
(2019) 02 GAU CK 0072
In the Gauhati High Court
Case No : MACApp. 300 Of 2014

United India Insurance Co. Ltd

APPELLANT

Vs

Jurie Phukan And 3 Ors

RESPONDENT

Date of Decision : 21-02-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 163A, 166, 173

Citation : (2019) 02 GAU CK 0072

Hon'ble Judges : Manish Choudhury, J

Bench : Single Bench

Advocate : F Khan, S Khanikarr

Final Decision : Allowed

Judgement

(1) This is an appeal preferred under section 173, Motor Vehicles Act, 1988, (hereinafter referred as the Act), as amended, against the judgment and award dated 01.10.2013 passed by the learned Member, Motor Accident Claims Tribunal, Golaghat in MAC Case No.88/2009. By the judgment and award dated 01.10.2013, the learned Tribunal has awarded an amount of Rs. 3,93,380 (Rupees three lakhs ninety-three thousand three hundred and eighty only) along with interest @ 6% per annum from the date of filing of the claim application i.e. 29.06.2009 till realization of the entire amount. The insurer has been directed to pay the said compensation along with interest to the claimants by directing it to deposit the awarded amount with interest thereon in the Claims Tribunal.

(2) The facts, in brief, leading to the institution of the claim application are that on 20.04.2009, at about 11-00 a.m., while the deceased, Sanjib Phukan was proceeding from Golaghat towards his house at Bhelowguri by driving a motorcycle bearing registration No. AS-05-B/7436, he dashed the motorcycle against a light post in order to avoid a cow which appeared suddenly in front of him. As a result, he sustained serious injuries and died instantaneously on the spot. At the time of his death, the deceased left behind his wife and 2 minor sons. The motorcycle bearing registration No. AS-05-B/7436 belonged to one Sri

Rajib Phukan and at the relevant time, the said motorcycle was covered by a policy of Insurance No.130404/ 31/ 08/ 01/ 00001454.

(3) Subsequent to his death, the dependents of the deceased i.e. the wife and 2(two) minor sons as claimants, had preferred an application under section 163A of the Act before the Motor Accident Claims Tribunal at Golaghat, seeking compensation of an amount of Rs. 20,00,000/- (Rupees twenty lakhs only) in total for the death of their husband and father respectively. The said claim application was registered and numbered as MAC Case No.88/2009. In the said MAC Case No.88/2009, the owner of the motorcycle was impleaded as the opposite party No.1 and the insurer of the motorcycle was impleaded as opposite party No.2.

(4) On receipt of notices from the learned Tribunal, the opposite party No.1/ owner of the motorcycle contested the case by submitting written statement wherein he contended that he was the owner of the said motorcycle which was duly insured with the opposite party No.2 vide a policy No. 130404/31/08/01/00001454 valid from 13.08.2008 to 12.08.2009 and therefore, it was the opposite party No.2 i.e. the insurer who was liable to pay the amount of compensation, if awarded. The opposite party No.2/insurer also contested the case by submitting the written statement wherein they contended that though it was the insurer of the said offending vehicle but the claimants' case was without any material basis.

(5) The Tribunal below for the purpose of determining the claimants' case, framed the following issues:-

1) Whether the present claim application is maintainable in the present form?

2) Whether the deceased person died due to injuries sustained in motor vehicle accident on 20.04.2009 at about 11 A.M. due to fell from the Motorcycle No.AS-05-B/7436 while travelling from Golaghat town to Bhelowguri on PWD Road?

3) Whether the claimant is entitled for any compensation? If so, what is the quantum of compensation and from whom?

4) Any other relief?

(6) During the course of proceedings of MAC Case No.88/2009, the claimants' side in support of their claim application, adduced the evidence of 2 (two) witnesses and exhibited a number of documents. The opposite parties did not adduce any evidence. The claimant No.1 i.e. the widow of the deceased examined herself as C.W.1 by filing an evidence-on-affidavit and she was duly cross-examined by the opposite party No.2/insurer. In her evidence, she deposed that on 20.04.2009 at about 11-00 a.m., her husband was riding a motorcycle bearing registration No.AS-05/B-7436 from Golaghat town towards his house and when he reached near Bhelowguri on PWD road, he suddenly lost his control when he saw a cow in front of his motorcycle and dashed the motorcycle on a

roadside electric post. As a result of the impact, her husband sustained grievous injuries on his person and he died instantaneously on the spot. She further deposed that her husband was aged about 38 years at the time of his death and was having an annual income of Rs.40,000/- only. He was the owner of one Fish shop, comprising of one eco-hatchery and 2.00 hactor water area nursery, which was established in the year 2006. She also deposed that the deceased was having a valid driving licence at the time of the accident authorizing him to drive LMV/ HMV/ truck etc. by the DTO, Golaghat. Her further deposition was to the effect that at the time of the accident, the concerned motorcycle had a valid insurance cover with the opposite party No.2 by a package policy covering the risk of the owner-driver of the motorcycle which coverage was extended on payment of additional premium. C.W.1 further testified that the registered owner of the motorcycle i.e. the opposite party No.1 was the brother of her husband and her husband was driving the motorcycle with the permission of the registered owner of the motorcycle at the time of the accident. In connection with the accident, Merapani Police Station registered a case vide General Diary Entry No. 450 dated 20.04.2009. C.W.1 had exhibited the Accident Information Report (Ext.1), Post Mortem Examination Report (Ext.2), Death Certificate (Ext.3), Driving licence of the deceased (Ext.4), Insurance Policy of the motorcycle, proved in original (Ext.5) and the Certificate of Registration of the motorcycle (Ext.6).

(7) The learned Tribunal while adjudicating the claim application did not record any detailed finding in respect of the insurance policy and its coverage. It simply recorded that at the relevant time of accident i.e. on 20.04.2009, the offending motorcycle was duly insured with the opposite party No.2 by a policy of insurance valid from 13.08.2008 to 12.08.2009, though the opposite party No.2 insurer by way of filing an additional written statement, contended that the deceased died of his own fault and the opposite party No.2-insurer was not liable to pay the amount of compensation to the claimants which, later on, the Tribunal had assessed at Rs.3,93,380/-.

(8) I have heard Mr. S.S. Sharma, learned senior counsel assisted by Mr. B.J. Mukherjee, learned counsel for the appellant and have also heard Mr. T.R. Sharma, learned counsel for the respondents No.1, 2 and 3/claimants.

(9) Aggrieved by the said judgment and award dated 01.10.2013 the instant appeal has been preferred by the opposite party No.2/insurer in MAC Case No.88/2009 as the appellant, assailing the same on the grounds, inter-alia, that the provision of section 163A of the Act is not applicable as the deceased was driving the motorcycle of the opposite party No.1/insurer and died in the accident where there was no involvement of any other vehicle. Mr. S.S. Sharma, learned Senior counsel has submitted that since the deceased had stepped into the shoes of the owner-insured, no award could have been passed against the appellant-insurer and in favour of the dependents of the deceased, who had stepped into the shoes of the insured-owner. It is further contended that the

deceased was not a third party in respect of the accident and he or his dependents are not entitled to any compensation under the provisions of section 163A of the Act. Supporting the said judgment, Mr. T.R. Sarma, learned counsel for the respondents-claimants has submitted that the insurer is liable to indemnify the owner under the policy of insurance valid at the time of the accident and the impugned judgment and award is not required to be interfered with.

(10) As has been mentioned above, it is the testimony of C.W.1, Smt. Jurie Phukan that the deceased who was her husband, was driving the motorcycle with due permission of the registered owner of the motorcycle at the time of the accident. The registered owner of the motorcycle was the brother of the deceased. In such situation, the question that arises for consideration is whether the claim for compensation by the claimants under section 163 A of the Act is maintainable or not.

(11) On a perusal of the Policy of Insurance of the Motorcycle involved in the accident which was exhibited as Ext.5, it can be seen that the same was a package policy. The opposite party No.1 was the insurer and the same was valid for the period from 13.08.2008 to 12.08.2009. It is also evident from the said policy that an additional premium of Rs.50/- was paid towards compulsory personal accident coverage of the owner-cum-driver for an amount of Rs.1,00,000/-.

(12) It is well settled that in case of death as a result of an accident arising out of use of a motor vehicle, the liability of the insurer towards a third party under a statutory policy, in a claim application preferred under section 163A of the Act, will be as per the second schedule. But when compensation is claimed for the death of the owner or another passenger of the vehicle, it is the terms of the contract on the basis of which the matter of compensation is to be decided and liability of the insurer is to be adjudicated. The liability under section 163A of the Act is on the owner of the vehicle and the owner as the claimant cannot also be a recipient. The legal representatives of the owner if the owner had caused the accident and suffered death, could not make a claim in terms of the provisions section 163A of the Act. Such claim can be considered only in terms of the contract of Insurance.

(13) In *Oriental Insurance Company Ltd. vs Jhuma Saha and Ors*, reported in (2007) 9 SCC 263, it is held by the Hon'ble Supreme Court as under:-

"10. The deceased was the owner of the vehicle. For the reasons stated in the claim petition or otherwise, he himself was to be blamed for the accident. The accident did not involve motor vehicle other than the one which he was driving, the question which arises for consideration is that the deceased himself being negligent, the claim petition under Section 166 of the Motor Vehicles Act, 1988 would be maintainable.

11. Liability of the insurer Company is to the extent of indemnification of the

insured against the respondent or an injured person, a third person or in respect of damages of property. Thus, if the insured cannot be fastened with any liability under the provisions of Motor Vehicle Act, the question of the insurer being liable to indemnify insured, therefore, does not arise."

(14) In *Ningamma & Anr vs United India Insurance Co.Ltd*, reported in (2009) 13 SCC 710, the facts, in brief, were that claimants were the wife and son respectively of the deceased who was driving a motorcycle which he had borrowed from its real owner for going to his native place. When the said motorcycle was proceeding on National Highway a bullock cart proceeding ahead of the said motorcycle suddenly stopped and consequently, the deceased who was driving on the said motorcycle dashed against it. As a result of the accident, he sustained fatal injuries and on the way to government hospital he died. In such situation, it is been observed that though the deceased was not the owner of the motorcycle in question but he borrowed the said motorcycle from its real owner. It is held that the deceased could not be held to be an employee of the owner of the motorcycle although he was authorized to drive the said vehicle by its owner, and therefore, he would step into the shoes of the owner of the vehicle. By referring to the provision of section 163A of the Act, it is observed that a bare perusal of the said provision makes it clear that the person like the deceased in the said case would step into the shoes of the owner of the said vehicle. In such situation, the owner or any other person who stepped into the shoes of the owner could not be a recipient of the compensation as the liability to pay the same is on him. Accordingly, it has been held that the legal representatives of the deceased who had stepped into the shoes of the motorcycle were not entitled to compensation under section 163A of the Act.

(15) After considering the aforesaid principle as regards liability under section 163A of the Act and the fact situation obtaining in the present case, I am of the view that the respondents No.1, 2 and 3 who were the claimants in MAC Case No.88/2009, are not entitled to claim compensation under section 163A of the Act as the said provision is not applicable. Therefore, the learned Tribunal is not justified in directing the appellant-insurer to satisfy the award the compensation of Rs.3,93,380/-.

(16) It is, however, evident from the policy of Insurance (Ext.5) that an additional premium was paid towards compulsory personal accident coverage of the owner-cum-driver of the motorcycle. In the absence of coverage of insurance as per the statutory requirement under section 147 of the Act, it is the terms of the contract of insurance which govern the liability of the insurance company. According to the terms of contract of insurance, in the instant case, the liability of the appellant-insurer is limited to Rs.1,00,000/- (Rupees one lakh only) for the death of owner-cum-driver of the vehicle. Since the amount of liability extended for personal accident to the owner-cum-driver of the motorcycle is limited to Rs. 1,00,000/-under the contract of insurance, the respondents-claimants are entitled to the said amount towards compensation for the death of the deceased.

In such view of the matter, the appellant-insurer though not liable to pay the amount as awarded by the Tribunal as compensation, is liable to pay the said amount of Rs. 1,00,000/- for which the additional premium was paid.

(17) It is, therefore, held that the respondent No.1, 2, 3/claimants are entitled to an amount of Rs. 1,00,000/- as per the terms of the contract of insurance along with interest @ 6% per annum from the date of the claim application till the date of disbursal. At this stage, it is submitted at the Bar by the learned counsels for the parties that the appellant-insurer has already deposited an amount of Rs. 1,96,690/- before the Registry in compliance of the order dated 12.08.2016, passed in connected Misc. Case No.3385/2014, since disposed of.

(18) Accordingly, it is directed that the amount of Rs. 1,00,000/- along with interest @ 6% per annum from the date of filing of the claim application i.e. 29.06.2009 till the date of disbursal shall be released in favour of the respondent No.1 from out of the said amount of Rs.1,96,690/- kept deposited at the Registry. After due calculation, the amount so arrived at shall be disbursed in favour of the respondents No.1 for and on behalf of all the respondents-claimants on their due identification by their learned advocate. After disbursal of such amount, the balance, if any, shall be released in favour of the appellant-insurer along with the statutory deposit of Rs. 25,000/-(Rupees twenty five thousand only).

(19) The appeal is allowed in terms of the directions made above. LCR be returned accordingly. No order as to costs.