

(2007) 11 GAU CK 0035

In the Gauhati High Court

Case No : MAC Appeal Nos. 22(K), 2300, 24(K), 25(K), 26(K) and 27(K) of 2006

National Insurance Company Ltd.

APPELLANT

Vs

Tarepla and Ors.

RESPONDENT

Date of Decision : 15-11-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 149, 149, 170, 170

Citation : (2008) 1 GLR 444

Hon'ble Judges : I.A.Ansari, J

Bench : Single Bench

Advocate : Sungtila , T.B.Jamir, P.B.Majumdar, A.R.Sharma, S.Temjen,
Advocates appearing for Parties

Judgement

1. By this common judgment and order, I propose to dispose of all the six appeals, namely, Nos. 22(K)/06,23(K)/06,24(K)/06,25(K)/06,26(K)/06 and 27(K)/06, arising out of the award, dated 26.4.2006, passed, in MAC Case Nos. 159/2002, 160/2002, 161/2002, 162/2002, 163/2002 and 164/2002 respectively, by the learned Motor Accident Claims Tribunal, Dimapur, whereby diverse sums of money have been granted, as compensation, to the claimantrespondents concerned. All these & appeals have been filed by the insurer against the award aforementioned.

2. I have heard Mr. P.B. Paul, learned counsel for the insurerappellants and Mr. A.R. Sharma, learned counsel for the claimantrespondents. I have also heard Mr. S. Temjen, learned counsel for the ownerrespondent.

3. The case of the claimants, while seeking compensation, was common in nature inasmuch as it is the case of all the claimants that the truck bearing registration No. NL06A2100, while passing, on AsetkongTsusangra road on 6.8.2002, fell down from the hill, near Tsumok river, because of rash and negligent driving of the truck by its driver resulting into the death of as many as six persons, whose legal representatives have claimed compensation by filing applications under section 166 of the Motor Vehicles Act, 1988 ("the MV Act").

The owner as well as the insurer of the offending truck resisted the proceeding by filing their written statements. While the owner of the offending vehicle did not dispute the factum of the accident, the insurer alleged that according to their investigator, no such accident, as alleged by the claimants, had taken place.

4. In support of its case that no such accident as has been alleged by the claimant had taken place, the insurer adduced evidence by examining seven witnesses. In support of their respective cases, the claimants too adduced evidence by examining witnesses. Having recorded the evidence, so adduced, the learned Tribunal concluded that the accident, as alleged by the claimant, was proved. The learned Tribunal, therefore, assessed the compensation payable to the claimants and on the basis of its finding that the vehicle, in question, stood, at the relevant point of time, insured with the present appellant, it directed the appellant, as insurer, to pay the compensation as determined by it, the compensation being payable to the claimants in MAC Case Nos. 159/2002, 160/2002, 161/2002, 162/2002, 163/2002 and 164/2002, being according to the learned Tribunal, Rs. 4,41,500, Rs. 4,15,960, Rs. 5,53,568, Rs. 2,65,644, Rs. 5,53,568 and Rs. 2,62,164 respectively.

5. Aggrieved by the impugned award granting compensation, the insurer has preferred the present six appeals. The appeal has been resisted at its very threshold, on behalf of the claimantrespondents, inasmuch as it has been contended, on behalf of the claimantrespondents, that the insurer's application made, under section 170 of the MV Act, seeking to contest the proceeding having been disallowed, it; is not, now, open to the insurer to challenge the award on merit. Refuting the submissions, so made, it is contended, on behalf of the insurerappellant, that in the facts and circumstances of the present case, the learned Tribunal ought to have allowed the insurer to contest the proceeding on all such grounds, which were available to the owner of the offending vehicle.

6. For the purpose of clearly understanding the controversy involved in this appeal, the scope of section 170 of the MV Act needs to be noted. For this purpose, section 170 is reproduced herein below:

"170. bnpleading 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 writing, direct that the insurer who may be liable in respect of such claim, shall thereupon have, without prejudice to the provisions contained in subsection (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."

7. A careful reading of the provisions, contained in section 170, shows that a

Claims Tribunal can allow an insurer to contest the claim on all or any of the grounds, which may be available to the person against whom the claim has been made if the Claims Tribunal, for reasons to be recorded, in writing, is satisfied that there is 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. The satisfaction of the Tribunal is, thus, sine qua non for allowing the insurer to contest the claim on the ground other than limited statutory rights available to the insurer under section 149. It may be pointed out that an insurer's right to contest a claim for compensation is circumscribed by the provisions of subsection (2) of section 149. If the insurer intends to contest the claim on a ground other than those, which are available to the insurer under subsection (2) of section 149, it has to satisfy the Claims Tribunal, as indicated hereinbefore, that there is collusion between the person making the claim and the person against whom the claim is made or that the person against whom the claim is made has failed to contest the claim. If the Claims Tribunal is so satisfied, it may, for reasons to be recorded in writing, direct that the insurer, who may be liable in respect of such claim, shall have, without prejudice to the provisions contained in subsection (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. The provisions, contained in section 170, clearly show that when a person against whom a claim is made has failed to contest the claim, the insurer can be granted permission as indicated in section 170. The provisions, contained in section 170, further show that even when a person against whom a claim is made, contest the claim, the insurer still has a right to apply for allowing it to contest the claim on all grounds available to such a person if the insurer can satisfy the Claims Tribunal that there is collusion between the person making the claim and the person against whom the claim is made.

8. In the present case, the insurer made an application under section 170. When the insurer's application, so made was taken up for consideration, the owner of the vehicle against whom the claim for compensation was made had already filed his written statement. This written statement gives absolutely no indication that there is collusion between the claimants and the owner. It was in these circumstances that the learned Tribunal declined to grant permission as had been sought for by the insurerappellant. The order passed by the learned Tribunal, in this regard, does not show any infirmity, legal or factual.

9. Notwithstanding, however, the fact that the insurer was not allowed to contest the claim by granting it requisite permission under section 170, the learned Tribunal nevertheless permitted the insurer to adduce evidence in support of its assertion that no accident, as alleged, had taken place. The evidence given, in this regard, by the insurer was duly considered by the learned Tribunal and having so considered, the learned Tribunal found no reason to hold that the case of the claimants was false and concocted. The relevant observations of the learned Tribunal read as under:

"8c. In his deposition the investigator Mr. Sarkar has repeated his above stated allegations. Since the said allegations were yet to be corroborated or defied by the insurer's witnesses the claimants did not thought it profitable to crossexamine the investigator at this stage.

Imlinungba, the OC PS Tuli had deposed that he had written in his note given to the investigator that the case is under investigation. The remaining words that the case was found false and concocted story are not mine.

I Yanger Ao of Lilingman village has deposed that one Bendang along with one nonNaga posing to be government employees came to my village and asked me to sign on a blank paper. They also said that they are investigating a vehicle accident. I remember in a vehicle accident on of my villager, namely, Shashimeren had died.

Dr. Imlitemsu Ozukum has deposed that one Sarkar came to his hospital and introduced himself as a person from insurance company who has come to help the relatives of the dead persons. He dictated a certificate to me. I wrote the certificate. I never knew that by pursuing me to write such type of certificate he was contemplating to harm me and deny compensation to the claimants. I am exhibiting my first certificate to the claimants which give a clear picture of accident and steps taken by me on the incident. In crossexamination he stated that he had issued the second certificate on dictration of Mr. Sarkar as he was convinced that he was doing for the benefit of the people.

K. Senti Lkr, Chairman Asangma village council has deposed that two persons of his village, namely, Junang and Suponglulen had died in a vehicle accident in August 2002. On 30.10.2002 two persons came to my village. One was local and the other nonlocal. I recognise the nonlocal sitting in the court. In the court room (meaning their council court room) they prepared the certificate over which I was asked to sign. I signed it without reading the contents.

Imtionen, GB of Kelingmen has deposed that a certificate was shown to me by one nonlocal who come to our village on 30.10.2002. The certificate was I signed by the Chairman of the village. The nonlocal who came to the village asked me also to sign as a witness on the said certificate and I accordingly signed on it. Neither the contents of the certificate were explained to me nor I read them. I do not know what was written on the certificates. In crossexamination he has stated" that "I have signed as witness as I was told that the certificate was pertaining to one of my villages who died in a motor accident."

8d. The examination of these, six witnesses produced by the insurer was closed on 7.2.2005. On 8.2.2005, however, the insurer filed another petition that the present OC Tuli PS (Khamlan Phom) has issued a note to the effect that the instant case is false. On the request of the insurer Shri Khamlan Phom was called for evidence. Khamlan, present OC Tuli PS appeared and deposed that based on some documents and certificate shown to him by the investigator of the insurer, he has issued a certificate dated 22.1.2005 to the effect that the instant case is

false. The documents shown to me were written by the then OC PS the MO and the village Chairman of village concerned where it was stated that there was no vehicle accident and none had died. They wanted a similar certificate from me. They informed me that they were coming for the first time to Tuli to obtain a certificate from the police. As I have just joined the PS and OC I did not know that the documents shown to me were already refuted nor did I check the records but gave a certificate as suggested by the insurer on good faith. I never knew that they had an anterior motive behind that. In crossexamination he denied that his certificate was given on the basis of police records. He had given this on the basis of documents shown to him by the investigator.

8e. It is pertinent to mentioned that all along, the insurer and the investigator (S. Sarkar) beside their counsel were present in the court room when their own witnesses one after the other denied the allegations of the investigator, But neither the investigator nor the learned counsel of the insurer asked anything from the witnesses nor ventured either to reexamine them as hostile witnesses nor took any steps to produce evidence contradicting the version of their own hostile witnesses.

8f. The insurer filed a petition in September 2005 for permission under section 170 MV Act to take up defences on merit as the vehicle owner was not taking part in the proceedings of the case. The said petition was taken up by this Tribunal on 23.9.2005 and rejected on the ground that the vehicle owner is not contesting the case and need for proceedings under section 170 MV Act does not arise. This order was passed after hearing the counsel of the insurer. The insurer again came up with another petition under section 170, of the MVAct in April 2006. The said petition was filed on the ground that there is collusion between the claimant and the vehicle owner. The said petition was taken up on 4.4.2006 and rejected for the second time. The operative part of the order reads as follows "After hearing the insurer"s counsel I do not find any change in the situation warranting a different stand in the matter. To be specific I do not find any collusion between the claimant and the vehicle owner. The vehicle owner or his counsel was not present when this order was passed.

8g. From the above discussions/submissions the position that emerged is that the entire lot of witnesses examined by the insurer in their defence have deposed against them. It, thus, shows that their entire exercise in the guise of investigation, was to deprive the claimants from their rightful and legitimate claims. In the circumstances it is established that there" was accident of vehicle registered No. NL06/A2100 near Tzumak river, 7 km. away from Tuli on 6.8.2002 and six persons named above had died in the said accident."

10. At the time of hearing of these appeals, nothing could be pointed out, on behalf of the insurerappellant, to show that the conclusion reached by the learned Tribunal was incorrect in fact or untenable in law. This apart, the investigator was, admittedly, not a witness to the accident nor did the insurer, in such circumstances, crossexamine any of its witnesses to show that what they

had deposed was untrue. In the face of these facts, the learned tribunal was wholly justified in not acceding to the objection raised by the insurer.

11. It is also worth noticing that as many as six persons died and the insurer has not submitted anything to show as to how these persons happened to die. Considering, therefore, the totality of the circumstances, the learned Tribunal's rejection of the insurer's objection that the whole case was concocted one, cannot be said to be incorrect, erroneous or illegal. I do not find that the insurer's defence can be said to be a credible defence. This apart, there is nothing discernible from the materials on record to show that any of the claim proceedings suffered from collusion between the claimants and the owner of the offending vehicle. In these circumstances, the contention of the appellant that the learned Tribunal ought to have allowed the insurerappellant to contest the claim, in terms of the provisions of section 170 of the MV Act, has no force, particularly, when the appellants had already adduced evidence in support of its case that no accident had taken place,

12. In view of the fact that the insurerappellant's contention that it ought to have been allowed to contest the proceeding in terms of section 170 fails, nothing really survives in these appeals for determination, for, an insurer cannot contest an award on merit without being permitted to do so under section 170. However, as a matter of abundant caution, this court has minutely scrutinized the assessment of compensation made by the learned Tribunal and even on this aspect, the learned Tribunal's findings and assessment of compensation are not found to be erroneous, unreasonable, factually incorrect or illegal.

13. Because of what have been discussed and pointed out above, this court is firmly of the view that these appeals are wholly without merit and must, therefore, fail.

14. In the result and for the reasons discussed above, these appeals stand dismissed. I, however, refrain from granting costs to the claimantrespondents.

15. With the above observations and directions, these appeals shall stand disposed of.

16. Send back the LCR.