

(2021) 11 GAU CK 0070
In the Gauhati High Court
Case No : MACApp. No. 270 Of 2014

New India Assurance Co. Ltd

APPELLANT

Vs

Surjit Mohan And Anr

RESPONDENT

Date of Decision : 26-11-2021

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A

Citation : (2021) 11 GAU CK 0070

Hon'ble Judges : Arun Dev Choudhury, J

Bench : Single Bench

Advocate : N Modi, G Bokalia

Final Decision : Allowed

Judgement

Heard Ms. M. Choudhury, learned counsel for the appellant. Also heard Mr. G. Bokalia, learned counsel for the claimant respondent No. 1.

By way of this appeal, the judgment dated 19.5.2014 passed by learned Member, MAC Tribunal, Dibrugarh in MAC Case No. 91/2010 is put under challenge .

By the said impugned judgment an amount of Rs 2 lakhs was awarded in favour of the claimant who got injured in a vehicular accident that took place on 20.9.2009.

The case of respondent claimant was that at about 11-45 p.m on on 20.9.2009, he was proceeding from his residence at Lachit Nagar towards Sivasagar side alongwith other three persons by driving vehicle No.AS-06-G-3292 and when he reached near Khatkhati, a street cow suddenly tried to jump over his vehicle then he tried to save the cow but could not control the vehicle and fell down on the nearby drain. All the persons including the claimant sustained injury and had to undergo medical treatment which included an operation. According to the claimant the vehicle and was duly insured with the appellant insurance corporation on the date of the accident and that the claimant was having valid driving licence issued by the competent authority. In such situation, the claimant

prayed for a compensation of Rs 5, 20,000/- on account of the injury sustained by him in the said vehicular accident.

The claimant adduced evidence of one witness i.e. himself and also exhibited certain documents to prove his case and to prove the medical expenses.

The Insurance company contested the said proceeding by way of filing written statement as well as leading evidence of one witness. In the written statement Insurance company took up the plea that the claimant drove the vehicle in a very rash and negligent manner and that the claimant is neither the third party nor is he covered under the policy . Therefore he is not entitled for any compensation as claimed for .

During the proceeding the following issues were framed:

(i) Whether the claimant sustained injuries in motor vehicle accident occurred on 20.9.2009 at about 11.45 p.m on NH 37 near Khatkhathi Purana Maszid under Moran police station, while he was driving the vehicle bearing registration No. AS-06-G-3292 due to sudden appearance of a cow who jumped over the vehicle?

(ii) Whether the claimant is entitled to get any compensation , if so , from whom and to what extent ?

After discussing the issues, the evidences, the learned Court came to the following conclusions:

1. No material evidences were available to establish that the petitioner/respondent drove the vehicle in a rash and negligent manner inasmuch as no evidences were available to prove the contention of the Insurance Company of contributory negligence on the part of the claimant.

2. Para 11 of the judgment of MAC 91/2010 is reproduced hereinbelow:

" It is plea of the insurance Co. That the claimant being driver of the vehicle owned by his father cannot be a third party and as such he is not entitled to compensation. In this aspect the response of the claimant is that as per the driver clause in the insurance policy any person including the insured can drive the vehicle , having effective license and the claimant has fulfilled the condition that at the time of driving the vehicle he had effective license vide Exht. 2 . As such insurance Co is liable to compensate the claimant irrespective of the fact that he is son of owner of the vehicle. The insurance Co. Admitted about such clause in the insurance policy that any person may be a driver who have effective D/L. So in view of such inclusion of clause in the policy, the insurance Co. Cannot escape the liability. The son of the owner cannot be equated to the footing of the owner."

The learned counsel for the petitioner confined her argument that since, on the point that since the claimant is not a third party, the Tribunal lacks jurisdiction to determine compensation inasmuch as the Learned Trial Court committed illegality awarding the amount beyond the terms of the insurance policy. According to the learned Counsel, the insurance policy has a coverage of personal accident of Rs 1

lakh each for five persons. Therefore, the claimant was not entitled for any compensation beyond such amount and such entitlement can only be decided under contractual terms and not by the Learned Tribunal.

The learned Counsel concludes her argument summarising the as under:

1. the claimant cannot be said to be a third party, in view of law laid down by the Apex Court in *Nigamma & Anr vs. United India Insurance Company Ltd.*, reported in 2009-19-SCC-710.
2. The claimant is neither a driver nor owner, rather he has stepped into the shoes of the owner and as such, the person cannot be both i.e. both recipient and owner.
3. Even payment of additional premium for personal accident cover for five persons by the owner, will not make the claimant entitled beyond such contractual liability of Rs.100000/-. Therefore award of amount above such amount granted by the Ld. Tribunal is illegal.

The learned Counsel for the respondent claimant makes the following submissions:

1. The limits of liability clause of the insurance policy, provides that personal accident cover for Owner-Driver is R.2.0Lacs. The Driver's Clause of the Insurance Policy provides that any person including the insured having a valid and effective driving licence is a driver. The undisputed and proved fact is that the claimant was driving the vehicle of his father with valid and effective driving licence. Therefore, he comes under the insurance cover of R.2.0 lacs and the claimant is entitled for the same.
2. The learned Counsel for the claimant further submits that the additional PA cover premium is meant for the passengers and not for the Driver. Therefore, the claimant being driver of the vehicle he will come under the limits of Liability Clause.
3. The learned Counsel further submits that, even if it is held that the claimant is entitled for compensation under contractual liability, this Court can pass award. This court has given anxious consideration to the submissions of the learned Counsels, perused the records, including the Insurance Policy (Ext.A).

There is no quarrel on the point of law that an owner of a motor vehicle cannot be a claimant for compensation for an accident arising out of the said vehicle when no other vehicle is involved. The law is also well settled that when a claim for death or injury of a owner or other passenger is governed by the contractual terms of the policy and liability needs to be determined under the same.

Therefore, the aforesaid principles of law need to be applied in the given facts of the present case, which are as follows:

1. The undisputed and proved facts in the case is that the father of the petitioner

is the owner of the vehicle.

2. Valid insurance policy was there on the date of the accident.

3. The claimant, who was driving the vehicle is the son of the petitioner and he was having a valid and effective driving licence.

4. The owner has paid Compulsory Personal Accident Cover Premium and Additional Personal Accident Cover Premium for five persons (Rs.100000 per person.)

In Nigamma(supra) it is held by the Hon'ble Apex Court as Under

19. In the case of Oriental Insurance Company Ltd. v. Rajni Devi and Others, wherein one of us, namely, Hon'ble Justice S.B. Sinha is a party, it has been categorically held that in a case where third party is involved, the liability of the insurance company would be unlimited. It was also held in the said decision that where, however, compensation is claimed for the death of the owner or another passenger of the vehicle, the contract of insurance being governed by the contract qua contract, the claim of the claimant against the insurance company would depend upon the terms thereof.

20. It was held in the said decision that Section 163-A of the MVA cannot be said to have any application in respect of an accident wherein the owner of the motor vehicle himself is involved. The decision further held that the question is no longer res integra. The liability under section 163-A of the MVA is on the owner of the vehicle. So a person cannot be both, a claimant as also a recipient, with respect to claim. Therefore, the heirs of the deceased could not have maintained a claim in terms of Section 163-A of the MVA.

21. In our considered opinion, the ratio of the aforesaid decision is clearly applicable to the facts of the present case. In the present case, the deceased was not the owner of the motorbike in question. He borrowed the said motorbike from its real owner. The deceased cannot be held to be employee of the owner of the motorbike although he was authorised to drive the said vehicle by its owner, and therefore, he would step into the shoes of the owner of the motorbike. We have already extracted Section 163-A of the MVA hereinbefore. A bare perusal of the said provision would make it explicitly clear that persons like the deceased in the present case would step into the shoes of the owner of the vehicle.

In consideration of above principle of law and in view of the facts narrated herein above, it is concluded that the claimant is not entitled for any compensation under Section 163A of the M.V. Act'1988.

However, it is clear from the term of the policy under the "Limits of Liability" Clause, Personal accident cover is two Lacs for "Owner-Driver".

The definition of the Driver, as defined in the Insurance Policy, is an inclusive definition i.e. any person including the insured subject to the condition of having an effective driving licence. The word "Owner-Driver", needs to be read in

consensus with the inclusive definition of the term "Driver" given in the policy. It is a well-settled principle that when there is an inclusive definition, the ordinary meaning of the word is enlarged and the ordinary meaning is not restricted by such inclusive definition. In the case in hand a reading of the definition of Driver in the Policy discloses that within the definition, it brings under its fold, specifically the "Insured" and at the same time ordinary meaning is not restricted by bringing under its fold "Any Person" subject to the qualification of both the "insured" or "any Person" having an effective Driving License.

Therefore, the contention of the learned Counsel for the Appellant that "Owner-Driver" means Owner cum Driver is not accepted.

In view of the aforesaid finding, the claimant is entitled for compensation under the contractual term of the insurance policy. According to the terms of the policy, as stated herein above, the liability of the Appellant Insurance Company is limited to Rs.200000/-. Therefore, though the claimant is not liable to pay the award of Rs.2,00000/- under Section 163 A. But entitled as per the policy term, for the reasons herein above discussed.

Accordingly, it is directed that the claimant is entitled for Rs.200000 (Two lacs) as per the term of the insurance Policy contract along with interest @ 6% per annum from the date of claim application till disbursal.

The Appeal is allowed in terms of the above directions. Registry should Return the LCR forthwith.

Parties shall bear their own Costs.