(2001) 12 GAU CK 0014

In the Gauhati High Court

Case No : M.A. (F) No. 84 of 1998

Oriental Insurance Co. Ltd. — APPELLANT

Vs

Arun Das and Others — RESPONDENT

Date of Decision : 18-12-2001

Acts Referred:
Motor Vehicles Act, 1988 — Section 149

Citation : (2002) 1 GLT 304

Hon'ble Judges : J.N. Sharma, J

Bench : Single Bench

Advocate : S. Dutta, for the Appellant; R.C. Saikia, for the Respondent

Final Decision : Dismissed

Judgement

J.N. Sarma, J.—This is an appeal by the Insurance Company against the award for Rs. 1,15,000/- along with interest at the rate of 10% in MAC Case No. 332 of 1996. This appeal is not maintainable in view of the fact that no appeal can be filed u/s 149 of the M.V. Act challenging the quantum.

2. Mr. Dutta, learned Counsel submits that there is no insurance policy which is factually no correct.

3. The brief facts of the case is that the Respondent-claimant Sri Arun Das filed a claim petition stating inter-alia that on 16.12.95 at about 3 p.m. he was proceeding through National Highway No. 31 at Kadamtala under Tihu P.S. taking left side of the road and at that time a truck bearing No. HR 13/3364 that was coming from Barama side in a very high speed hit him from the front side causing grievous injury to his person. The truck stopped and the driver picked the claimant in the truck and took him to Down Town Hospital at Guwahati. The claimant was hospitalised there till 2.1.96 and there after also took treatment at Nalbari. The claimant claimed Rs. 20,000/- add medical expense Rs. 80,000/- for pain and suffering Rs. 2,00,000/- as loss of business activity and Rs. 1,00,000/- as other compensation.

Neither the driver nor owner of the vehicle appeared to contest the claim. The Oriental Insurance Co. the insured of the vehicle alone contested the case by filing W.S. taking the plea that the facts stated in the claim petition not known to the Insurance Co. and these are subject to proof and that on the event of passing an award of compensation in favour of the claimant it should be subject to proof of valid driving licence road permit etc.

4. The grievance of the Insurance Company is that the name of the owner was not there. This is absolutely incorrect statement as whatever could be gathered and found by the poor claimant so much were incorporated in the claim petition and the name and address of the owner and the driver and the Insurance Company are given as follows:-

1. Owner: Truck No. HR-13-3364 Name not known. C/O Mahabir Road Carrier Katram Mour Jaria, Dhanbad (Bihar) C/O Bajaj Market, Beltola, Guwahati, Assam. STD-0361, Ph-562095 2. Driver : Driver of H.R-13-3364 Name not found, C/O Mahabir Road Carrier Katram Mour Jaria 828111 Dhanbad (Bihar) 3. Insurance Co. : Oriental Insurance Company SCD 73, 74 Hisar-62996 C/O Bajaj Market, Beltola, Guwahati (Assam)

A written statement which was filed by the present Appellant, in that written statement there was not a whisper that this particular vehicle was not insured by the Insurance Company, following are the issues:

1. Has the claimant suffered permanent/ temporary disability?

2. Whether the claimant suffered due to rash and negligent driving of the No. HR. 13/3364?

3. Is the claimant entitled to get compensation if so to what extent and against whom?

In that particular case it is also seen that there is no issue with regard to the plea which is sought to be taken by Shri Dutta. Further the Insurance Company did not examine any witness. Even doctor was not cross examined at all. Even when this claim out was cross-examined there was no suggestion that the vehicle was not insured by the owner. That is the factual position, the findings with regard to the injury is as follows:

From the evidence adduced by P.W. 2 (Doctor) it is found that the claimant suffered permanent disability as there is no chance of restoration of his right arm in his original shape. Ld. advocate for the Insurance Co. argued that it was for the fault on the part of the claimant his arm was not restored as because had he gone for further treatment if could be restored. But from the evidence of Doctor it is found that the claimant expressed his inability to bear further expense. So the responsibility can not be attributed to the claimant who was unable to bear the expenses of his treatment. It is clear that because of knocking down the claimant''s abdomen and intestine were exposed but those parts have been repaired. The claimant also suffered permanent disability in respect of his right arm. The claimant is a farmer without any other source of livelihood and because of his permanent disability of his right arm it can be well imagined that claimant is unable to do anything to earn his livelihood.

5. Mr. Dutta in support of his claim wants to rely on SCC 1998 Vol. 1 P. 365, Oriental Insurance Co. Ltd. v. Sunita Rathi and Ors. That case was absolutely different from the present one. In that case the accident occurred on 10.12.91 at 2.20 p.m. and it was only thereafter the same day at 2.55 p.m., the insurance policy and the cover note were obtained by the insured, owner of the motor vehicle involved in the accident. There was further mention in the cover note that the effective date and time of commencement of the insurance for the purpose of the Act was 10.12.91 at 2.55 p.m.

6. In the case in hand Mr. Saikia on the other hand relied on the judgment of the Division Bench of this Hon''ble High Court reported in 2001 (1) GLR 232 Smti. Bina Rani Saha and Ors. v. Sunil Das and Ors. wherein the Division Bench held that if a defence was not taken up by the Insurance Company and they did not adduce evidence in support of that plea before the trial Court they are absolutely debarred from taking that plea before the Appellate Court.

7. In that view of the matter there is no merit in this appeal and accordingly shall stand dismissed. Interim order if any passed stands vacated.

It is needless to say that the Insurance Company shall deposit the awarded amount within a period of two (2) months from today failing which the Insurance Co. will be liable to pay an interest at the rate of 18% over and above the interest awarded by the Tribunal.

