(2018) 09 GAU CK 0009

In the Gauhati High Court

Case No : Mac Appeal No. 231 Of 2014

National Insurance Company. Ltd. APPELLANT

Vs

Smti. Asima Gogoi RESPONDENT

Date of Decision : 06-09-2018

Acts Referred:
Motor Vehicles Act, 1988 — Section 147, 163A

Citation : (2018) 09 GAU CK 0009

Hon'ble Judges : Rumi Kumari Phukan, J

Bench : Single Bench

Advocate : R Goswami, A R Sikdar

Final Decision : Allowed

Judgement

MOTOR STAND FOREIGN LIQUOR SHOP NO.1 AND ANR.

1. Heard learned counsel for the appellant Mr. R Goswami. Also heard Mr. A R Sikdar, learned counsel for the respondents/claimants

2. The appeal is directed against the judgment and order dated 1.04.2014 passed by the Learned Member Motor Accident Claims Tribunal, Kamrup

No. 2, in MAC Case No. 1207/2012.

3. Brief case of the claimant Ashima Gogoi (respondent No. 1 herein) is the mother of deceased Avoni Gogoi also the mother of respondent No. 2.

On 27-10-2011 at about 11 AM when said Avoin Gogoi was driving a motorcycle No. AS-06-J-3699 proceeding towards Namrup from his house,

then the vehicle met an accident on the road as a result of which he sustained grievous injuries on his person and although he was taken to hospital for

treatment but he succumbed to his injuries as on 31.10.2011. The mother of the deceased Ashima Gogoi and brother of the deceased Montu Gogoi preferred the claim petition u/s 163A MV Act praying for compensation for the death of Avoni Gogoi in the Road Traffic Accident.

4. On the basis of the aforesaid claim petition, MAC Case No. 1207/2012 was registered and notice was issued to the owner, driver and insurer of the

vehicle. The owner of the vehicle is the another son of the claimant and in his written statement he has admitted that his aforesaid vehicle belongs to

him and said was driven by his brother Avoni Gogoi on the fateful day. It is contended that the vehicle was insured with the National Insurance

Company so the Insurance Company is liable to pay the compensation. On the other hand, the Insurance Company raised the usual contention that

they are not liable to pay any such compensation as the liability of the insurance is subject to compliance of the policy conditions and valid documents

relating to the vehicle etc.

5. Upon the pleadings, the learned tribunal framed necessary issues and after examining the witnesses come to a decision that the deceased Avoni

Gogoi died out of the injury sustained in the accident and by taking note of the age and income etc. concluded that the payment is entitled to a

compensation of Rs. 3,41,000/- with 6 per cent interest from the date of filing of the petition till realization.

6. Challenging the aforesaid award, the present appeal has been preferred basically on the ground that the aforesaid award is bad in law inasmuch as

the insurer is not liable to indemnify the owner/insured of the vehicle as in the present case deceased was driving the vehicle of the owner who is his

own brother and the deceased was not a third party at the time of occurrence and as such there is no liability on the part of the Insurance Company

u/s 147 of the MV Act. It is contended that the findings of the tribunal is contrary to the provisions of law relating to compensation from Motor

Accident Victims.

7. The learned counsel for the appellant/National Insurance Company Ltd. Mr. Goswami has placed reliance on the judgment of the Honâ??ble

Apex Court (2009) 2 SCC 417 New India Insurance Company Vs. Sadand Mukhi & Ors., (2009) 13 SCC 710 Ningamma and another Vs. United

India Insurance Company followed by 2015 (2) TLR 450 National Insurance Company Vs. Shivani Das, 2015 (1) TLR 459 Suchitra Choudhury

(Dey), & Ors. Vs. Naresh Debbarma & Ors. and (2016) 3 GLR 537 Oriental

Insurance Company Vs. Anjana Sharma & Ors.

8. I have heard the submission of learned counsel for both the parties and gone to the impugned award and the LCR.

9. In the instant case, it is an admitted position that the deceased took the vehicle of his own brother for a driving and on the way he met with an

accident of his own and there is no involvement of other vehicle. In the backdrop, it can be said that the deceased borrowed the vehicle from the

owner and admittedly he is not a driver or employee under the owner. The vehicle was insured with the Insurance Company. The mother of the

deceased preferred the claim petition by arraying her son/owner of the vehicle as party respondent No. 2 In the light of the aforesaid submissions, the

question that falls for consideration is whether the legal representatives of a person, who was driving a motor vehicle, after borrowing it from the real

owner meets with an accident without involving any other vehicle, would be entitled to compensation under section 163-A of MVA or under any other

provision(s) of law and also whether the insurer who issued the insurance policy would by bound to indemnify the deceased or his legal representative

?

In the context, it would be useful to discuss the relevant provision of Section 163-A â?

â??163-A. Special provisions as to payment of compensation on structured formula basis â?" (1) Notwithstanding anything contained in this Act or in

any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorized insurer shall be liable

to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second

Schedule, to the legal heirs or the victim, as the case may be.

(2) In any claim or compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement

in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of

any other person.

10. In Ningamma (Supra) it was held as follows:

â??In a case where third party is involved the liability of the Insurance Company would unlimited. It is also held that the said decision where, however, compensation was claimed for the death of the owner or another passenger of the vehicle, the contract of the insurance being governed by

the contract-qua-contract, the claim of the claimant against the insurance company would depend upon the terms thereof.â??

In the case of Rajini Devi (Supra), it has been held that the Section 163 A of the MV Act cannot be said to have any application in respect of an

accident where the owner of the vehicle himself involved. The decision further held that the question is no longer res-integra. The liability under

section 163 A of the MV Act is on the owner of the vehicle so a person cannot be both, a claimant as also a recipient with respect to the claim.

Therefore, the heirs of the deceased would not have maintained a claim under section 163 A of MV Act.

11. In Sadand Mukhi (Supra) it has been held that â??for the reason stated in the claim petition or otherwise he himself was to be blamed for the

incident. The incident did not involve any other motor vehicle, other than the one which he was driving and it was held that since the deceased being

the negligence the claim petition is not maintainable.

12. In the given backdrop reference can be made to the relevant provision of Section 147 of Motor Vehicle Act. Requirements of policies and limits of

liability- (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which-

(a) is issued by a person who is an authorized insurer; and

(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)-

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, [including owner of the goods or his

authorized representative carried in the vehicle] or damage to any property of a third party caused by or arising out of the use of the vehicle in a public

place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:

Provided that a policy shall not be required-

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in

respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the

Workmenâ??s Compensation Act, 1923 (8 of 1923), in respect of death of, or bodily injury to, any such employee-

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle engaged as a conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability

In National Insurance Co. Ltd. Vs. Jugal Kishore, (1988) 1 SCC 626, it has been held that in absence of any specific agreement undertaking any

liability in excess of the statutory limit and payment of separate premium therefore, insurerâ??s liability would be confined to that provided in the

statute.

The legal obligation arising under S. 147 cannot be extended to an injury or death of the owner of the vehicle or a pillion rider travelling thereon,

(Oriental Insurance Co. Ltd. Vs. Sudhakaran K.V., (2008) 7 SCC 428 (2008) 3 SCC (Cri) 110). Insurance is mandatory under S. 147(2), hence

insurer would be liable to reimburse the insured to the extent of the damages payable by the owner to the claimants, subject to the limit of its liability as

laid down in the Act or the contact of insurance, (Oriental Insurance Co. Ltd. Vs. Premlata Shukla, (2007) 13 SCC 476 : (2009) 1 SCC (Cri) 204).

13. The word any person occurred in the Section 147 MV Act has been explained by the Honâ??ble Apex Court in New India Assurance Company

Ltd. Vs. Aasha Rani 2003 2 SCC 223, it has been held as follows :

26. that â??the meaningâ? of the words â??any personâ? must also be attributed having regard to the context in which that has been used i.e. â??a

third partyâ??. Keeping in view of the provision of the 1988 Act we are of opinion that as the provisions thereof do not enjoin any statutory liability from

the owner of the vehicle to get his vehicle insured for any passenger travelling in a goods vehicle, the insurer would not be liable thereof. In other

words, â??any personâ?? is to be understood as a third party.

14. The liability of the Insurance Company is to pay compensation as per policy covered only a third party risk, not a risk of the life of the Insurance

Company as has been held in New India Assurance Vs. Kalikthal and Ors. 2002

(2) TAC 663 Madras. Again in 2007 (2) 417 (SC) (Oriental

insurance Co. Ltd. Vs. Meena Variyal & Ors.), it has been held that in a case where a person is not a third party within the meaning of the act, the

insurer cannot be made automatically liable to make the compensation. The latest decision on the issue has been set at rest by the Honâ??ble

Supreme Court in the case of National Insurance Co. Ltd. Vs. Ashalata Bhomik (Civil Appeal No. 9100/18, dated 31.08.2018) by holding that where

in the accident did not involve any motor vehicle other than the one which the deceased was driving and the deceased himself was negligent, the claim

petition will not be maintainable. The liability of the insurance company is to the extent of indemnification of insured against the respondent or an

injured person or in respect of damages of property. Thus, if the insured cannot be fastened with any liability under the provisions of Motor Vehicles

Act, the question of insurer being liable to indemnify the insured, therefore, does not arise.

15. In view of the discussions and the legal propositions mentioned above, the claimant is not entitled to get compensation under Section 163-A of the

Act. As a consequence thereof, the impugned judgment and award is hereby set aside. The insurance company may provide necessary payment to

the owner/insured as per entitlement under the policy coverage. The appeal stands allowed. Return the LCR.