
(2013) 07 GAU CK 0004
In the Gauhati High Court
Case No : MAC Appeal No. 90 of 2007

Nur Mohammad (Md.)

APPELLANT

Vs

Nure Ali (Md.) and Another

RESPONDENT

Date of Decision : 18-07-2013

Acts Referred:

Citation : (2013) 4 GLT 659

Hon'ble Judges : A.C. Upadhyay, J

Bench : Single Bench

Advocate : B. Chetri and Mr. K. Saxena, for the Appellant; A. Roshid, D.F.A. Ahmed, Y. Yasmin, S.S. Sharma and Mr. R.K. Bhatra, for the Respondent

Final Decision : Allowed

Judgement

A.C. Upadhyay, J.—This appeal, u/s 173 of Motor Vehicle Act, 1988, read with Article 227 of the Constitution of India, is directed against the judgment and order dated 14.5.2007 passed by learned Member Motor Accidents Tribunal, Dhemaji, in MAC Case No. 32/2005, whereby an award of an amount of Rs. 55,000/- with interest @ 6% per annum, was made in favour of the claimant, directing payment of the award by the owner of the vehicle bearing No. AS-22/1419 (Scooter), instead of the Insurance Company (Respondent No. 2). The facts leading to filing this appeal may be stated in brief as follows:

On 26.5.2003 at about 4:00 P.M. while the son of the claimant, Atabar Ali was standing along the side of the road at Gelua Gaon, under Silapathar Police Station, the opposite party No. 1, Nur Mohammad by driving his scooter rashly and negligently, knocked down Atabar Ali. As a result of which, Atabar Ali sustained grievous injuries on his person. Injured Atabar Ali was immediately taken to a rural Hospital at Silapathar and thereafter shifted to Dhemaji Civil hospital for treatment Injured Atabar Ali was referred to Guwahati Medical College for his better treatment. During the entire period of treatment, apart from spending huge amount of money for medical treatment, the victim also suffered bodily injury for no fault of his own. The claim was filed by Md. Nure Ali,

father of the victim Atabar Ali, for the bodily injuries sustained by his son.

2. Both the opposite parties entered appearance and filed their written statement in defence. The appellant as opposite party No. 1 contested the claim stating in his written statement that the claim was vexatious, false and concocted and the same was filed only to harass him with a mala-fide intention. He denied driving of the vehicle rashly and negligently and causing hurt to the victim. He further contended that his vehicle at the relevant time was duly insured with the United India Insurance Company under policy No. 130702/31/05 dated 20.4.2003 for the period from 20.4.2003 to 19.4.2004. The opposite party No. 2, United India Insurance Company also filed a written statement against the claim of the victim.

3. Upon hearing pleadings of the parties, learned Claims Tribunal framed the following issues, for just decision of the claims case.

Issues:

1) Whether the accident in question occurred due to rash and negligent driving of the Vehicle No. AS-22/1419?

2) Whether Atabar Ali, son of the claimant Nure Ali, sustained bodily injury in the accident that took place on 26.5.2003 due to the use of the Vehicle No. AS-22/1419?

3) Whether the Vehicle No. AS-22/1419 was duly insured with the Opp. Party- United India Insurance Co. Ltd.?

4) Whether the claimant is entitled to any compensation? If so, to what extent and by whom payable?

4. The claimant examined as many as 4 witnesses, in support of his claim and also produced relevant documents. The opp. Party No. 1, owner of the vehicle, examined himself as witness in defence. The opp. Party No. 2, insurance company also examined 1 witness and produced certain documents, in support of its defence.

5. On perusal of the materials on record, the learned Tribunal held that the claimant is entitled to a sum of Rs. 55,000/- as compensation and accordingly awarded the compensation with interest @ 6% per annum from the date of filing of the claim petition, till such realization. Learned Tribunal also held that the offending vehicle had no insurance coverage on the date of the incident and therefore, directed the payment of compensation by the owner of the vehicle in question.

6. Although the appellant agitated several grounds in the appeal, however, learned counsel for the appellant submitted that since the appellant i.e. owner of the vehicle, had paid a premium of Rs. 454/- to the Development Officer of the United India Insurance Company on 20.4.2003 in favour of Vehicle No. AS-22/1419, against which a cover note/receipt was issued to him and consequently, the vehicle of the appellant, shall be deemed to be duly insured

with the insurance company for the period w.e.f. 20.4.2003 to 19.4.2004 and therefore, the Insurance Company cannot escape the liability to reimburse the compensation amount awarded by the learned Member, Motor Accidents Claims Tribunal.

7. Mr. B. Chetry, learned counsel for the appellant contended that the insurance policy in question was placed with the record at the time of filing of the written statement and further the learned counsel also indicated in the written statement that the vehicle was covered by insurance coverage in terms of the cover note/receipt issued by the Development Officer of the insurance company. Learned counsel further pointed out that facts stated by the appellant opposite party No. 1, in their written statement filed before the Tribunal, regarding coverage of insurance during the period of accident was never challenged by the Insurance Company, while filing their written statement as well as during adducing the evidence and therefore, insurance company cannot disown the cover note/receipt issued by its Development Officer on behalf of the appellant giving insurance coverage of the vehicle in question for the relevant period.

8. Learned counsel for the appellant by referring to a decision of the Apex Court reported in National Insurance Co. Ltd. Vs. Abhaysing Pratapsing Waghela and Others, submitted that the cover note document issued by the insurance company is sufficient enough, for coverage of the insurance policy indicated in the cover note and such cover note is valid and binding on the insurance company, only if the same was not cancelled with due notice. The relevant portion of the judgment is quoted below:

16. Indisputably, the first respondent is a third party in relation to the contract of insurance which had been entered into by and between the appellant and the owner of the vehicle in question. We have noticed hereinbefore that a document was produced before the Tribunal. Even according to the appellant, although it was only a Motor Input Advice cum Receipt, it contained the Cover Note No. 279106. We, therefore, have to suppose that a Cover Note had, in fact, been issued. If a Cover Note had been issued which in terms of clause (b) of sub-section 1 of Section 145 of the Act would come within the purview of definition of certificate of insurance; it also would come within the purview of the definition of a insurance policy. If a Cover Note is issued, it remains valid till it is cancelled. Indisputably, the insurance policy was cancelled only after the accident took place. A finding of fact, therefore, has been arrived at that prior to the deposit of the premium of insurance in cash by the owner of the vehicle, the cover note was not cancelled.

9. Learned counsel for the appellant also relied on a decision reported in United India Insurance Co. Ltd. Vs. Shadma Begum and Others, wherein it was held that if the amount of premium was received earlier, but it was noted in the office later on, the insurance will come into effect from the date on which the amount of insurance was received and a cover note was issued. The liability of the insurance company starts from the date when the cover note was issued to the

insured and not from the date the amount of premium is received in its office.

10. Mr. Chetry, learned counsel for the appellant further pointed out that the respondent insurance company has not denied the coverage of the vehicle by the cover note receipt under the insurance policy during trial but refused to admit at the appellate stage, the cover note/receipt, which was issued by its Development Officer. Learned counsel has also drawn attention of this Court to show that cover note receipt was placed on record before the Tribunal by the appellant. Learned counsel also submitted that the learned Tribunal ignored to consider the insurance cover note duly issued by the Development Officer of the insurance company. Learned counsel for the appellant by referring to the decision of this Court reported in *State of Assam Vs. Arundhati Saikia and Others*, submitted that in a motor accident claims proceedings strict rule of evidence does not apply and the Court can look into evidence, without being exhibited, as required in civil suit, but there must be some legal evidence to come to a finding.

11. In reply to the above, Mr. R.K. Bhatra, learned counsel for the Respondent No. 2, insurance company submitted that the burden to produce the documents of the vehicle and policy and proving the terms and conditions or for that matter, the validity of the policy lies upon the claimant and/or the owner/driver. Learned counsel further submitted that without such proof, the company cannot be held to be liable for any compensation claimed by the claimant.

12. Learned counsel for the Insurance Company submitted that the learned Tribunal framed as many as 4 issues, with a specific Issue No. (III) to adjudicate and decide as to whether the vehicle No. AS-22-1419 was duly insured with the opp. Party-United India Insurance Co. Ltd.

While deciding Issue No. III, the learned Tribunal came to a finding that the owner/driver i.e., the appellant although had pleaded that his vehicle was insured with the respondent No. 2 i.e., United India Insurance Co. Ltd., and the owner/driver had even examined himself in support of his defence, but has neither produced the copy of such Insurance Policy or cover note policy, nor any other evidence to establish his contention that his vehicle was duly insured with the opp. Party/respondent No. 2 i.e., United India Insurance Co. Ltd., as such have failed to establish that the vehicle was under insurance policy at the relevant time of the accident i.e. on 26.05.2003.

13. Learned counsel for the Respondent No. 2 submitted that the United India Insurance Co. Ltd. in support of their defence examined one of its official as D.W. 2, namely, Shri Tuleswar Kuli and by filing Exhibit "Ga" were able to prove and establish that the offending vehicle was not insured with them at the relevant time of the accident, but the same was covered under the policy for the period 30.08.2003 to 29.08.2004, which thereby proved that the vehicle No. AS-22-1419 was insured with the Respondent No. 2, i.e., United India Insurance Co. Ltd. only after the date of accident i.e., 26.05.2003.

14. Learned counsel for the Insurance Company further submitted that the

United India Insurance Co. Ltd. had discharged their liability by proving lack of Insurance Policy and therefore, the burden of proof is shifted from them to the appellant/owner cum driver to establish existence of valid Insurance of the vehicle in question, but the appellant failed to discharge his burden.

15. In support of above, learned counsel for the Respondent No. 2, i.e., United India Insurance Co. Ltd. relies on a decision reported in Darilian Passah Vs. Batriti Lyngdoh and Others, Answering to the question of no pleadings, as regards the policy in question is concerned, learned counsel for the Respondent No. 2 relies on the following decision of this Court reported in New India Assurance Co. Ltd. Vs. Shri Bindu Bhushan Sen and Others, where the Hon'ble Court had even permitted the policy to be produced in the appellate stage.

16. Learned counsel for the Respondent No. 2 submitted that this Court vide its order dated 08.12.2010, had even directed the Respondent No. 2, i.e., United India Insurance Co. Ltd. to file an affidavit relating to the cover note certificate of Insurance, Annexure C-1. Complying with such direction, the Respondent No. 2, i.e., United India Insurance Co. Ltd. had filed their affidavit as SI. No. 3965/32 and had put on record that the vehicle involved in the accident was not covered under any policy issued by them, which covered the period of risk from 20.04.2003 to 19.04.2004.

17. Learned counsel for the Respondent No. 2, i.e., United India Insurance Co. Ltd. further stated in their affidavit that pursuant to the order dated 08.12.10, passed by this Court, they had enquired from its policy issuing branch at North Lakhimpur, and in reply to such query the North Lakhimpur branch, vide its Office Memo No. NLP: BO; LEG;/98; 2010 dated 11.01.2011, informed the Regional Office at Guwahati that from their records it is revealed that no policy under Policy No. 130702/31/05 was ever issued to the vehicle No. AS-22-1419 (Bajaj Scooter). Learned counsel for the Respondent No. 2, i.e., United India Insurance Co. Ltd. further submitted that the North Lakhimpur Branch of the Respondent No. 2 reiterated and confirmed vide the above communication that the vehicle No. AS-22-1419 was insured with the company but under a different policy number and for a totally different period i.e. policy No. 1307023103200000350 and was valid from 30.08.03 to 29.08.04.

18. Learned counsel for the Respondent No. 2, i.e., United India Insurance Co. Ltd. further submitted that they have not issued any policy as alleged in respect of the vehicle involved in the accident bearing Registration No. AS-22/1419 (Bajaj Scooter), under Policy No. 130702/31/05, allegedly issued by North Lakhimpur Branch and submitted that Respondent No. 2, i.e., United India Insurance Co. Ltd. were successful in proving the said defence and there is no infirmity or illegality in the judgment and award dated 14.05.07, passed by the learned Motor Accident Claims Tribunal, Dhemaji, in MAC Case No. 32 of 2005, by which an amount of Rs. 55,000/- alongwith interest @ 6% p.a. was awarded and made payable by the appellant as owner/driver of vehicle No. AS-22-1419 (SCOOTER).

19. In reply to the above affidavit submitted on behalf of the Respondent No. 2/ Insurance company, pursuant to the order dated 8.12.2010 passed by this Court, the appellant also filed affidavit contending that written statement was filed by the appellant enclosing all documents of offending vehicle bearing No. AS-22/1419 including the cover note/receipt dated 20.4.2003 of the insurance policy, which was annexed with the original record of the case. Over and above, the appellant specifically indicated in the written statement regarding the coverage of the insurance policy of the vehicle in question by the said cover note. It has been pointed out in the affidavit submitted by the appellant that the insurance company did not deny issuance of such cover note by them while submitting their written statement before the learned Tribunal and therefore, there was no occasion for the appellant to ever conceive that the insurance company had cancelled the cover note Annexure C-1, without issuing notice thereof. It has further been submitted on behalf of the appellant that the insurance company at this appellate stage cannot be heard to dispute such fact.

It appears that the Insurance Company in its additional written statement filed in the Tribunal emphasized issuance of Insurance policy from 30.08.03 to 29.08.04, but did not challenge the issuance of cover note policy Annexure C-I on behalf of the appellant, as alleged by the appellant. In the absence of specific challenge, in the written statement by the Insurance Company, the cover note policy is deemed to have been issued by the Insurance Company and there was no compulsion for the appellant, in a motor accident claims proceedings, to prove existence of cover note policy placed on record. The Document Annexure C-1 i.e. cover note receipt of the insurance policy issued in proper format of the respondent Insurance Company placed on record, as a matter of fact, was issued by the Agent of the insurance company. It is natural that the respondent insurance company may not have such information regarding acceptance of insurance premium of the insurance policy by its Agent and consequent issuance of cover note/receipt by the Agent. But the fact remains that until and unless the cover note/receipt is cancelled by the insurance company with due notice the validity and liability of the policy will remain in force and the insurance company cannot deny the coverage of insurance of the vehicle in question for the relevant period.

20. Considering the matter in its entirety and after hearing learned counsel for the parties as well as the observations made by the Apex Court as well as this Court cited above, I am of the view that in the instant case by filing affidavits and counter affidavits the parties have made their position clear in respect of the cover note Annexure C-1 issued by the respondent No. 2 Insurance Company. I do not deem it necessary to remand the matter to the Tribunal to prove the existence of the cover note issued by the Insurance Company. Annexure C-1 issued in proper format of the insurance company clearly reveals that the cover note issued by the Respondent No. 2 Insurance Company covered the period of accident.

21. As a matter of fact a cover note is issued by the agent of the Insurance Company, with an assurance that the money has been received on behalf of the Insurance Company in respect of the policy in question in connection with the insured vehicle. Since the cover note policy is generally issued in remote location by the agent of the Insurance Company, therefore, respondent Insurance Company's ignorance of existence of such cover note is but natural. The cover note, which is signed and sealed by the Development Officer of the United India Insurance Company, clearly indicates that the vehicle in question was duly covered with the insurance policy of the insurance company during the relevant period. The cover note/receipt submitted by the appellant clearly revealed that the vehicle in question had the coverage during the period of accident in terms of the insurance policy.

22. Therefore, in my considered opinion, the liability of the insurance company starts from the date when the cover note was issued to the insured and not from the date the amount of premium is received in its office. Consequently, the United India Insurance Company is liable to pay the compensation amount awarded by the learned Tribunal in terms of the insurance policy issued by the company in respect of the offending vehicle of the owner i.e. the appellant.

23. Accordingly, the impugned judgment and order dated 14.5.2007 passed in MAC Case No. 32/2005, is hereby modified. It is provided that instead of the owner of the vehicle i.e. the appellant, the respondent No. 2/United India Insurance Company shall pay the compensation with interest thereon, awarded to the claimant i.e. Md. Nure Ali, in terms of the direction issued by the learned Member, Motor Accident Claims Tribunal, Dhemaaji. With the above modifications, this appeal is allowed.