(2011) 02 GAU CK 0011

In the Gauhati High Court

Case No : MAC Application No. 21 (K) of 2008

Oriental Insurance Company Ltd. APPELLANT

Vs

Toshiba Pongner RESPONDENT

Date of Decision : 03-02-2011

Acts Referred:
Motor Vehicles Act, 1988 — Section 165, 165(1), 166

Citation : (2011) 4 GLT 689

Hon'ble Judges : C.R. Sharma, J

Bench : Single Bench

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

Judgement

C.R. Sarma, J.—Heard Mr. T. B. Jamir, learned counsel, appearing for the appellant. Also heard Mr. Tongpok Pongener, learned counsel, appearing for the sole respondent.

2. The respondent, namely, Shri Toshiba Pongner, who was the owner of the offending vehicle, bearing Registration No. NL-02-E/ 2575 (Scooter), met with an accident, on 17.07.2007, while riding the Scooter aforesaid and as a result he sustained injuries, requiring medical treatment. Accordingly, the claimant preferred a claim case being MAC Case No. 21/2007, before the Motor Accident Claims Tribunal, Mokokchung, Nagaland, seeking compensation.

3. The claim of the claimant-respondent was contested by the Oriental Insurance Company Ltd., Dimapur, Nagaland i.e. the present appellant.

4. The learned Member, Motor Accident Claims Tribunal, having heard both the parties, granted compensation of Rs.60,000/-, holding that the claimant sustained 60% disability. The Divisional Manager, Oriental Insurance Company Ltd. Dimapur, i.e. the present appellant, was directed to deposit the said amount, within 30 days from the date of the order. It was also provided, that in the event of failure to deposit the said amount, the insurer would be liable to pay interest @ 9% from the date of filing of the claim petition.

Aggrieved by the said judgment and award, the insurer as appellant, has come up with this appeal, on the ground that the owner of the vehicle, who sustained the injuries, being the first party, is not entitled to get compensation under the provisions of Sections 165 and 166 of the Motor Vehicles Act, 1988 (hereafter called ''the M.V.Act'').

5. Mr. T.B. Jamir, learned counsel, appearing for the appellant, referring to the provisions of Section 165 of the M. V. Act and relying on the decision of this High Court in the case of Jahar Deb Vs. National Insurance Company Ltd. and Others, submitted that, under the provisions of Section 165 of the M.V. Act, the owner of the offering vehicle, who is a first party under the Insurance Policy, is not entitled to claim compensation.

6. Mr. Tongpok Pongener, learned counsel, appearing for the claimant-respondent, on the other hand, submitted that the claimant was insured towards his personal accident to the extent of Rs. 1,00,000/- and as such the clamiant is entitled to get compensation under the said insurance policy, which included personal accident coverage. The insurance policy, which is annexed to the present appeal as Annexure-1, indicates that the personal accident cover for the owner/ driver, was to the extent of Rs. 1,00,000/-.

7. In the case of Jahar Deb (supra), a Division Bench of this Court, in paragraph Nos. 9 and 10, observed as follows:-

9. Let us, now, turn to the question as to whether the M V Act bars suit for compensation of damage caused to the vehicle of the person, who claims compensation from his own insurer, when the damage to the vehicle of such a person has not been caused by use of another vehicle in a public place? While considering this question, it is important to note that a Tribunal is constituted, u/s 165 of the MV Act for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles or damage to any property of a third party so arising, or both. A bare reading of the provisions contained in sub-section (1) of Section 165 of the MV Act makes it clear that a Tribunal, constituted u/s 165, can adjudicate upon the damage caused to the property of a third party. Section 165 does not empower such a Tribunal to adjudicate upon any claim for damage to the property of the insured or of the 1st party."

"10. It, thus, becomes transparent that for the damage caused to a person''s vehicle by use of his own vehicle cannot be adjudicated upon by a Tribunal constituted under the MV Act. The Tribunal, constituted u/s 165, can adjudicate upon only the claims of third party.

8. Section 165 of the M.V. Act, reads as follows:-

165. Claims Tribunals:-

(1) A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (hereinafter) in this Chapter

referred to as Claims Tribunal) for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both.

(2) A Claims Tribunal shall consist of such number of members as the State Government may think fit to appoint and where it consists of two or more members, one of them shall be appointed as the Chairman thereof.

(3) A person shall not be qualified for appointment as a member of a Claims Tribunal unless he-

a) is, or has been, a Judge of a High Court, or

b) is, or has been a District Judge, or

c) is qualified for appointment as a High Court Judge (or as a District Judge).

(4) Where two or more Claims Tribunals are constituted for any area, the State Government, may by general or special order, regulate the distribution of business among them.

9. In the backdrop of the above provision prescribed by Section 165 of the M.V. Act and the decision rendered by the Division Bench of this Court, it is clear that the first party i.e. the owner of the vehicle is not entitled to claim compensation u/s 166 of the M.V. Act. However, as the owner was covered under the policy ''personal accident cover'', he was entitled to seek compensation from the insurer as per law.

10. In view of the above discussion, I am of the considered opinion that the learned trial Judge committed error by granting compensation in favour of the respondent-claimant. Accordingly, the impugned order, dated 15.02.2008 is set aside and quashed. However, it is made clear that the respondent-claimant, who was the first party under the said Insurance Policy, may seek appropriate relief, if so advised, from the insurer as per law.

11. With the aforesaid directions, this appeal is disposed of. No cost.

Send down the Lower Court Records.

