

GAHC010003752013



THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

PRINCIPAL SEAT AT GUWAHATI

MAC Appeal No. 30 of 2013

SRI DUGDHA RABHA,
S/O SRI BABU RAM RABHA,
VILL-MANDALGRAM,P.O & P.S.- DUDHNOI,
DISTRICT-GOALPARA, ASSAM.

.....Appellant

-Versus-

1. M/S NATIONAL INSURANCE COMPANY LTD.,
REGIONAL OFFICE, G.S. ROAD, BHANGAGARH, GUWAHATI-05, KAMRUP,
ASSAM TO BE REPRESENTED BY ITS REGIONAL MANAGER.
(INSURER OF VEHICLE NO. AS-18/7031)

- 2: SRI ANIL RABHA, S/O SRI MAHANDRA RABHA,
VILL. LELA PUKHURIPARA
P.O. and PS. DUDHNOI,
DIST. GOALPARA
ASSAM .
(DRIVER OF VEHICLE NO. AS-18/7031)

3. SMTI. KUMPHOLI RABHA,
W/O LATE KILU RABHA,
VILL. MANDALGRAM,
P.O. and P.S. DUDHNOI,
DIST. GOALPARA,
ASSAM.
4. MISS PURABI RABHA,
D/O LATE KILU RABHA,
VILL. MANDALGRAM,
P.O. and P.S. DUDHNOI
DIST. GOALPARA,ASSAM.
5. SRI CHIRANJEEV RABHA,
S/O LATE KILU RABHA,
VILL. MANDALGRAM,
P.O. and P.S. DUDHNOI
DIST. GOALPARA, ASSAM.
6. RAKESH RABHA,
S/O LATE KILU RABHA,
VILL. MANDALGRAM,
P.O. and P.S. DUDHNOI,
DIST. GOALPARA
ASSAM.
7. SMTI. MONIBALA RABHA,
W/O LATE HARAKANTA RABHA,
VILL. MANDALGRAM,
P.O. and P.S. DUDHNOI,
DIST. GOALPARA, ASSAM.

.....Respondents.

Advocates for the appellant : Mr K K Dutta,
Advocate for the respondents : Mr R K Bhatra,
Mr A Singha Roy.

**BEFORE
HON'BLE MRS. JUSTICE MALASRI NANDI**

Date of Judgment : 27.01.2023

JUDGEMENT AND ORDER (ORAL)

Heard Mr K K Dutta, learned counsel appearing for the appellant and Mr R K Bhatra, learned counsel for the respondent/Insurance Company. Also heard Mr A Singha Roy, learned counsel for the respondent/claimant.

2. The appellant in this case is the owner of the offending vehicle, who has preferred this appeal under Section 173 of the MV Act, 1988, challenging the Judgment and Order dated 06.05.2009, passed by the learned Member, MACT, Kamrup, in MAC Case No. 2634 of 2005.

3. The brief facts of the case is that on 28.10.2005, the deceased was travelling on a bus, bearing Registration No. AS-18-7031, as a handyman from Guwahati to Goalpara. When the bus reached near Farm Gate under Azara Police Station, he fell down from the bus and sustained grievous injuries on his head, as a result of which, he died on the spot. The Post-Mortem Examination was conducted in the Gauhati Medical College and Hospital. The deceased was the sole earning member of his family, consisting of his wife, four minor children and old aged mother. After the accident, one case was registered vide Azara PS Case No. 136/2005, under Sections 279/304-A IPC. It is stated in the claim petition that at the relevant time of accident, the alleged vehicle was duly insured with the National Insurance Company Limited.

4. Subsequently, Smt. Kumpholi Rabha, wife of the deceased filed a case before the MACT,

Kamrup, claiming compensation for the death of her husband. Accordingly, a case was registered vide MAC Case No. 2634/2005. After completion of trial, learned Tribunal vide Judgment and Award dated 06.05.2009, awarded compensation amounting to Rs. 4,68,000/- (Rupees Four Lacs and Sixty Eight Thousand) only, with interest @ 6% per annum, from the date of filing of the claim petition till payment, in favour of the respondent No. 3/claimant, with a direction to the present appellant/owner of the vehicle to pay the compensation.

5. Being highly aggrieved and dissatisfied with the Judgment and Award as aforesaid, the appellant has filed this appeal.

6. It is submitted by the learned counsel for the appellant that in his written statement, the present appellant as owner of the vehicle , bearing Registration No. AS-18-7031, clearly submitted that the said vehicle was duly insured with the National Insurance Company Limited, at the relevant time of accident. But these aspects were not considered by the learned Tribunal, while passing the impugned judgment.

7. It is further submitted by the learned counsel for the appellant that since deceased was a handyman and employee of offending vehicle, the Insurance Company cannot avoid liability as admittedly, under the policy risk of two employees, besides driver was covered, as such, there was no question for fixing the responsibility to satisfy the Award with the owner of the vehicle. It is further submitted that though the Insurance Company took the plea that the appellant put his signature on the proposal form, in fact, the signature in the declaration by the insured was not proved and the signature found in the proposal form is not the signature of the appellant. Hence, the impugned Judgment and Award is not sustainable in law and liable to be set aside.

8. In support of his submission, learned counsel has placed reliance on the following caselaw:-

2018 (3) TAC 709 (Gauhati); (*Khudeja Khatun & Ors. Vs. Bajaj Allianz General Insurance Company Limited & Another*)

9. On the other hand, learned counsel for the Insurance Company has submitted that the deceased was a handyman and the policy was issued for 2 (two) persons, driver and conductor, by paying the premium of Rs. 50/-. There is nothing to show that the appellant had paid any additional premium to cover the risk of injury to a handyman. There is no payment of premium for a handyman. As such, the Insurance Company is not liable to pay any compensation in favour of the claimant. In support of his submission, learned counsel for the Insurance Company cited the following caselaws:-

1) (2002) 2 SCC 278; (*New India Assurance Co. Ltd. vs- C.M. Jaya & Others*)

2) (2003) 10 SCC 664; (*Ramashray Singh vs. New India Assurance Co. Ltd. & Ors.*)

10. I have considered the submissions of the learned counsel for the parties. I have gone through the Judgment of the trial Court as well as the documents available on record.

11. In the case in hand, the factum of accident, the age of the deceased, the income of the deceased have not been challenged. The only question raised by the learned counsel for the Insurance Company is that as the policy was the package policy, covering risk of only two employees, i.e., driver and conductor and the deceased being a handyman of the vehicle is not the employee of the owner. As such, Insurance Company is not liable to pay any compensation.

12. Before the Tribunal, during trial, the appellant, i.e., owner of the vehicle, bearing

Registration No. AS-18-7031, has submitted written statement, wherein he had admitted that the vehicle involved in the accident was a bus and he is the owner of the said bus. He authorized respondent No. 2, Sri Anil Rabha to drive his vehicle and the vehicle was duly insured with National Insurance Company Limited vide Policy No. 200600/31/04/630001661, valid upto 2.12.2005. The deceased was the handyman of his vehicle and died in the course of his employment and he was paid Rs. 3,500/- per month as his salary.

13. The Insurance Company has also submitted written statement before the Tribunal, wherein it is specifically stated that the claim petition was not maintainable under Section 166 of the MV Act, as no premium was paid by the owner of the vehicle for covering the risk of handyman of a public service vehicle under the policy of Insurance, issued by the Insurance Company to the owner. It is a well settled position of law that as per Section 147 of the MV Act, a policy of insurance is not required to cover the risk of a handyman of a public service vehicle automatically, unless extra premium is paid by the insured/owner of the vehicle to the insurer.

14. One witness was examined by the Insurance Company as DW-1. He deposed in his evidence that the vehicle, bearing Registration No. AS-18-7031 (bus) was insured by the National Insurance Company Limited under the passenger carrying, commercial package Policy vide No. 200600/31/04/630001661, for the period from 03.12.2004 to 02.12.2005, against the payment of total premium of Rs. 23,837/-. The owner of the vehicle had paid Rs. 1860/-, covering the basic third party risk, Rs. 6624/- against the 48 numbers of passengers and had specifically paid premium of Rs. 50/- covering the risk of two of his employees, engaged in the vehicle. The said two employees are the driver and the conductor of the insured bus, inasmuch as, the premium was paid for the driver and the conductor only.

Therefore, there is neither any statutory obligation nor any contractual obligation of the Insurance Company as the insurer of the vehicle No. AS-18-7031 to compensate the owner of the vehicle for any death or bodily injury of the handyman of a bus, which is a public service vehicle. The Insurer of the vehicle No. AS-18-7031 is not liable either under the MV Act, nor under any contractual provision to indemnify the owner for the injuries received by the handyman of the vehicle.

15. In his cross-examination, DW-1 replied that in the policy it is only mentioned that extra premium has been paid for two employees. However, nothing has been mentioned, as to who are these two employees. There is nothing in the Insurance Policy that only the risk of driver and conductor was covered. DW-1 also admitted that signature of the proposer was not taken in his presence. The proposal form was signed by the proposer on 03.12.2002. No fresh proposal form was obtained, when policy was issued afresh for period 03.12.2004 to 02.12.2005. There is also no undertaking by the proposer that the policy for the aforesaid period was issued on the same terms and conditions of the proposal form of 03.12.2002.

16. According to the appellant, i.e. owner of the vehicle, he did not put any signature in the proposal form when it was renewed, wherein it was specifically stated that the risk was covered for the driver and conductor of the vehicle. But DW-1 in his cross-examination clearly admitted that in the policy it is only mentioned that extra-premium has been paid for two employees and nothing has been mentioned, as to who are these two employees. The appellant specifically stated that the deceased was working as a handyman in his vehicle. The owner paid premium for two employees of his vehicle. If there is nothing in the insurance policy that only the risk of driver and conductor are covered, it can be presumed that the owner had paid the premium for his handyman, being the employee of his vehicle. Under

such backdrop, the Insurance Company is liable to pay compensation.

17. In the case of *National Insurance Company Limited vs. Balakrishnan*; (2008) 5 SCC 736, the Hon'ble Supreme Court had an occasion to examine the difference between act policy and comprehensive/package policy, wherein, the respondent/claimant, being the Managing Director of the respondent/company, met with an accident while travelling in a motor vehicle, belonging to a Company. It was contended before the Supreme Court by the appellant/insurer that even assuming respondent not to be the owner and the non-fare paying passenger, he would not be covered under the policy, wherein the Supreme Court held that the owner of the insured vehicle is not entitled to compensation under the provisions of Section 147 of the MV Act. The Supreme Court held as under:-

“It is extremely important to note here that till 31.12.2006, the Tariff Advisory Committee and thereafter, from 01.01.2007, IRDA functioned as the statutory regulatory authorities and they are entitled to fix the tariff as well as the terms and conditions of the policies issued by All Insurance Companies. The High Court had issued notice to the Tariff Advisory Committee and IRDA to explain the factual position as regards the liability of the Insurance Company in respect of an occupant in a private car under the comprehensive/package policy before the High Court, the competent authority of IRDA stated that on 02.06.1986, the Tariff Advisory Committee had issued instructions to all the Insurance Companies to cover the pillion driver of a scooter/motor cycle under the comprehensive policy and the said position continues to be in vogue till date.

It had also submitted that the “comprehensive policy” is presently called a “package policy”. It is the admitted position as the decision would show, the earlier

circulars dated 18.03.1978 and 02.06.1986 continued to be valid and effective and all insurance companies are bound to pay the compensation in respect of the liability towards the occupant in a car under the comprehensive/package policy, irrespective of the terms & conditions contained in the policy. The competent authority of the IRDA was also examined before the High Court, who stated that the circulars 18.03.1978 and 02.06.1986 of the Tariff Advisory Committee were incorporated in the Indian Motor Tariff effective from 01.07.2002 and they continue to be operative and binding on the Insurance Companies. Because of the aforesaid factual position, the circulars dated 16.11.2009 and 03.12.2009, that have been reproduced hereinabove were issued.

In view of the aforesaid factual position, there is no scintilla of doubt that a comprehensive/package policy would cover the liability of the insurer for the payment of compensation for the occupant in a car. There is no cavil that an "Act policy" stands on a different footing from a "comprehensive/package policy". As a circulars have made the position very clear and IRDA, which is presently the statutory authority has commanded the Insurance Companies, stating that a "comprehensive/package policy" covers the liability, there cannot be any dispute in that regard."

18. The provisions of Section 146 obligates the owner of the motor vehicle to take insurance for use of the vehicle on the road. Section 147 of the MV Act requires an insurance

company to cover the liability incurred by the insured in respect of death or bodily injury to any person (including an owner of the goods or his authorized representative) carried in the vehicle or any property, caused by the use of the vehicle. The purpose of the policy is to indemnify the insured against liabilities incurred towards other persons (a third party) in respect of the damages caused to him and the property.

19. In *Balakrishnan & Anr. (supra)* the issue involved was, as to whether Insurance Company is liable in respect of an occupant in a private car under the "comprehensive/package policy", wherein the Supreme Court referring to the instructions of the Tariff Advisory Committee issued to all the Insurance Companies to cover the pillion driver of a scooter/motor cycle under the comprehensive/package policy, held that under "comprehensive/package policy" all the occupants, namely, pillion rider of a scooter/motor cycle and/or an occupant of a car being a gratuitous passenger or a non-fare occupant are covered under the policy.

20. In the case in hand, the deceased was the handyman of the motor vehicle and the compensation was claimed by his wife, sons, daughter and mother. Admittedly, the deceased was travelling in the vehicle as handyman or otherwise as a non-paying passenger. In such a scenario, the ratio laid down in *Balakrishnan (supra)* is applicable to the fact of the present case.

21. No other point has been raised at the time of hearing of the appeal.

22. In the result, the appeal is allowed to the extent of paying the compensation to the claimant, by the Insurance Company, instead of the appellant/owner of the vehicle.

23. Insurance Company is directed to discharge the liability for payment of compensation to

the claimant, as per order of the Tribunal dated 06.05.2009.

24. Send down the LCR.

25. Statutory amount in deposit, if any, be refunded to the appellant.

JUDGE

JUDGE

Comparing Assistant