
(2010) 11 GAU CK 0009
In the Gauhati High Court
Case No : MAC Appeal No. 17 (K) of 2009

New India Assurance Co. Ltd.

APPELLANT

Vs

Rupali Regon and Others

RESPONDENT

Date of Decision : 30-11-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 149, 149(2), 170, 173

Citation : (2011) 2 GLT 199 : (2011) 2 TAC 860

Hon'ble Judges : P.K. Musahary, J

Bench : Single Bench

Advocate : Bendang Wabang, for the Appellant; T.B. Jamir and L. Wapang, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Musahary, J.—On 15.9.2008 at about 6.45 a.m. on NH-52 near Maidamai Gaon, while the deceased was proceeding towards Charaimaria on his bicycle, suddenly the offending Vehicle bearing Registration No. AS-07A/4300 (709 Mini Bus) driven by the opposite party No. 2 coming from Boginadi side, knocked him down and as a result he sustained grievous injuries and after continuous treatment, he died on 28.9.2008 at the Gauhati Medical College Hospital. The legal heirs of the deceased filed a claim petition on account of Ins death for compensation of Rs. 21,46,160 against the different heads jointly and severally against the opposite parties. In the said claim petition, the driver and owner of the offending vehicle were impleaded as opposite party Nos. 1 and 2 while the Branch Manager and the Division Manager of the New India Assurance Company Ltd. were impleaded as opposite party Nos. 3 and 4. The opposite party Nos. 1 and 2 filed a joint written statement. The opposite party Nos. 3 and 4 filed a petition on 17.7.2009 u/s 170 of the MV Act seeking permission to raise and merit.

2. After hearing the parties, the learned Tribunal rejected the aforesaid petition vide order dated 3.7.2009, Thereafter, on consideration of the evidence and

materials on record and after hearing the parties, passed the impugned judgment and order dated 2.9.2009 awarding total compensation of Rs. 14.12.277 with interest @ 9% per annum from the day of filing the claim petition and until payment of the awarded amount by the insurer in the form of bank draft in the Court of the learned Tribunal.

3. I have heard Mr. Bendang Wabang, learned Counsel for the Appellant-insurer and Mr. T.B. Jamir, learned Counsel for the opposite party Nos. 1 and 2. I have also heard Mr. L. Wabang, learned Counsel appearing for Respondent No. 4. None appears for Respondent No. 3.

4. At the outset, Mr. Jamir, learned Counsel for the opposite party Nos. 1 and 2 raises preliminary objection as to the maintainability of the appeal inasmuch as the Appellant's application u/s 170 of the MV Act claiming right to be rejected by to prefer an contest the claim on all or any of the grounds was the learned Tribunal and the Appellant has no right to prefer an appeal questioning the award of compensation except on the grounds enumerated in Section 149(2) of the MV Act. In order to bring home these submission, he relies on the following decisions:

- (1) National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others,
- (2) R. Mannakatti and Anr. v. M. Subramaniam and Anr. (2005) 11 SCC 389.
- (3) New India Assurance Co. Ltd. Vs. Sangzuali and Another,

5. It is an admitted position that the application filed by the Appellant, insurer u/s 170 of the MV Act, as rejected by the learned Tribunal vide order dated 31.7.2009, While passing the aforesaid order, the teamed Tribunal heavily relied on Rohtagi's case (supra). I have gone through the aforesaid decision of the Apex Court. It has been held, amongst other, that right to appeal is not an inherent or a common law right but is a statutory right and, hence, where the statute limits the right to appeal only to the specified grounds, the Appellant cannot file an appeal on any other ground. It has also been held that the application for such permission u/s 170 should be bona fide and filed at the state when the insured is required to lead his evidence. The insurer can prefer appeal only on the grounds Specified or enumerated u/s 149(2) of the MV Act. para 26 of the aforesaid judgment is illustrative and worth quoting, which reads as follows:

26. For the aforesaid reasons, an insurer if aggrieved against an award may file an appeal only on those grounds and no other. However, by virtue of Section 170 of the 1988 Act, where in course of an enquiry the Claims Tribunal is satisfied that (a) there is a collusion between the person making a claim and the person against whom the claim has been made, or (b) the person against whom the claim has been made has failed to contest the claim, the Tribunal may, for reasons to be recorded in writing, impale the insurer and in that case it is permissible for the insurer to contest the claim also on the grounds which are

available for the insured or to the person against whom the claim has been made, Thus, unless an order is passed by the Tribunal permitting the insurer to avail the grounds available to an insured or any other person against whom a claim has been made on being satisfied of the two conditions specified in Section 170 of the Act, it is not permissible to the insurer to contest the claim on the grounds which are available to the insured or to a person against whom a claim has been made. Thus, where conditions precedent embodied in Section 170 are satisfied and award is adverse to the interest of the insurer, the insurer has a right to file an appeal challenging the quantum of compensation or negligence or contributory negligence of the offending vehicle even if the insured has not filed any appeal against the quantum of compensation, Sections 149, 170 and 173 are part of one scheme and if we give any different interpretation to Section 173 of the 1988 Act, the same would go contrary to the scheme and object of the Act.

The decision in the aforesaid case has been followed in R. Mannakatti's case (supra). It has been observed therein that since the owner of the vehicle contested the claim of the Appellants, the insurer could not prefer an appeal, even if the owner of the vehicle joined him as a party-Appellant, definitely it came to a conclusion that if the appeal itself is not maintainable at the instance of the insurer, the other grounds like application of wrong multiple cannot be examined in an appeal filed by the insurer.

6. It is noticeable in the present case that the Appellant insurer did not challenge the order dated 31.7.8009 by which its prayer for such permission u/s 170 of MV Act was rejected by the learned Member of the MAC Tribunal as such as per the aforesaid rulings of the Apex Court, the Appellant is debarred from preferring an appeal. The Appellant may file application on the grounds enumerated in Section 149(2) of the MV Act only but the scope under the said provision is also foreclosed inasmuch as it has made no allegation of breach of specified. condition of the policy.

7. In the, light of the decisions rendered by the Apex Court and also in the attending facts and circumstances of the base, I am of the considered view that the preliminary objections raised by the Respondent opposite party Nos. 1 and 2 are sound an sustainable and the present appeal could be dismissed as not hearing maintainable under the present scheme emphasised in the existing MV Act.

8. Accordingly, this appeal stands dismissed. The Appellant-insurer is directed to comply with the judgment and order dated 2.9.2009 passed by the learner Member, MACT, Kohima in MAC Case No.3/2009 within a period of 30 days from the date of receipt of a certified copy of this judgment and order.

9. Send down the records to the learned tribunal forthwith.