
(2008) 02 GAU CK 0017
In the Gauhati High Court

Usha Rajkhowa and Others

APPELLANT

Vs

Paramount Industries and Others

RESPONDENT

Date of Decision : 07-02-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 147

Citation : (2009) ACJ 1295 : (2008) 1 GLT 949

Hon'ble Judges : Anima Hazarika, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

This Judgment has been overruled by : Usha Rajkhowa and Others Vs. Paramount Industries and Others, (2009) ACJ 1314 : AIR 2009 SC 1951 : (2009) CLT 721 : (2009) 2 JT 512 : (2009) 14 SCC 71 : (2009) 3 SCR 520 : (2009) AIRSCW 1576 : (2009) 1 Supreme 787

A. Hazarika, J.—Heard Mr. J. Singh, learned senior counsel assisted by Mr. LA. Talukdar appearing for the appellant. Also heard Mr. S. Dutta learned Counsel appearing for the respondent No. 3 and Ms. M. Choudhury learned Counsel appearing for respondent No. 2. None appeared for respondent No. 1 inspite of service of notice.

2. This appeal has been preferred by the claimants/appellants against the judgment and order dated 7.3.2001 passed by the learned Member of the Motor Accident Claims Tribunal at Golaghat in MAC case No.13/99.

3. Necessary facts may be stated herein, in a nutshell

A claim case was filed by the applicant Snit. Usha Rajkhowa claiming compensation on account of death of her husband Yadav Rajkhowa in a Motor vehicle accident. The claimant's case is that on 5.12.98 at about 7 P.M. her husband went to Dergaon market from his house at Dadhara in his Maruti Car bearing No. WB/12/6287. On the way to Dergaon, one truck bearing No.

NLA-241 coming from Jorhat side towards Bokakhat in a rash and negligent manner dashed against the Maruti car causing the instant death of her husband. She being the wife of the deceased filed the claim petition for an award of Rs. 10 lacs.

4. The deceased Yadav Rajkhowa was the owner of the Maruti car and he himself drove the same at the time of the accident. The car was insured with Oriental Insurance Company Ltd. The offending truck belongs to M/s. Paramount Industries, Jorhat which was insured with United India Insurance Co. Ltd. Golaghat Branch

5. The insurer resisted the claim. The Oriental Insurance Company Ltd. resisted by contending, inter alia, that the Maruti car was under the valid insurance coverage with the Oriental Insurance Company Ltd. and it was an Act Policy and the owner Yadav Rajkhowa paid Rs. 373/- only as premium covering third party risk.

6. It was further contended that for covering his own life risk, the insured paid no additional premium even though there are such provision under separate insurance policy. The insured also did not pay any additional premium for driver and occupants.

7. The contention of the Oriental Insurance Company was that the owner, driver and occupants are never treated as third party and hence, through an Act Policy, the claimant would not be entitled to claim any compensation from their company. The policy conditions were also exhibited by the witnesses adduced on behalf of the Oriental Insurance Company. However, none was examined from the side of the United India Insurance Company Ltd.

8. No specific issue was, however, framed on the plea so taken by the Oriental Insurance Company Ltd. and upon recording the evidence adduced by the claimants as well as the Oriental Insurance Company Ltd. the learned tribunal awarded as compensation Rs. 13,12,600/- in favour of the claimants/appellants and ordered for recovery of Rs. 6,56,300/- i.e. half of the total amount assessed from the United Insurance Company Ltd. being the insurer of the offending truck No. NLA-241 with an interest @ 9% P.A. from the date of filing of the claim petition, further making it clear that the balance amount is to be borne out by the owner itself and as such, the legal representative who are claiming compensation in the case.

9. The appellant being aggrieved by the aforesaid judgment and order has preferred the instant appeal before this Court. Mr. Singh, learned senior counsel appearing on behalf of the appellants has submitted that without holding the volume of negligence of the vehicle, the tribunal unilaterally awarded compensation of Rs. 13,12,600/- and ordered the insurer of the truck i.e. respondent No. 2 herein, would pay half of the said amount and that the balance amount shall be borne out by the owner(deceased) himself, i.e. legal representatives of the deceased.

10. The learned Tribunal has failed to determine the fault of the vehicle i.e. which vehicle is responsible and to what extent. Mr. Singh has further submitted that without determining the fault as to which vehicle is responsible for the accident and to what extent, the learned Tribunal ought not to have apportioned the liability of the compensation, whereas evidence adduced by the parties would go to show that entire liability are liable to be paid by the insurer of the offending truck only. The learned Counsel has thus, emphatically urged that the learned Tribunal not having held the contributory negligence on the part of the Maruti Car ought not to have apportioned the liability of the compensation on both the vehicles. The learned Tribunal was therefore not justified in coming to the conclusion that the driver of the Maruti car contributed 50% in causing the accident. According to him it was the truck which was responsible for causing the accident.

11. Heard Mr. S. Dutta learned Counsel "appearing for respondent No. 3 and Ms. M. Choudhury learned Counsel appearing for respondent No. 2. Supporting the judgment passed by the learned Tribunal, both the counsels have submitted that the award as directed by the learned Tribunal is not liable to be interfered with in this appeal as the same has been passed after going through the materials as well as evidence available on record. Ms. M. Choudhury learned Counsel appearing for respondent No. 2 has further submitted that taking into consideration the facts that the policy of the owner of the Maruti car i.e. the deceased was an Act Policy only, the learned Tribunal has passed the judgment of award.

12. It is seen that while passing the judgment the Tribunal has held that the owner of the vehicle i.e. the Maruti car was insured under the Act Policy and therefore, the owner i.e. deceased, husband of the appellant No. 1 can never be a passenger or a gratuitous passenger. There is a difference of Act Policy and comprehensive policy.

The policy (Ext. A.) exhibited by the respondent No. 3 reveals that the deceased, owner of the Maruti car paid minimum amount of Rs. 373/- covering third party risk only and therefore, the owner of the vehicle cannot claim the benefit arising out of the comprehensive policy where few thousand rupees are to be paid under such policy. Moreover, the terms and conditions of the insurance policy, its basic feature of contract of insurance bind both the parties. The parties only get the benefit under those terms and conditions of the policy until and unless additional premium is paid covering own risk and risk of the occupants. An Act Policy cannot give benefit to the owner of the vehicle who was driving it. In this regard it needs to be carefully borne in mind that the husband of the claimant himself was, admittedly, registered owner of the vehicle.

13. Section 147 of the Motor Vehicle Act does not require an insurance company to assume risk for death or bodily injury to the owner of the vehicle. The learned Tribunal thus has rightly held that if one can get all the benefits arising out of an accident by effecting an Act Policy, nobody would prefer to have a comprehensive

policy by paying more insurance premium. In the present case in hand, the owner of the vehicle who was driving the vehicle died of the motor accident has to indemnify himself by way of comprehensive policy, therefore, his legal representative would not be entitled to claim compensation from the insurance company which was covered under an Act Policy only.

14. In the backdrop of the facts indicated above, it is now required to be determine whether the Tribunal was justified in holding that the driver of the Maruti car and the truck contributed equally for the cause of the accident. The learned Counsel appearing for the respondent No. 2 has placed reliance on a decision in Dr. B.D. Bagri v. Daulat Ram and Ors. reported in 1998(1) TAC287(P&H) wherein it has been held that unless fault of one driver is specifically determined, drivers of both the vehicles are equally responsible for causing the accident. In the present case at hand the learned Tribunal has held that the accident took place due to contributory negligence of the driver of the truck and the Maruti car. On perusal of materials on record it reveals that the only eye witness in the case is PW-3. This PW-3 has specifically stated while deposing in the Court that "as to which vehicle was in fault I cannot say clearly". Therefore, the learned Tribunal has rightly held that it was an act of contributory negligence, inasmuch as, except this witness no other witnesses said anything about the accident and this PW-3, who is an eye witness could not say clearly as to which vehicle was actually in fault, whether the truck or the maruti car.

15. In view of the above position, this Court is of the opinion that it is a case of contributory negligence as nobody could pin point as to which vehicle was in fault. Unless fault of one driver is pin pointed, driver of both the vehicles have to be equally responsible. In the instant case also from the perusal of the materials on record, including the evidence adduced by the parties, this Court finds that the drivers of both the vehicles should be held equally responsible for causing the accident.

16. On the other hand, the owner cum driver of the maruti car, who died in the accident, had an Act Policy only and not a comprehensive policy and therefore, as rightly held by the Tribunal, that 50% of the awarded amount is to be paid by opposite party No. 2 and the balance amount is to be borne out by the owner himself, as such, the legal representatives, who are claiming compensation in the case.

17. In the result and for the reasons discussed above, the appeal being devoid of merit stands dismissed.

18. Send down the records.