

GAHC010005862011



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : MACApp./82/2011

NEW INDIA ASURANCE CO. LTD.
HAVING ITS REGISTERED AND HEAD OFFICE AT NEW INDIA ASSURANCE
BUILDING, 87, MAHATMA GANDHI ROAD, FORT, MUMBAI-400001, AND
REGIONAL OFFICE AT GUWAHATI.

VERSUS

MD. RAFIQUE UDDIN and ANR
S/O LATE RASHID ALI, VILL. BETU KANDI, DIST. CACHAR, ASSAM.

2:MRS. LAILA BEGUM LASKAR

W/O JASHIM AHMED LASKAR
VILL. NIZ BANSKANDI
DIST. CACHAR ASSAM
OWNER OF VEHICLE NO. AS-11-A/198

Advocate for the Petitioner : Mr. M. Choudhury.

Advocate for the Respondent :

::: BEFORE :::
HON'BLE MRS. JUSTICE MITALI THAKURIA

Date of Hearing: 10.11.2022

Date of Judgment & Order: 17.02.2023

JUDGMENT & ORDER (CAV)

Heard Ms. M. Choudhury, learned counsel for the appellant.

The present appeal is already proceeded ex-parte as none represented the respondents.

2. This is an appeal under Section 173 of the Motor Vehicle Act, 1988, against the judgment and award dated 03.08.2006, passed in MAC Case No. 1701/2003 by the learned Member MACT, Cachar, Silchar.

3. The brief facts, leading to filing of the present appeal, is that an application for compensation was filed by the claimant- Shri Rofique Uddin for injuries sustained by him in a road accident on 09.09.2003. As per the claimant, on the day of the accident, he was travelling in the offending 709 bus, bearing Registration No. AS-11A-1989, but when the bus reached at Rongpur, Silchar, the bus met with an accident due to rush and negligent driving of the driver of the vehicle and for the said accident, the claimant sustained injury and for which he claimed Rs. 1,80,000/- (Rupees one lakh eighty thousand) only towards compensation.

4. The owner of the vehicle- Mrs. Laila Begum Laskar/O.P No. 1 and the driver of the offending vehicle- Shri Swapan Kumar Deb/O.P No. 2 did not contest the case and the case proceeded ex-parte. However, the O.P No. 3- the New India Assurance Company Limited contested the case by filing their written statement. It is stated in the written statement that the insured violated the mandatory provision of the policy of the insurance and the driver was not having valid driving license at the time of accident. More so, the claimed amount is excessive and without any basis.

5. The claimant/respondent No. 1 examined himself as PW-1 in support of his own case and he was duly cross-examined by the O.P No. 3/ the New India Assurance Company Limited. After hearing the arguments from both the sides, the learned Member MACT Cachar, Silchar, passed the judgment & award on 03.08.2006 awarding Rs. 85,000/- (Rupees Eighty-five thousand only) to the claimant/respondent No. 1 as compensation.

6. On being highly aggrieved and dissatisfied with the judgment & award dated 03.08.2006, passed by the learned Member MACT, Cachar, Silchar, the present appeal has been preferred by the appellant/the New India Assurance Company Ltd. on the following grounds, amongst others:

(i) That the learned Member MACT erred both in law as well as in facts while passing the impugned award. The learned Member MACT ignored the affidavit filed by the owner stating that none of the passengers were injured in the alleged accident that took place on

09.09.2003.

(ii) That the learned Member, MACT, most illegally and arbitrarily, without any basis, awarded a sum of Rs. 85,000/- (Rupees eighty-five thousand only) on the basis of the injury report, i.e. Exhibit-7, and only medical prescription, i.e. Exhibit-8. Further, from both exhibits, it reveals that the injury was a minor one and the claimant/respondent No. 1 also did not submit any other documents to prove that due to the accident, he has lost his income and also lost his enjoyment of normal life.

(iii) That the learned Member, MACT, also failed to appreciate the fact that the claimant/respondent No. 1 himself admitted that he failed to produce medical documents from Silchar Medical College & Hospital, where he took the treatment, after the accident.

(iv) That the learned Member, MACT, most illegally and arbitrarily awarded a sum of Rs. 25,000/- (Rupees twenty five thousand) only under the head of pain and sufferings where statute provides Rs. 5,000/- (Rupees five thousand) only under the said head and as such, the impugned award is liable to be set aside and quashed. More so, the learned Member, MACT, illegally awarded a sum of Rs. 10,000/- (Rupees ten thousand) only without any basis towards the head of loss of enjoyment of life due to said accident.

(v) That more than 50 numbers of claim cases were filed by the different claimants which are pending before the Tribunal, though the owner of the bus by filing his affidavit has stated that there were only 13 passengers and assuming, but not admitting, even if the appellant/Insurance Company is held to be liable despite the fact that none sustained any kind of injury, then also under no circumstances, the liability of the appellant/Insurance Company should exceed beyond 13 passengers. Since the appellant/Insurance Company is not in a position to identify the passengers, the claim cannot be settled. And the Tribunal is to decide that the liability beyond 13 passengers should be fastened with the respondents, i.e. the owner and driver of the vehicle. Having not done so, the impugned award dated 03.08.2006, passed in the instant case and in other cases, is liable to be set aside and the case should be remanded to the Tribunal for determining the liability of

appellant/Insurance Company on proportionate basis limited to 13 passengers only and further directions may be given to the Tribunal to dispose the other matters expeditiously, so that the liability of the Insurance Company limited to 13 passengers can be determine in all other cases filed and/or other cases which may be filed in future.

7. Accordingly, the appellant prayed to set aside the impugned judgment & award, passed by the learned Member MACT, Cachar, Silchar, in MAC Case No. 1701/2003.

8. In the instant case, as stated above, none appeared or represented the respondent side though the service upon respondent was completed and hence, the present appeal proceeded ex-parte.

9. Ms. M. Choudhury, learned counsel for the appellant/Insurance Company, has submitted that the learned Court below passed the impugned judgment & award without any basis or without any proper medical document. The learned Member, MACT, also failed to consider the affidavit filed by the owner, wherein, it is clearly stated that there were only 13 passengers inside the vehicle at the relevant time of accident.

10. More so, except the Exhibit- 1- one advice slip, and the Exhibit-2- the photo-copy of the injury report, there is no other medical documents to support the claim of the claimant/respondent No. 1. The claimant/respondent No. 1 also failed to furnish any prescription or voucher to calculate or assess the actual expenditure for his medical treatment. Further, there is no certificate to show that there was any permanent disablement for which there is any loss of the enjoyment or future prospect. Therefore, the learned Member, MACT, most

arbitrarily awarded a sum of Rs. 25,000/- (Rupees twenty five thousand) only under the head of pain and sufferings and also awarded Rs. 10,000/- (Rupees ten thousand) only towards the loss of income and enjoyment.

11. Further, it is submitted by the learned counsel for the appellant that there are more than 50 numbers of claim cases filed by different claimants, which are still pending before the learned Member, MACT, though, the owner of the bus filed an affidavit before the learned Member MACT stating that there were only 13 passengers in the bus and no one has sustained any kind of injury for the alleged accident. So, the present appellant/Insurance Company is not liable to pay any compensation neither to the present claimant nor the other claimants. Further, in no circumstances the liability of the appellant/Insurance Company should exceed beyond 13 passengers. More so, at the time of the relevant accident, the driver had no valid driving license and for this also, the company cannot be made liable to pay any compensation for the alleged accident. Further, it is submitted that without any proper medical documents, the learned Member, MACT, most illegally and arbitrarily calculated the compensation and awarded Rs. 85,000/- (Rupees eighty five thousand) only to the claimant/respondent No. 1.

12. And hence, the impugned judgment & award dated 03.08.2006, passed by the learned Member, MACT, Cachar, Silchar, is liable to be set aside and it is a fit case to be remanded to the Tribunal for determining the liability of appellant/Insurance Company on proportionate basis limited to 13 passengers and also the Tribunal should be directed to dispose of the other matters expeditiously, so that the liability of the Insurance Company, limited to 13

passengers can be determine in all other cases filed and/or other cases which may be filed in future.

13. After hearing the submission of the learned counsel for the appellant, I have perused the case record of MAC Case No. 1701/2003 and the judgment & award passed by the learned Member, MACT, dated 03.08.2006.

14. It is the admitted fact that neither the driver nor the owner of the bus contested the case and the case proceeded ex-parte against them. It is seen that one photo-copy of the affidavit is available in the case record stated to be submitted by the owner of the bus, wherein, it is stated that out of 13 passengers in the bus, no one sustained bodily injury and hence, the Insurance Company is not liable to pay any compensation. But the question arises as to what prevented the owner to contest the case by filing her written objection and also by adducing evidence in support of her case if she had filed the affidavit. She could have contested the case and also could have adduced her evidence to substantiate her plea that out of the 13 passengers, no one sustained any injury on their persons. Further, from the materials on record, it reveals that the appellant/Insurance Company failed to substantiate the plea that the driver had no valid driving license at the relevant time of accident. It is also not disputed that at the time of accident, the vehicle was duly insured under the appellant/the New India Assurance Company Ltd.

15. The appellant failed to furnish the case numbers of the other MAC Cases arising out of the same accident which are still pending before the learned Member, MACT. The photo-copy of the injury report, i.e. Annexure-7, also does

not disclose the name of 50 injured to substantiate the plea of the appellant that 50 numbers of cases are filed for the alleged accident. The claim of the present claimant/respondent No. 1 cannot be dismissed only for the statement made by the owner of the bus in her affidavit (photocopy) that there were only 13 passengers in the bus and none of the passengers sustained injury for the alleged accident. More so, the owner of the bus did not contest the case to establish her case in spite of having opportunity.

16. In view of the discussions made above, I am of the opinion that the learned Member, MACT, committed no error or mistake while allowing the claim petition filed by claimant/respondent No. 1. However, it is seen that without any proper medical statement for the expenditure, an amount of Rs. 25,000/- (Rupees twenty-five thousand) only was awarded to the claimant. But, at the same time, it cannot be denied that as per the Annexure-7 and the Exhibit-1, the claimant sustained fractured injuries on his leg for which he had to suffer from physical pain and mental agony and at the same time there may be some loss of income to the claimant/respondent No. 1.

17. Accordingly, I find that some modification or alteration is required in respect of the compensation awarded to the claimant/respondent No. 1 and I also find that Rs. 10,000/- (Rupees ten thousand) only towards medical expenditure, Rs. 15,000/- (Rupees fifteen thousand) only towards physical pain & mental agony and another amount of Rs. 10,000/- (Rupees ten thousand) only towards loss of income will be reasonable and justified amount towards compensation.

18. Therefore, I find that Rs. 35,000/- (Rupees thirty-five thousand) only in total will be reasonable and just compensation to the claimant/respondent No. 1.

19. Accordingly, the appellant/the New India Assurance Company Ltd. will pay the compensation amount of Rs. 35,000/- (Rupees thirty-five thousand) only in total to the claimant/respondent No. 1 towards compensation within a period of 6 (six) months from the date of the passing of this order at the rate of 6% per annum from the date of filing of the claim petition till realization. The compensation will be paid by the appellant/Insurance Company before the learned Member, MACT, Cachar, Silchar. However, the statutory deposited amount of Rs.25,000/-(Rupees Twenty-five thousand) only may be adjusted from the compensation amount.

20. With the above observation and modification, the appeal is, partly allowed and stands disposed of.

21. Send back the LCR.

JUDGE

Comparing Assistant