
(1994) 07 GAU CK 0020
In the Gauhati High Court
Case No : M.A. (F) No. 18 of 1992

New India Assurance Co. Ltd.

APPELLANT

Vs

Birendra Mohan De and Others

RESPONDENT

Date of Decision : 01-07-1994

Acts Referred:

Motor Vehicles Act, 1988 — Section 149, 173

Citation : (1996) 1 ACC 142 : (1995) ACJ 824

Hon'ble Judges : Sujit Barman Roy, J;N.G. Das, J

Bench : Division Bench

Advocate : P.K. Dhar, for the Appellant; A. Chakraborty, K.N. Bhattacharjee and P.K. Paul, for the Respondent

Final Decision : Dismissed

Judgement

S. Barman Roy, J.—This appeal by the insurance company, namely, the New India Assurance Co. Ltd., is directed against the award dated 19.12.1991 passed by the learned Motor Accidents Claims Tribunal, West Tripura, Agartala, in T.S. (M.A.C.T.) 114 of 1989.

2. We have heard Mr. P.K. Dhar, learned counsel appearing on behalf of the appellant, Mr. K.N. Bhattacharjee, learned senior counsel for the owner and driver, namely, respondent Nos. 3 and 4 and Mr. A. Chakraborty, learned senior counsel appearing on behalf of the respondent Nos. 1 and 2, namely, the claimant-respondents.

3. To appreciate the contentions advanced before us by the learned counsel for the parties, the facts relevant for the purpose may be shortly stated as under:

On 19.7.1989 at about 10.15 a.m. a motor accident took place at a place called Bordowali (Bhattapukur) in front of the house of one Sunil Ranjan Dutta Majumdar and as a consequence of that motor accident in which the vehicle TRY 37 was involved, 3 persons were killed. One of those 3 persons who died on account of that accident was Joydeep De, son of Birendra Mohan De. It was

alleged that the accident occurred by reason of the fact that the aforesaid vehicle was being driven rashly and negligently. The father and mother, namely, Birendra Mohan De and Chaya Rani De of deceased Joydeep De filed a claim petition claiming compensation to the tune of Rs. 10,57,000/-.

4. The insurance company as well as the insured were made parties and they also resisted the claim petition by filing separate written statements. The present appellant, namely, the insurance company, however, did not adduce any evidence in support of the written objection that was filed against the claim petition. Learned Member of the Motor Accidents Claims Tribunal, therefore, after appreciation of the evidence on record awarded compensation to the tune of Rs. 1,28,000/- together with interest at the rate of 12 per cent per annum from the date of presentation of the petition till realisation of the amount.

5. Being aggrieved, the insurance company, namely, the New India Assurance Co. Ltd., presented this appeal mainly on the ground that policy was limited to the extent of Rs. 50,000/- only and, as such, the appellant is not bound to pay the entire sum. Mr. Dhar, learned counsel appearing on behalf of the appellant, has, at the very outset, drawn our attention to the xerox copy of the policy which was marked as Exh. A and submitted that this document would show that the liability of the insurance company was limited to the extent of Rs. 50,000/-. Mr. K.N. Bhattacharjee, learned senior counsel appearing on behalf of the insured, has, however, repelled the contention of Mr. Dhar by submitting that this ground of the insurance policy cannot be considered at this stage in the appellate court, first, because a bare perusal of the written objection filed by the insurance company will show that the insurance company nowhere even casually stated that its liability was limited to the extent of Rs. 50,000/- only and secondly, because the appellant did not produce the original policy containing the conditions. We find sufficient force in the submission of Mr. Bhattacharjee as Mr. Dhar who took much endeavour to find out such an averment in the pleading ultimately submitted that the insurance company did not make any such claim that its liability was limited to the extent of Rs. 50,000/- only. We are, therefore, constrained to hold that the insurance company is not entitled to take this plea before this court. That apart, we also find from the record that the insurance company did not adduce any evidence in support of the written statement, Exh. A, which is the xerox copy of the insurance policy produced by the insurer and it also does not indicate specifically that the liability of the insurance company was limited to the extent of Rs. 50,000/- only.

6. The next point of criticism advanced by Mr. P.K. Dhar is that the claimant petitioners did not make all the necessary parties as parties in this case. According to him, a scooter was involved in the aforesaid accident. But neither the owner nor the insurer of that scooter was made party in this case. We do not think that the insurance company in view of the provision of Section 149 of the Motor Vehicles Act, 1988, can take such a plea. More so where the insurance company did not adduce any evidence whatsoever in support of such contention

before the trial court.

7. Mr. A. Chakraborty, learned senior counsel appearing on behalf of respondent Nos. 1 and 2, namely, the claimant petitioners, has submitted that this appeal is liable to be dismissed ab initio as the insurance company did not deposit the amount of Rs. 25,000/- at the time of presentation of the memo of appeal. It is submitted by Mr. Chakraborty that the amount of Rs. 25,000 was deposited by the insurance company after expiry of prescribed period of limitation and, hence, such an appeal cannot be entertained. Mr. Dhar, learned counsel appearing on behalf of the appellant, in his reply has submitted that since the memo of appeal was presented before this court in time, i.e., within the prescribed period of limitation, the amount of Rs. 25,000/- though deposited after expiry of the period of limitation, the court is entitled to entertain this appeal. But on perusal of the provision of Section 173 of the Motor Vehicles Act, we are of the view that such an appeal cannot be entertained unless and until the amount of Rs. 25,000/- is deposited within the prescribed period of limitation.

For the reasons stated above, we are of the view that this appeal is devoid of merit and, accordingly, it is dismissed. No costs.