
(2006) 03 GAU CK 0088
In the Gauhati High Court
Case No : MAC Appeal No. 53 (K) of 2004

New India Assurance Co. Ltd.

APPELLANT

Vs

Imkong Toshi Jamir alias Toshi Jamir

RESPONDENT

Date of Decision : 02-03-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 173

Citation : (2007) ACJ 2871 : (2006) 3 GLR 31 : (2006) 3 GLT 379

Hon'ble Judges : M.B.K. Singh, J; I.A. Ansari, J

Bench : Division Bench

Advocate : T.B. Jamir, for the Appellant; Supu Jamir, for the Respondent

Judgement

I.A. Ansari, J.—By the impugned award, dated 25.3.2004, passed in MAC Case No. 13/2001, the learned Member, Motor Accident Claims Tribunal, Dimapur, Nagaland has directed the appellant herein, namely, New India h Assurance Co. Ltd. to pay to the respondent herein, namely, Shri Imkong Toshi Jamir, who is the owner of Maruti Van bearing registration No. NL-01/T813 (Taxi), a sum of Rs. 3,11,509 as compensation for the injuries sustained by the owner of the said vehicle in an accident, which took place on 3.2.2000 on 39 National Highway at Dimapur.

2. We have heard Mr. T.B. Jamir, learned Counsel for the appellant, and Mr. Supu Jamir, learned Counsel for the respondent.

3. While considering the present appeal made u/s 173 of the Motor Vehicles Act, 1988 (in short, "MV Act"), what needs to be noted is that in the present case, the accident, admittedly, took place due to mechanical failure, when the owner of the said vehicle was driving the vehicle, and as a result of the accident, the claimant sustained injuries on his person. The fact that the accident took place, while the respondent herein, as owner of the vehicle, was driving the vehicle is, thus, not in dispute.

4. The question, therefore, is this whether an insurer can be made liable to pay

compensation for the injuries sustained by the owner of a vehicle, particularly, when the owner himself was driving the vehicle ? The answer to this question can no longer be said to be in doubt or uncertain, for, it is no longer *res integra* that the liability of an insurer is only to indemnify the insured against the liabilities, which the insured may incur towards a third person or in respect of damage to property. It is, therefore, clear that when the owner of a vehicle himself sustains injury, he cannot be said to have become liable to pay compensation to any one and since the owner, in such a case, incurs no liability, the insurer can also not be fastened with any liability. In such a case, it is really not material whether, when the accident took place and the owner sustained injuries, the owner was himself driving the vehicle or someone else was driving the vehicle. The law, in this regard, has been succinctly laid down by the Apex Court in *Dhanraj Vs. New India Assurance Co. Ltd.* and Another, wherein, the Apex Court has observed and held as follows:

8. Thus, as insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an owner of the goods or his authorised 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. Section 147 does not require an insurance company to assume risk for death or bodily injury to the owner of the vehicle.

9. In the case of *Oriental Insurance Co. Ltd. v. Sunita Rathi* it has been held that the liability of an insurance company is only for the purpose of indemnifying the insured against liabilities incurred towards a third person or in respect of damages to property. Thus, where the insured, i.e., an owner of the vehicle has no liability to a third party the insurance company has no liability also.

5. Because of what has been pointed above, it is abundantly clear that the owner of the vehicle, in the present case, had not incurred any liability and in view also of the fact that no premium was paid to the insurer for personal injuries that may be caused to the owner of the vehicle, the insurer could not have been directed to pay compensation to the owner of the vehicle, i.e., the respondent herein.

6. In the result and the foregoing reasons, we hold that the appellant is not liable to pay any compensation to the respondent. The impugned award shall accordingly stand set aside.

7. No Order as to costs.

8. Before parting with this appeal, we make it clear that the appellant shall be at liberty to withdraw the statutory amount of compensation, which stands deposited with the Registry of this Court.