

(2012) 09 GAU CK 0078
In the Gauhati High Court
Case No : MAC Appeal No.92 of 2005

New India Assurance Co. Ltd.

APPELLANT

Vs

Bhaben Thakuria and Ors.

RESPONDENT

Date of Decision : 28-09-2012

Acts Referred:

Citation : (2013) 2 GLR 656

Hon'ble Judges : S.Talapatra, J

Bench : Single Bench

Advocate : Mr. S.S. Sarma for the appellant.??Mr. C. Choudhury for the respondents., Advocates appearing for Parties

Judgement

1. This is an appeal under section 173 of the Motor Vehicles Act, 1988 by the New India Assurance Co. Ltd. against the judgment and award dated 23.12.2004 passed by the Member, Motor Accident Claims Tribunal, Barpeta in MAC Case No. 173(B) of 1994.

2. The findings as returned by the Tribunal as regards the accident that occurred on 15.3.1994 for rash and negligent driving of the vehicle bearing registration No. ASZ6423(Bus) and death of one Nishinta Thakuria, son of the claimant in the said accident are not in dispute by either of the parties or in the appeal. As such those findings stand affirmed requiring no further appraisal.

3. The questions those have been raised in the appeal may be encapsulate as :

(1) Whether the vehicle at the time of accident was insured by the appellant or not?

(2) Whether the appellant is under any obligation to make payment of the awarded sum as" settled by the Tribunal?

4. Mr. S.S. Sarma, learned senior counsel appearing for the appellant vehemently questioned the finding of the Tribunal where it has been held that:

"16. So in this instant case it appears that the premium was paid to the company through bank draft No. 287898 dated 12.3.1994 for rupees 4660. and as such the risk may be presumed from the date where the premium is tendered by post through demand draft.

From the record, it appears that while disposing the matter relating to no fault liability, the hon''ble Gauhati High Court in conn. With MA(F) No. 215 and MA(F) 216/1994 vide order and Judgment dated 8.1.2001 observed as follows :

"These two appeals have been filed against the order by which the liability has been thrust on the insurance company at the rate of rupees 50,000 for no fault liability. The law is that the Insurance Company cannot file any Appeal or any revision against an order of no fault liability save an accept in a case where the order is absolutely perverse one and then also it can be interfered only under article 227 of the Constitution. That is not the position in the case in hand. There is a dispute in this case that the accident had occurred on 15.3.1994 and the policy was taken on 16.3..1994. It is the submission of the Id. Counsel for owner of the vehicle that the amount was paid to the recognized Agent of Insurance Company on 12.3.1994 by demand draft and in view of the decision of the Apex Court in 1997 SC 2459 and the Single Bench decision of this court in 1999 (1)GLT 205, these appeals were stand dismissed. However the Insurance Company may prove that the payment was not bona fide one and it was a collusive one and the tribunal may look to that aspect of the matter.

It is needless to say that if ultimately the Insurance Company is successful on its plea, the Insurance Company may get necessary reimbursement from the owner of the vehicle. Said order passed earlier stand vacated. No fault liability may be paid, but with necessary indemnity bond before the tribunal.

17. From the evidence on record, it appears that Ins. Company has failed to prove the fact that the payment for premium was not bona fide and it was collusive one by adducing an cogent and positive evidence. From the evidence on record; it appears that the vehicle involved in the accident had a valid Ins. Policy and other vehicular documents at the time of accident and the premium was paid with demand draft covering the risk for the period when the accident had occurred on 15.3.1994."

Thereafter, Mr. Sarnia, learned senior counsel made reference to the deposition of one Sarat Ch. Malakar, the Divisional Manager of the appellant (OPW No. 1) who categorically submitted that they received the proposal for the policy on 16.3.1994 at about 2.30 p.m. The OPW1 had proved the W.S as the Ext. A. He proved his signature on the Ext. A document (the written statement), the Proposal Form as the Ext. B for the said offending vehicle, the Money Receipt as the Ext. C and the Insurance Policy as the Ext. D. In a nutshell what Mr. Sarma had projected is that the policy was taken after the date of accident. However, the OPW 1 as it appears from the records had received the demand draft dated 12.3.1994 on 16.3.1994.

5. On the other hand Mr. C. Choudhury, learned counsel appearing for the claimantrespondent submitted that since the payment was made on 12.3.1994 by the demand draft the policy has to commence from the said date.

6. In rejoinder to the submission as advanced by Mr. Choudhury, learned counsel appearing for the claimantrespondent, Mr. S.S. Sarma, learned senior counsel relied on a decision of the Apex Court in S.M. Sharmila v. National Insurance Co. Ltd. and Others, 2012 ACJ 693 where it has been held as under :

"Whether the vehicle in question was insured at the time of accident, i.e., on 3.4.1998 is a question of fact. After appreciating the evidence, the High Court came to the conclusion that the vehicle in question was not insured on 3.4.1998 and the vehicle in question had been insured for a period commencing from 3.3.1997 to 2.3.1997. The High Court has recorded sound reasons for coming to the said conclusion after carefully appreciating the evidence adduced before the Commissioner. Postage book of the Insurance Company shows that the Insurance Policy was dispatched on 25.3.1997. This clearly denotes that policy was taken prior to 25.3.1997 and, therefore. High Court rightly believed the version of the Insurance Company. This fact rules out the possibility of the vehicle being insured on 3.4.1998 as submitted on behalf of the respondent workmen and the appellant. Moreover, the cover note relied upon by the respondent workmen was not found to be genuine by the High Court. We are, therefore, in agreement with the view expressed by the High Court."

7. On the scrutiny of the records it appears from the Ext. C document that the demand draft dated 12.3.1994 was submitted on 16.3.1994. The proposal was also received on 16.3.1994, though in the proposal, the owner sought the policy to be operated from 12.3.1994. From the Insurance Policy it appears categorically that the policy was made effective from 16.3.1994 from 2.30 p.m. as it transpires from the Ext. D document. The owner of the vehicle did not adduce any evidence to rebut the above claim of the appellant whereas the OPW. 2 also supported the OPW.1, as such, the claim of the owner of the offending vehicle that the said offending vehicle was insured with the appellant at the time of accident cannot be believed by any prudent person. Even the previous policy was also not produced before the court to show that there had been reason for the renewal with effect from 12.3.1994. As such, this court without any hesitation holds that on 15.3.2012 when the accident occurred the offending vehicle was not under any Insurance coverage by the appellant and, hence, the appellant has got no liability to discharge for the damage that emerged from the said accident. However, the claimantrespondent No.1 may recover the awarded sum from the respondent No. 2, the owner of the offending vehicle, if the awarded sum with interest be not paid by the respondent No. 2.

8. The respondent No. 2 is directed to pay the awarded sum to the extent of Rs. 1,03,000 along with interest @ 9% per annum from the date of filing of the claim petition, i.e., 21.6.1994 till the payment is made within two months from today in the Tribunal without fail.

9. For the reasons as discussed above, this appeal is allowed with the modifications as indicated. However, there shall not be any order as to cost.

10. Send down the LCRs forthwith.