider of the ill-fated Motor cycle did not file written statement nor made any appearance. The defendant Nos. 3 and 4 Insurance Company filed written statement denying the liability for compensation since the accident took place due to rash and negligent driving of the offending Motor vehicle.

5. The defendant Insurance Company filed an application u/s 170 of the Act on 21.4.2006 which was registered as Civil Misc. Case No. 3 of 2006 for allowing it to contest the claim on all counts because the defendant Nos. 1 and 2, driver and owner of the offending truck tiled joint written statement in collusion with the claimants. The said petition was rejected by the learned tribunal vide order dated 4.5.2006. Against this order of the learned Tribunal, the Insurance Company has filed the present petition before this Court to quash the impugned order dated 4.5.2006 by invoking power under Article 227 of the Constitution of India.

6. At certain stage, before adducing evidence, the Insurance Company made a prayer before the learned Tribunal to implead the rider and owner of the Motor cycle as defendant and not as pro forma defendant. This prayer was turned down by the learned Tribunal vide an order dated 26.4.2005 (Annexure D) based on police report which revealed that the accident in question was the result of rash and negligent driver of the truck. In the mean time, claimant was examined and cross-examined on 28.6.2005 as PW1 while the owner of the truck was cross-examined by the Insurer on 9.2.2006. Thereafter, the learned Tribunal passed the impugned judgment and order on 28.6.2006 awarding Rs. 8,30,055 against the insurer with a direction to indemnify the vehicle owner by depositing the said awarded amount with the Tribunal within thirty days from the date of judgment and order and on default to pay the awarded amount within the stipulated period to add 9% interest per annum over the awarded amount from the date of filing

of the claim i.e., 20.9.2004.

7. Being aggrieved by and dis-satisfied with the aforesaid order, the present petitioner has also preferred an appeal being MAC Appeal No. 21(K)2001 which is taken up for hearing with the present Revision petition.

8. I propose to deal with the Civil Revision petition first because it involves the core question as to whether the learned Tribunal applied its judicial mind while considering the application u/s 170 of Act and rejection of the said application by the impugned order dated 4.5.2006 is tenable in law. It may be appropriate to quote the provision u/s 170 of the Act below:

170. Impleading insurer in certain cases. - Where in the course of any inquiry, the Claims Tribunal is satisfied that -

(a) there is collusion between the person making the claim and the person against whom the claim is made, or

(b) the person against whom the claim is made has failed to contest the claim. It may, for reasons to be recorded in writing, direct that the insurer who may be liable in respect of such claim, shall be impleaded as a party to the proceeding and the insurer so impleaded shall thereupon have, without prejudice to the provisions contained in Sub-section (2) of Section 149, the right to contest the claim on all or any of the grounds that are available to the person against whom the claim has been made.

9. It is an admitted fact that the petitioner Insurance Company filed an application u/s 170 of the Act alleging inter alia that the claim petition was filed by the claimants in collusion with the defendant Nos. 1 and 2, driver and owner of the offending truck who admitted in their written statement rash and negligent driving and shifted the entire liability on the applicant Insurer. The statements made in paragraphs 2 and 3 in the application u/s 170 contain the said allegations which may be quoted hereunder:

2. That the owner of the alleged offending vehicle examined himself as DW1 and in his examination-in-chief as well as in the cross-examination of the insurer categorically admitted the allegation of rash and negligent driving of his vehicle and thereby admitted the entire liability on his shoulder against the claimant and as such for the ground alone the claimant in collusion with the DW1 purposely and deliberately remained abstained from taking part in the cross-examination.

3. That as apparent from the statement made in para 9 of the claim petition and the annexures A1 and A2 annexed thereto it is appeared that the alleged accident dated 12.1.2004 was only reported to the police on 21.3.2004 by the father of the claimant on the basis of which the police allegedly registered the case as P.S.G.D.E. No. 62 dated 12.1.2004 which is appeared to be doubtful.

When such allegations and collusion are made it is incumbent upon the Tribunal to enquire and satisfy itself whether the allegations of collusion between the

claimant and the defendants, owner and driver of the offending vehicle are correct. Such enquiry should be made by the Tribunal if it appears to it that there exists collusion; no matter whether any application is made or not by any party to that effect and in the course of enquiry if it is satisfied that there exists collusion between the person making the claim and the person against whom the claim is made or the person against whom the claim is made has failed to contest the claim, it should record reasons in writing for reaching this conclusion before the Insurance Company is allowed the right to contest the claim on all or any of the grounds available to the person against whom the claim is being made. Going through the impugned order dated 4.5.2006, it does not appear that the learned Tribunal ever made an enquiry, even in summary manner, into the allegations of collusion. The impugned order is rather cryptic disclosing no reason for rejection of the application u/s 170, which is quoted here under:

4.5.2006

ORDER

The vehicle owner is absent.

Claimant present through counsel.

The Insurer filed an application u/s 170 of the MV Act, praying for permission to contest the case as there is collision between the claimant and the vehicle owner.

I have heard the Counsel of the Insurer and perused the petition and I also do not find sufficient grounds to substantiate the charge of collision and therefore petition is not grant.

Fixing: 24.5.2006, for filing W/Argument by Insurer and the vehicle owner as claimant have already filed his W/Argument.

Furnish copy.

10. From records it is verified and found that although the accident took place on 12.1.2004, the matter was reported by the father of the claimant to the police on 21.3.2004 only vide exhibit P.2 and a police report in the form of certificate was issued by the O.C., Tuli Police Station vide exhibit P1.

11. This is also an admitted position that the Insurer of the offending Motor cycle was not made a party; not even a pro forma defendant. The learned Tribunal relied wholly upon the said police report namely exhibit P1 issued in the form of a certificate, which is not at all a reliable document. It is not ascertained by the Tribunal as to whether the O.C. who issued the said certificate (Police report) was himself the investigating officer. The claimant did not cite the said O.C. as witness and he was not examined. It is quite evident that the learned Tribunal did not pay its attention to this aspect although the same were brought to its notice by the petitioner Insurance Company, not to speak of making any enquiry into the alleged collusion as mandated u/s 170 of the Act. I have no hesitation to come to the conclusion that the impugned order dated 4.5.2006 was passed by

the learned Tribunal mechanically without applying its judicial mind which is liable to be quashed. In my considered opinion, there are sufficient materials on record substantiating the allegations of collusion and the petitioner succeeded in making good grounds for allowing his application u/s 170 of the Act.

12. This Court in the case of National Insurance Company Ltd. v. Sukla Debnath 2004(1) GLT 497 held that Section 170 is a tailor made provision to remedy situations embracing eventualities beyond the scope of the permissible ground of defence u/s 149(2) of the Act. The eventualities like collusion of claimant and the parties against whom the claim is made, is more prevalent in the modern days and the Insurer has been provided with sufficient protection in such eventualities u/s 170. The rejection of a petition u/s 170 without making any appropriate enquiry and recording reasons by the Tribunal tantamount to denial of most valuable right to the Insurer. Implication of rejection of petition u/s 170 is fatal to the Insurer inasmuch as it would deprive the Insurer of its right to appeal on grounds outside the ambit of Section 149(2) of the Act. In other words, it can be said that the Insurer would be precluded from taking larger defence on merit against the award made by the Tribunal and would be confined to defence available u/s 149(2) only. In my considered view, by rejecting the application u/s 170, the Tribunal has deprived the petitioner Insurance Company of its right to take larger defence in appeal, which as occasioned mis-use of due process of law and failure of justice requiring interference by this Court in exercise of its jurisdiction under Article 227 of the Constitution of India and read with Section 115 of the CPC.

13. The other important aspect of the matter is that by an order dated 26.4.2005, the learned Tribunal rejected the prayer of the present petitioner for impleading the owner and driver of the offending Motor cycle as defendants instead of pro forma defendants because the Insurer of the said Motor cycle was not joined as a party by the claimant. There is a reason to presume that the Insurer of the offending Motor cycle was not made a party to the MACT proceedings as a part of alleged collusion. This was one of the reasons for filing a petition u/s 170 by the petitioner. The Apex Court had an occasion to deal with somewhat similar matter in the case of Shankarayya and Another Vs. United India Insurance Co. Ltd. and Another, holding inter alia that unless that procedure is followed, the Insurance Company cannot have a wider defence on merits than what is available to it by way of statutory defence.

14. A Division Bench of this Court in the case of National Insurance Company Ltd. v. Alila @ Nungsanglila Ao 2005(3) GLT 641, held that the Tribunal in whom power has been vested by Section 170 of the Act, has a sacrosanct duty to exercise the power conferred after a full scrutiny to satisfy itself as regards to the existence of the conditions precedent contemplated by Section 170 of the Act. It is also held that u/s 170 of the Act, power has been vested in claims tribunal to allow the Insurer to contest a claim on all or any of the grounds that are available to a person against whom the claim has been made in the event of

either of the two contingencies as contemplated u/s 170 of the Act. In the aforesaid case, this Court further held that the rejection of petition u/s 170 on the ground that the owner/driver of the vehicle in the accident filed written statement without taking further part in the proceeding was improper and set aside the award directing the Tribunal to re-adjudicate the claim of the petitioner by permitting the Insurer to contest the claim on merit.

15. In my considered view, the Division Bench of this Court has already settled the law in this regard in the aforesaid case and the decision render thereunder squarely covers the present case.

16. In view of the discussion and consideration made above and also in view of the above position of law, it is held that the impugned order dated 4.5.2006 passed by the learned Tribunal rejecting the petitioner application u/s 170 of the Act is illegal and not tenable under law and the same is liable to be set aside and accordingly the same is set aside. Consequently, the award given by the Tribunal vide impugned judgment and order dated 28.6.2006 in MAC Case No. 105 of 2004 is also set aside. The learned Tribunal is directed to re-adjudicate the entire claim matter by permitting the Insurer present petitioner to contest the claim on all grounds on merit.

17. This Civil Revision Petition stands allowed.

18. In view of the above order the connected MAC Appeal No. 21(K) 2006 also stands allowed.