
(2008) 04 GAU CK 0028
In the Gauhati High Court

United India Insurance Co. Ltd.

APPELLANT

Vs

Dipen Nath and Another

RESPONDENT

Date of Decision : 01-04-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 165, 166, 173

Citation : (2009) ACJ 2030 : AIR 2009 Guw 12 : (2009) 3 GLR 647

Hon'ble Judges : I.A. Ansari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

I.A. Ansari, J.—Whether the, owner of a vehicle is entitled to claim compensation from its own insurer for the damage caused to his vehicle in an accident, arising out of use of the vehicle, in a public place? This is the moot question raised in this appeal.

2. In order to appreciate the issue involved in the present appeal, which has been preferred u/s 173 of the Motor Vehicles Act, 1988, (in short, "the MV Act"), the material facts leading to the award, impugned in the present appeal, heed to be taken into account.

3. The facts leading to the present appeal may, in a nutshell, be described as follows:

(i) The respondent No. 1 is the registered owner of the bus bearing registration No. AS-03-4800. The said bus was hired by a picnic party for taking the vehicle from Kaziranga to Moriani. When the bus reached a place called Rangamati, a truck, bearing registration No. ARC-367, dashed against the bus from behind. As a result of the said collision, the bus got damaged. The respondent-claimant, thereafter, made an application, u/s 166 of the MV Act, claiming compensation for the damage caused to his own bus in the accident. This claim application gave rise to MAC Case No. 18/1999. In the claim application, the claimant respondent impleaded not only the insurer of his own bus (i.e., the present

appellant), but also the owner of the truck.

(ii) None except the insurer of the claimant's bus appeared in the claim petition and resisted the claim. In the claim proceeding, the appellant, as insurer, contended that an insurer is liable to indemnify the owner of the insured vehicle only against the liability, which such an owner may incur in respect of death of, or bodily injury to, any person (including the owner of the goods or its authorized representative) carried in the vehicle or damage to any property of a third party. In the claim proceeding, the present insurer-appellant also contended that since the bus, in question, which suffered the damage, did not belong to the third party, but to the insured himself, question of indemnifying such an owner of the vehicle did not arise at all. By the impugned award, dated 31-3-2004, the learned Tribunal has, however, held that the claimant is entitled to receive, in all, a sum of Rs. 79,000/- as compensation and that 50% of this amount shall be paid by the owner of the offending truck and the remaining 50% shall be paid by the insurer of the claimant's bus, which had suffered the damage. Aggrieved by the award, so made, the insurer has preferred, as indicated above, this appeal.

4. I have heard Mr. A. Ahmed, learned Counsel for the insurer, appellant. None has appeared on behalf of the respondent.

5. Appearing on behalf of the insurer appellant, Mr. Ahmed has pointed out that the claim for compensation made against the present appellant was not maintainable inasmuch as the claimant, being a contracting party, cannot be regarded as the third party. This apart, points out Mr. Ahmed, under the scheme of the MV Act, the liability is a tortious liability. Where the owner of a vehicle causes accident and becomes liable to pay compensation to a third party, such a vehicle's insurer too becomes liable to indemnify the owner if he (i.e., the owner) becomes liable to pay any compensation to a third party for the death of, or bodily injury to, any person or damage caused to the property of any third party.

6. While considering the present appeal, what needs to be noted is that Section 165 of the MV Act provides for constitution of Claims Tribunals for the purpose of adjudicating upon claim for compensation in respect of accidents involving the death of, or bodily injury to, any person, arising out of the use of the motor vehicle, or damage to any property of a third party. The provisions of Section 166, which entitles a person to claim compensation, are obviously subject to the provisions of Section 165. The claimant, in the present case, is the insured. Logically, therefore, the contract of insurance exists between him, as the owner of the damaged vehicle, and the present appellant, as the insurer thereof. Thus, being a contracting party, the claimant cannot be regarded as a third party. The insurance policy, in the present case, is an "Act only" policy. That is to say, it is a policy, which covers the liability in respect of death of, or bodily injury to, some one other than the insured, i.e., the owner of the vehicle, or damage to the property of a third party, i.e., a party other than the insured. u/s 147(1)(b)(i) of the MV Act, the compulsory insurance covers the risk of third party only and since the claimant, in the present case, cannot be regarded a third party, the

question of the claimant receiving compensation, in such a case, does not arise at all.

7. The question, therefore, is this: Whether an insurer can be made liable to pay compensation for the damage caused to the vehicle of the insured? The answer to this question is no longer *res integra*, for, it is well settled that the liability of an insurer is limited to indemnifying the insured against the liability, which the insured may incur towards third persons or in respect of damage to a property of a third party. It is, therefore, clear that when the owner of a vehicle himself sustains injury, or when his own vehicle gets damaged, he cannot be said to be liable to pay compensation to any one and since the owner, in such a case, incurs no liability to pay compensation to a third party, the insurer can also not be fastened with any liability to indemnify such an insured. In such a case, it is really not material whether it was the owner himself, who was driving the vehicle, when the accident had taken place, or not, (See *Dhanraj Vs. New India Assurance Co. Ltd.* and *Another*, , see also *Narendra Kumar and Another Vs. Yarenissa and Others*, .

8. In *National Insurance Co. Ltd. Vs. Laxmi Narain Dhut*, , the Apex Court has clearly held that an insurer is not liable to pay to the insured compensation for the damage caused to his own vehicle. The decision in *Laxmi Narain Dhut* (*supra*) has been followed in *The Oriental Insurance Company Limited Vs. Meena Variyal and Others*, .

9. What crystallizes from the above discussion is that the owner of a vehicle, not being a third party, is not entitled to be indemnified, by his insurer for the damage caused to his own vehicle in an accident irrespective of the fact as to whether the accident took place, because of his own fault or fault of some one else, particularly, when no special premium has been paid by such an owner for damage, which may be sustained by his vehicle in such an accident.

10. Because of what have been discussed and pointed out above, it becomes transparent that the learned Tribunal has seriously erred in law in directing the present appellant, as insurer of the bus, in question, to pay 50% of the compensation, which the claimant respondent has been found entitled to receive for the damage caused to his vehicle. The claimant respondent, in the facts and circumstance of the present case, is, however, entitled to receive compensation-amount of Rs. 79,000/- from the owner of the offending truck.

11. In the result and for the reasons discussed above, this appeal succeeds. The impugned award is set aside to the extent that it makes the present appellant liable to pay to the claimant-respondent 50% of the said compensation amount. It is further held and directed that the entire compensation of Rs. 79,000/- shall be payable to the claimant respondent by the owner of the said offending truck.

12. With the above observations and directions, this appeal shall stand disposed of.

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