

(2012) 07 GAU CK 0004
In the Gauhati High Court
Case No : MAC Appeal No. 64 of 2001

Nemai Chandra Saha

APPELLANT

Vs

Dilipdey and Another

RESPONDENT

Date of Decision : 20-07-2012

Acts Referred:

Evidence Act, 1872 — Section 165
Motor Vehicles Act, 1988 — Section 173

Citation : (2013) ACJ 1754 : (2013) 2 GLT 440

Hon'ble Judges : S. Talapatra, J

Bench : Single Bench

Advocate : S.K. Datta, for the Appellant; P. Gautam, for the Respondent

Final Decision : Allowed

Judgement

S. Talapatra, J.—This is an appeal filed u/s 173 of the Motor Vehicles Act, 1988 against the judgment and award dated 02.08.2001 as passed by the Motor Accident Claims Tribunal No. 1, West Tripura, Agartala on the ground that the Tribunal has committed gross illegality by saddling liability of payment of the awarded compensation on the owner of the vehicle, the appellant herein. The claim was filed by the respondent No. 1 as he had received serious injuries in the accident occurred on 07.09.1995 in front of the Khowai Hospital at Khowai while he was coming from his house by his scooter with a very slow and controllable speed treading the extreme left side of the road. When he reached in front of the hospital, the vehicle owned by the appellant herein bearing registration No. TRT-2867(Jeep) having been driven rashly and negligently dashed him. As a result he was seriously injured and was immediately brought to the Khowai hospital and thereafter he was referred to the G.B.P. Hospital at Agartala. He was treated as the indoor patient in the G B.P. Hospital from 07.09.1995 to 19.09.1995. Thereafter he continued his treatment as the outdoor patient for several months.

2. Even though the respondent No. 1 claimed compensation to the extent of Rs.

51,40,000/- but on scrutiny of the evidence the Tribunal awarded a sum of Rs. 55,000/- with interest @ 9% per annum w.e.f. 05.06.1996, date of filing of the claim petition with a direction on the appellant to pay the said amount within a period of three months from that date.

3. The respondent No. 1 did not file any cross objection or parallel appeal against the said award. However, the appellant being the owner of the offending vehicle (Jeep) filed this appeal on the said solitary ground. It was contended that the claimant-respondent No. 1 did not make the insurer a party. As a result, such anomaly in the judgment and award could take place. This contention is straightway rejected by this Court. It is always the duty of the owner of the offending vehicle to disclose the policy materials including the name of the insurer to the Tribunal either in the written statement or by filing a separate application. Thereafter the Tribunal may either implead the insurer as a party or may apprise of such claim by way of a notice. By the order dated 05.07.2012 as assessed separately in exercise of the power u/s 165 of the Evidence Act this Court accepted the Insurance Policy as submitted by the National Insurance Company Ltd., respondent No. 2 in the evidence. It evinces from the said Insurance Policy that the same was valid on the date of accident as the said policy No. 203000/95/03222 had the validity for the period from 04.08.1995 to 03.08.1996 and the accident occurred on 07.09.1995, within the period of coverage. By the communication dated 18.04.2012, the Insurance Company has also confirmed that the vehicle was duly insured w.e.f. 04.08.1995 to 03.08.1996 against the policy as stated.

4. In view of this, the National Insurance Company Ltd. shall pay the entire compensation i.e. Rs. 55,000/- (Rupees fifty five thousand) as awarded by the Tribunal with interest @ 9% per annum from 05.06.1996 till the payment is made. The respondent No. 2 is further directed to pay the said sum with interest within a period of two months from today without fail.

5. For the aforesaid reasons, the appeal stands allowed. In the fact and circumstances of the case, there shall be no order as to costs. Send down the LCRs forthwith.