

(2002) 09 GAU CK 0042
In the Gauhati High Court
Case No : First Appeal No. 29 of 1994

United India Insurance Co. Ltd.

APPELLANT

Vs

Jugal Chandra Talukdar and Others

RESPONDENT

Date of Decision : 03-09-2002

Acts Referred:

Motor Vehicles Act, 1988 — Section 95, 96(2)

Citation : (2004) ACJ 1980 : (2003) 2 GLR 1 : (2003) 2 GLT 283

Hon'ble Judges : J.N. Sharma, J;D. Biswas, J

Bench : Division Bench

Advocate : S.S. Sharma and D.K. Bhatra, for the Appellant; B.P. Borah, J. Borah, C.K. Das, R. Gogoi and N. Tagia, for the Respondent

Final Decision : Allowed

Judgement

D. Biswas, J.—This first appeal valued at Rs. 3,68,730 is directed against the Judgment and Decree dated 21.12.1993 passed by Shri B.K. Das. Learned District Judge, Kokrajhar in Money Suit No. 1/1991. The Learned District Judge by the impugned judgment decreed the suit for Rs. 3,66,710 with costs and with interest at the rate of 9% per annum to be computed from the date of institution of the suit till realisation. The suit was, however, dismissed against Respondent No. 1, i.e., the State of Assam.

2. The respondent-plaintiff's case was that he is the owner of the Tata Mini Bus No. AML 1718. The defendant No. 3, namely, the Senior Power Station Superintendent took the said vehicle on hire with effect from 23.3.1989 for patrol duty within the jurisdiction of Bongaigaon Thermal Power Station in view of the disturbed law and order situation. The vehicle was duly insured with the Defendant No. 4, namely. United Insurance Company, Madras having its Branch office at Bongaigaon. The said vehicle, while on patrol duty, was badly damaged due to bomb blast over a bridge near B.T.P.S. Complex in the night of 27.3.1989. The plaintiff's demand for payment of compensation and loss of income was rejected by the defendants. The plaintiff had incurred an expenditure of Rs.

1,67,000 to repair the vehicle. It is further averred in the plaint that the law and order situation due to agitation of ABSU was extremely bad and no agreement could be made with the Respondent No. 3. The respondents also hired Mini Bus No. AXA 7818 and paid Rs. 17,000 per month as hire charge. The plaintiff claimed Rs. 17,000 per month from 23.3.1989 to 23.3.1990, the date when the vehicle became road worthy after repair. The total loss on account of hire charges amounted to Rs. 2,01,730, and the plaintiff served a notice upon the Respondent No. 1 u/s 80 CPC claiming the said amount. The plaintiff also issued notice to other defendants claiming comprehensive compensation of Rs. 3,68,730. On refusal, the plaintiff instituted the suit.

3. The defendant No. 1 in their written statement denied their liability and maintained that there was no failure on their part to maintain law and order in the area. The defendants No. 2 and 3, apart from legal pleas, admitted that the vehicle was taken on hire with effect from 23.3.1989 and that it was damaged due to bomb blast while on duty. They have admitted that they are liable to pay hire charges only for five days, i.e., from 23.3.1989 to 27.3.1989 and not responsible for any payment on account of damage caused by bomb blast beyond their control. Plaintiff's claim that he had spent Rs. 1,67,000 for repair has been denied. Defendant No. 5, i.e., the Insurance Company denied that the vehicle was insured with them against terrorist attack and they pleaded protection u/s 95/96(2) of the Motor Vehicle Act.

4. On consideration of pleadings, the Learned Trial Court framed the following issues :-

1. Whether the suit is maintainable in its present form ?
 2. Whether the suit is barred by limitation ?
 3. Whether there is any cause of action of this suit ?
 4. Whether the suit is bad for non-joinder and mis-joinder of necessary parties ?
 5. Whether the suit is bad for acquiescence, estoppel and waiver ?
 6. Whether the vehicle was properly insured under Insurance Act ?
 - (i) Whether the defendant No. 2 and 3 are to be totally exempted from any liability to pay compensation to the plaintiff for the losses sustained by him due to the accident of bomb blast ?
 7. Whether the plaintiff is entitled to get decree as prayed for ?
 8. To what relief, plaintiff is entitled under law and equity ?
5. It would appear from the evidence on record, both oral and documentary, that the vehicle was insured under comprehensive policy, Exhibit-5, on 20.4.1988 for a period expiring on 19.4.1989. The insurance policy, Exhibit-5, contains that the vehicle was for use only under a contract carriage/State Carriage Permit within the meaning of the Motor Vehicles Act, 1939 and the policy does not cover risk

arising out of use of the vehicle in organised racing or speed testing. The schedule of premium collected show that the premium has been paid less the amount payable for damages on account of earth quakes, flood. The premium paid includes "riots and strikes". The Insurance Company is, therefore, liable for damages caused due to riots and strike.

6. The word "riot" means disturbance of peace by a crowd, therefore, terrorist activities including bomb blast causing breach of peace will amounts to rioting. In Section 1 of the Insurance Policy provides for damages caused by rioting and, therefore, the Insurance will be liable for damage caused to the vehicle by bomb blast. But, Clause (7) of the General Exceptions provides as follows :-

"(7) any accidental loss damage or liability directly or indirectly caused sustained or incurred during the period of requisition or commandeering by the Government for any purpose.

The company shall not be liable in respect of any accident loss damage and/or liability directly or indirectly proximately or remotely occasioned by contributed to by or arising out of or in connection with flood typhoon hurricane volcanic eruption earthquake or other convulsion of nature war invasion the act of foreign enemies hostilities or war like operations (whether before or after declaration of war) civil war strike riot mutiny rebellion military or usurped power or by any direct or by any direct or indirect consequences of any of the said occurrences and except under Section-II-1(i) of this policy whilst the insured or any person driving with general knowledge and consent of the insured is under the influence of intoxicating liquor or drugs and in the event of any claim hereunder the insured shall prove that the accidental loss damage and or liability arose independently of and was in no way connected with or occasioned by or contributed to by/or traceable to any of the said occurrences or any consequence thereof and in default of such proof the Company shall not be liable to make any payment in respect of such a claim."

7. It appears from the above agreement that in case of damage by terrorist activities, the Insurance Company is not liable to indemnify. The vehicle at the relevant time was in the service of the Respondents No. 2 and 3. The damage occurred when it was on duty and under absolute command of Respondent No. 2 and 3. Therefore, Respondents No. 2 and 3 who were in custody at the relevant time are liable to indemnify. The decree has been passed jointly and severally against Respondents No. 2 to 5. Since the Insurance Company is not liable, the decree has to be modified to exempt the Insurance Company. The Insurance Company because of the exemption clause quoted above has to be absolved of its liability in the instant case.

8. Now let us discuss about the quantum. The learned Court below has decreed the suit for Rs. 3,66,710 which includes hire charges of Rs. 2,01,730 for 12 months less 3 days. Although the vehicle was in service of the Respondents No. 2 and 3 for five days, yet the hire charges have been assessed for the entire period

during which the vehicle was off the road. The decree includes repairing charge of Rs. 1,64,970. In our considered opinion, the plaintiff is entitled to repairing charge of Rs. 1,67,000 and hire charges for five days when the vehicle was in actual service of the Respondents No. 2 and 3. We are also of the opinion that the compensation for loss of income cannot be for 12 months as has been assessed by the learned Court below. The vehicle which suffers extensive damage may at best require two months for repairing. Hence, the plaintiff-respondent is entitled to loss of income for two months only. Calculated thus, the amount comes to Rs. 2,03,834. The plaintiff-respondent is entitled to recover this amount as compensation from Respondents No. 2 and 3 with interest at the rate of 9% per annum.

9. The appeal by the Insurance is allowed. The Judgment and Decree passed by the Learned Trial Court stands modified to the extent that the plaintiffs is entitled to a decree for realisation of Rs. 2,03,834 from the Respondents No. 2 and 3 with cost and interest at the rate of 9% per annum. Order accordingly.