

(2018) 09 GAU CK 0015
In the Gauhati High Court
Case No : Mac Appeal No. 17 Of 2015

United India Insurance Co Ltd	Vs	APPELLANT
Abu Bakkar Siddique Prodhani And 5 Ors		RESPONDENT

Date of Decision : 07-09-2018

Acts Referred:

Indian Penal Code, 1860 — Section 279, 338

Citation : (2018) 09 GAU CK 0015

Hon'ble Judges : Rumi Kumari Phukan, J

Bench : Single Bench

Advocate : B.K. Purkayastha, P. Choudhury

Final Decision : Dismissed

Judgement

1. Heard Mr. B.K. Purkayastha, learned counsel appearing for the appellant United India Insurance Co. Ltd. Also heard Mr. P. Choudhury, learned counsel appearing for the respondent No.1 and Mr. R. Goswami, learned counsel for the respondent No.2.

2. The present appeal has been directed against the judgment and order dated 13.8.2014, passed by the learned Member, Motor Accident Claims Tribunal, Dhubri, in the MAC Case No.762/2006.

3. Briefly stated, the case of the claimant is that on 7.8.2005, the claimant/respondent No.1 along with other passengers were travelling from

Dharmasala to Nishiganj in Coochbehar District, by the National Highway in the Tata Sumo bearing No.WB-74 C/0278 and while the Tata Sumo

reached Kamat Fulbari near Raidak Bridge under Toofanganj Police Station, at that time one Maxi Bus bearing No.WB-71/6661, coming from the

opposite direction, hit the Tata Sumo in a head on collision and as a result of which the respondent No.1/claimant sustained severe injuries on his

person. The co-passengers travelling in the Tata Sumo also sustained injuries on their person. Accordingly a claim petition was preferred before the

learned MAC Tribunal, Dhubri, which was registered as MAC Case No.762/2006, praying for compensation for the injuries sustained in the said

accident.

4. The learned Tribunal issued notice to the driver, owner and insurer of both the vehicles involved in the accident and in turn, all the opposite parties in

the said case, contested the case by filing their respective written statement.

5. The learned Tribunal after examining the witnesses, including the Doctor regarding the injury as well as the disability of the claimant, has finally

dispose of the case by awarding an amount of Rs.9,78,571/-, with interest @8% p.a., from the date of filing of the claim petition, with a direction that

the award should be born and paid equally by both the Insurance Companies, namely the National Insurance Co. Ltd. and the United India Insurance

Co. Ltd., in the ratio of 50:50.

6. Accordingly, the National Insurance Co. Ltd. has paid their portion of the award. However, raising grievances about such apportionment made by

the learned Tribunal regarding payment, the United India Insurance Co. Ltd. has brought the matter to this appeal, challenging the fact that they are

not liable to pay the compensation, as the Tata Sumo vehicle, which was insured by the appellant insurance company is not at all in fault and it was the

Maxi Bus alone, which was responsible for the accident and as such the Tribunal is wrong while making such apportionment.

7. The learned counsel for the appellant has pointed out that the claim petition as well as the evidence of the claimant and his witnesses have stated in

their evidence that the accident occurred only for the fault of the Maxi Bus and there was no negligence on the part of the said Tata Sumo, wherein

the claimant and other passengers were travelling.

8. On the next, it is also contended that after the investigation, the charge sheet has been filed only against the driver of the Maxi Bus, under Section

279/338 IPC and as such, the whole liability should go to the owner and insurer of the said vehicle.

9. On the other hand, the learned counsels appearing for the respondent Nos.1 & 2 has vehemently opposed such contention of the learned counsel

for the appellant that the witnesses, that has been referred by the appellant, in

their respective cross-examination made by the National Insurance Co.

Ltd., has admitted that the accident occurred due to the head on collision of both the vehicles in a turning and both the vehicles were damaged.

10. The learned counsel for the respondents have also contended that in similar nature of cases that was preferred by the other injured persons, for

the injuries they sustained, the learned Tribunal has come to a similar findings that the accident occurred due to the fault of both the vehicles and has

directed both the Insurance Companies to pay the amount in the ratio of 50:50 and in fact, the said decision has been adhered to by the

appellant/insurance company, which reflects from the judgment and order itself and the that finding is not rebutted. Accordingly it has been contended

by the learned counsel for the respondents that while the appellant has not challenged the said findings of the Tribunal, which has already attained

finality, the same cannot be challenged by way of separate appeal, against the same sort of findings.

11. Pursuant to the submission of rival counsels, I have also examined the evidence on record.

12. On careful examination of the evidence on record, it is to be noted that although in the claim petition as well as in the evidence, the claimant and

his witnesses have stated only about the Maxi Bus, which has caused the accident but in their respective cross-examination, they have fairly admitted

that the accident occurred in a turning due to head on collision of both the vehicles and in the sense it indicates the contributory negligence of the said

Tata Sumo, rendering them liable for the said accident.

13. In the given circumstances, the findings of the learned Tribunal is found to be proper while directing both the Insurance Companies to bear the

compensation in a ratio of 50:50. By abiding such award, the appellant Insurance Company has satisfied the award in other cases related to the same

accident and filing of appeal on different pretext as against the same accident cannot prevail.

14. Now regarding the fact that the charge sheet has been submitted as against the Maxi Bus only, that cannot be a ground to discard the findings on

the evidence that has been recorded before the Tribunal. Fixing a criminal liability may be in a different context, apart from the fixation of liability to

pay compensation under such social legislation. There should not be any

difficulty on the part of the insurance company to indemnify the insured in terms of the award, which has been adhered to in other connected cases, by the appellant.

15. In view of the above discussions and the evidence on record, I find no any illegality in the award so passed by the learned Tribunal to interfere

with. Accordingly, the appeal stands dismissed with a direction to pay 50% of the awarded compensation before the Registry, by adjusting the amount,

if already deposited/paid and adjusting the statutory amount, already paid, along with interest as directed by the learned Tribunal.

16. Accordingly, the appeal stands dismissed. Return back the LCR.