
(2018) 09 GAU CK 0011
In the Gauhati High Court
Case No : Mac Appeal No. 03 Of 2016

United India Insurance Co. Ltd.	Vs	APPELLANT
Smti. Lili Bezbaruah		RESPONDENT

Date of Decision : 06-09-2018

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 163A, 166, 165

Citation : (2018) 09 GAU CK 0011

Hon'ble Judges : Rumi Kumari Phukan, J

Bench : Single Bench

Advocate : K. K. Bhatra, P. Bhowmick

Final Decision : Allowed

Judgement

1. Heard learned counsel for the appellant Mr. K. K Bhatra. Also heard Mr. P. Bhowmick, learned counsel for the respondents.
2. The appeal is directed against the judgment and order dated 14.07.2015 passed by the Motor Accident Claims Tribunal, No. III, Kamrup at Guwahati in MAC Case No. 136/2009.
3. Brief case of the claimant is that on 19.11.2006 her deceased son Hemen Barua was riding a Scooty Activa No AS 01 P 2893 from Chandrapur towards home then at about 6-40 PM at Panikhaity under Panikhity Police Petrol Pump met with an accident and he was admitted at Down town Hospital but he succumbed to his injuries on 20.12.2006. At the time of the death, the deceased was 20 years of age and was a business man and thus earned Rs. 3,000/- per month. The claimant filed claim petition claiming compensation of Rs. 4,00,000/-
4. The opposite party No. 1 United India Insurance Company Ltd. contested the case by filing their written statement. This case is proceeded ex-

parte against O.P No. 2.

5. The answering opposite party No. 1 the United Insurance Co. Ltd. in their written statement has denied the allegation and wanted strict proof of

facts and documents, such as age, occupation, income of the deceased, amount spent for his treatment, and denied about the valid driving license etc.

It is alleged that the accident occurred due to rash and negligent driving of the deceased himself, and hence the claim petition is liable to be dismissed.

Further it is stated that the alleged offending vehicle was covered under a package policy, but the deceased borrowed the vehicle from the owner and

thus stepped into the shoe of the owner of the scooty and as such, he was not a third party and hence his legal representative are not entitled to get

any compensation from the insurer of the vehicle and submitted to dismiss the case against the answering opposite party No. 1.

6. Upon the pleadings, the following issues were framed by learned Tribunal:

1. Whether deceased Hemen Barua died in the alleged road accident dated 19.11.2016 involving vehicle No. AS-01P-2893 ?

2. Whether the claimant is entitled to get any compensation, and if yes, to what extent and by whom amongst the opposite parties, the said

compensation amount will be payable ?

7. Claimant's side examined three witnesses and the opposite party No. 1 also examined one witness. The learned Tribunal, however, awarded

the claim of the respondent No. 1/claimant in her favour awarding a compensation of Rs. 4,49,000/-with a direction to the Insurance Company to

satisfy the award.

8. Aforesaid award is being challenged by the Insurance Company on the following counts:

(i) The deceased was simply borrower of the vehicle of his own brother and as such he steps into the shoes of the owner and he is not a driver or

employee under the owner. The learned Tribunal gravely erred in awarding compensation ignoring the provision of law.

(ii) The deceased died for the fault of his own wrongful driving and there is no involvement of another vehicle creating any third party liability to be

indemnified by the Insurance Company. The deceased being not a third party, is not entitled to get the compensation.

(iii) Learned Tribunal failed to appreciate the relevant scope and ambit of the

provision of Section 166/163A as well as Section 147 of the Act, to decide about the entitlement towards compensation.

9. Mr. Bhatra, learned counsel appearing for the appellant/United India Insurance Co. Ltd. submitted that in view of the relation between the

deceased and the owner i.e. two brothers, the deceased was not a third party and contended that the Section 165 of the M.V. Act clearly postulates

that insurer is liable to indemnify the risk of the third party during the motor vehicle accident. Here, in the present case, driver of the vehicle is

admittedly not a party and as such, the Tribunal has no jurisdiction to pass an order under the Motor Vehicles Act and as such, the finding of the

Tribunal is against the settled position of law and same is liable to be set aside. In support of his contention, Mr. Bhatra has placed reliance upon the

decisions of the Honâ??ble Supreme Court in (2009) 2 SCC 417 New India Insurance Company Vs. Sandand Mukhi & Ors., (2009) 13 SCC 710

Ningamma and another Vs. United India Insurance Company followed by 2015 (2) TLR 450 National Insurance Company Vs. Shivani Das, 2015 (1)

TLR 459 Suchitra Choudhury (Dey), & Ors. Vs. Naresh Debbarma & Ors. and (2016) 3 GLR 537 Oriental Insurance Company Vs. Anjana Sharma

& Ors.

10. Due considerations have been given to the submissions of learned counsels for both the parties. In the light of the aforesaid submissions, the

question that falls for consideration is whether the legal representatives of a person, who was driving a motor vehicle, after borrowing it from the real

owner meets with an accident without involving any other vehicle, would be entitled to compensation under section 163-A of MVA or under any other

provision(s) of law and also whether the insurer who issued the insurance policy would be bound to indemnify the deceased or his legal representative

?

It would be useful to discuss the relevant provision of Section 163-A â?

â??163-A. Special provisions as to payment of compensation on structured formula basis â?" (1) Notwithstanding anything contained in this Act or in

any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorized insurer shall be liable

to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second

Schedule, to the legal heirs or the victim, as the case may be.

(2) In any claim or compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement

in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of

any other person.

10. In the present case pleadings as well as the evidence on record reveals that deceased/the son of the claimant drove the vehicle of the OP No. 2

who is the owner/another son of the claimant and the deceased took the vehicle from his brother and on the way he met the accident but there was no

any involvement of another vehicle. The deceased did not possess any driving license at the time of occurrence as no license was produced. In view

of the matter, the deceased was a borrower of the vehicle in question. Having regard to the pleading between the parties and the ground of appeal, the

question therefore will be whether the borrower of the vehicle can claim compensation from the owner/insurer of the vehicle? The aforesaid aspect

has been dealt with in the aforesaid decision relied by the appellant.

11. In Ningamma (Supra) it was held as follows:

“In a case where third party is involved the liability of the Insurance Company would be unlimited. It is also held that the said decision where,

however, compensation was claimed for the death of the owner or another passenger of the vehicle, the contract of the insurance being governed by

the contract-qua-contract, the claim of the claimant against the insurance company would depend upon the terms thereof.”

In the case of Rajini Devi (Supra), it has been held that the Section 163 A of the MV Act cannot be said to have any application in respect of an

accident where the owner of the vehicle himself involved. The decision further held that the question is no longer res-integra. The liability under

section 163 A of the MV Act is on the owner of the vehicle so a person cannot be both, a claimant as also a recipient with respect to the claim.

Therefore, the heirs of the deceased would not have maintained a claim under section 163 A of MV Act.

12. Now in the instant case the deceased was not the owner of the vehicle and he borrowed the vehicle from his brother/the real owner and we

cannot be held to be an employee of the owner but he was authorized to drive

the vehicle of the owner, therefore, he would step into the shoes of the owner. In view of the ratio laid down in the decisions discussed above the deceased had stepped into the shoes of the owner of the vehicle and as such claim for compensation against the owner of the vehicle could not arise. In a similar situation, in 2002 (1) TAC (GAU) it has been held that while the owner of the vehicle met an accident and the contention that policy covered only third party risk, no compensation could have been awarded.

Owner incurred no liability in respect of death or bodily injury to any person to be indemnified by the insurance policy under the provision of 147 MV

Act.

13. In *Sadand Mukhi* (Supra) it has been held that “for the reason stated in the claim petition or otherwise he himself was to be blamed for the incident. The incident did not involve any other motor vehicle, other than the one which he was driving and it was held that since the deceased being the negligence the claim petition is not maintainable.

14. In this context reference to be made to the relevant provision of Section 147 of Motor Vehicle Act. Requirements of policies and limits of liability-

(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which-

(a) is issued by a person who is an authorized insurer; and

(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)-

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, [including owner of the goods or his

authorized representative carried in the vehicle] or damage to any property of a third party caused by or arising out of the use of the vehicle in a public

place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:

Provided that a policy shall not be required-

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in

respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the

Workmen's Compensation Act, 1923 (8 of 1923), in respect of death of, or bodily injury to, any such employee-

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle engaged as a conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability Insurer's liability (S. 147 of new Act) in respect of third party risk- In absence of any specific agreement

undertaking any liability in excess of the statutory limit and payment of separate premium therefore, insurer's liability would be confined to that

provided in the statute. National Insurance Co. Ltd. Vs. Jugal Kishore, (1988) 1 SCC 626.

The legal obligation arising under S. 147 cannot be extended to an injury or death of the owner of the vehicle or a pillion rider travelling thereon,

Oriental Insurance Co. Ltd. Vs. Sudhakaran K.V., (2008) 7 SCC 428 (2008) 3 SCC (Cri) 110.

Insurance is mandatory under S. 147(2), hence insurer would be liable to reimburse the insured to the extent of the damages payable by the owner to

the claimants, subject to the limit of its liability as laid down in the Act or the contract of insurance, Oriental Insurance Co. Ltd. Vs. Premlata Shukla,

(2007) 13 SCC 476 : (2009) 1 SCC (Cri) 204.

15. We may refer to the decision in New India Assurance Company Ltd. Vs. Aasha Rani 2003 2 SCC 223 wherein the Hon'ble Supreme Court

had the occasion to consider the scope and provision of 'any person' occurring in the section 147 of the MV Act and it has been held as follows:

26. that 'the meaning' of the words 'any person' must also be attributed having regard to the context in which that has been used i.e. 'a

third party'. Keeping in view of the provision of the 1988 Act we are of opinion that as the provisions thereof do not enjoin any statutory liability from

the owner of the vehicle to get his vehicle insured for any passenger travelling in a goods vehicle, the insurer would not be liable thereof. In other

words, 'any person' is to be understood as a third party.

16. Regarding the challenge that the deceased was not a third party we may take note of the decision of New India Assurance Vs. Kalikthal and Ors.

2002 (2) TAC 663 Madras wherein it has been held that insurance company is

liable to pay compensation as per the policy cover only the third party risk, not the risk of the life of the insured. Again in 2007 (2) 417 (SC) (Oriental Insurance Co. Ltd. Vs. Meena Variyal & Ors.), it has been held that in a case where a person is not a third party within the meaning of the act, the insurer cannot be made automatically liable to make the compensation. The latest decision on the issue has been set at rest by the Honâ??ble Supreme Court in the case of National Insurance Co. Ltd. Vs. Ashalata Bhomik (Civil Appeal No. 9100/18, dated 31.08.2018) by holding that where in the accident did not involve any motor vehicle other than the one which the deceased was driving and the deceased himself was negligent, the claim petition will not be maintainable. The liability of the insurance company is to the extent of indemnification of insured against the respondent or an injured person or in respect of damages of property. Thus, if the insured cannot be fastened with any liability under the provisions of Motor Vehicles Act, the question of insurer being liable to indemnify the insured, therefore, does not arise.

17. In view of the discussions and the legal propositions mentioned above, the claimant is not entitled to get compensation under Section 163-A of the Act. As a consequence thereof, the impugned judgment and award is hereby set aside. The insurance company may provide necessary payment to the owner/insured as per entitlement under the policy coverage. The appeal stands allowed. Return the LCR.