

GAHC010008842013



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

PRINCIPAL SEAT AT GUWAHATI

MAC Appeal No. 214 of 2013

Oriental Insurance Co. Ltd.,
Having its registered office at Oriental House,
A-25/27, Asaf Ali Road, New Delhi-110002, and
Regional Office at Guwahati -7, represented by
The Regional Manager.

.....Appellant

-Versus-

1. Sri Prabin Nath,
Son of Late Kanak Chandra Nath,
Resident of Village- Bamunbari,
Mouza-Silpukhuri, P.S.-Mikirbhita,
District-Nagaon, Assam.

2. Sri Bhabendra Kumar Das,
S/o P.D. das, Amolapatty,
Nagaon, Assam.
(Owner of Scooter bearing Registration No. AS- 02/6923)

3. Sri Saranga Bhuyan,
Son of Sri Nara Nath Bhuyan,
Gosaibari, P.S.-Jajari, Nagaon, Assam.
(Rider of Scooter bearing Registration
No. AS-02/6923)

.....Respondents.

Advocates for the appellant : Mr S Dutta.
Advocate for the respondents : None appears.

BEFORE
HON'BLE MRS. JUSTICE MALASRI NANDI

Date of Judgment : 24.01.2023.

JUDGEMENT AND ORDER (CAV)

Heard Mr S Dutta, learned counsel appearing on behalf of the appellant/Insurance Company. None has appeared on behalf of the respondents.

2. This appeal has been preferred by the appellant/Insurance Company against the Judgment and Order dated 16.11.2012, passed by the learned Member, MACT Nagaon, in MAC Case No. 234 of 2004.

3. The respondent No. 1, being the claimant, filed a claim petition before the learned Member, MACT, Nagaon, for his injuries sustained in a motor vehicle accident, which took

place on 11.03.2003. It is alleged that while respondent No. 1/claimant was proceeding towards his house on his bicycle, at that time, a scooter bearing Registration No. AS-02/6923, coming in a rash and negligent manner knocked down the bicycle from behind, as a result of which, respondent No. 1/claimant sustained grievous injuries on his person.

4. The appellant Company appeared and contested the case by filing written statement as well as additional written statement, thereby denying its liability to pay compensation to the claimant, on the ground that there was no insurance policy ever issued to the vehicle bearing Registration No. AS-02/6923, by the appellant/Insurance Company. The appellant/Insurance Company also adduced evidence through DW-1, who deposed that the policy as mentioned in Exhibit-1 was not the policy issued by the appellant/Insurance Company. But the learned Member, MACT, did not consider the case of the appellant and vide Judgment and order dated 16.11.2012, awarded amount of compensation of Rs. 49,020/- (Rupees Forty Nine Thousand and Twenty)Only, in favour of the respondent No. 1/claimant.

5. Being highly aggrieved and dissatisfied with the Judgment and Order dated 16.11.2012, the appellant has preferred this appeal.

6. It is submitted by the learned counsel for the appellant that in the additional written statement, it was stated by the Insurance Company that the policy bearing No. 93101/N/252, was not issued by the appellant/Insurance Company and the appellant also adduced evidence before the Tribunal through DW-1 that the said policy was not a policy of Oriental Insurance Company Limited. It is also stated that the vehicle bearing Registration No. AS-02/6923, was never insured with the Oriental Insurance Company Limited.

7. It is also the submission of the learned counsel for the appellant that the learned MACT

had ignored the plea taken in the additional written statement and the evidence adduced in the case. It is further submitted that the entire approach of the learned Member, MACT, Nagaon, is vitiated by perversity and for which, the award so passed is liable to be set aside and as such, he prayed that the case be remanded back to the learned MACT, Nagaon and after ascertaining the policy of the vehicle, on the date of accident, the matter may be disposed of by the learned MACT.

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

1. (1986) 1 TAC 368; (*New India Assurance Company. Ltd. vs. Modi Narayanbhai Maganbhai & Ors.*)

2. (2008) 4 GLR 25; (*Oriental Insurance Co. Ltd. – Musstt. Hazira Bibi & Ors.*)

9. The sole question, therefore, which has been raised and needs to be decided in the present appeal is whether the vehicle bearing Registration No. AS-02/6923, stood insured with the present appellant, as its insurer on the date of accident.

10. I have gone through the record of MAC Case No. 234 of 2004 and the documents available on record.

11. As per Accident Information Report (AIR) vide Exhibit-1, it reveals that the policy number of the vehicle has been shown as Policy No. 93101/N/252. In the claim petition, the claimant also has mentioned the same policy number vide Policy No. 93101/N/252. No any policy is available in the record. It appears from the record that the owner of the vehicle has submitted written statement wherein he has mentioned the policy number as 93/01/N/252.

12. One witness was examined by the Insurance Company as DW-1, who deposed in his evidence that the insured had claimed that the vehicle bearing Registration No. AS-02/6923, was being insured by the Oriental Insurance Company Limited, but the said vehicle was not insured under the appellant/Company. The policy number- 93101/N/252 was not a policy of their company.

13. The learned Tribunal did not make any enquiry whether the policy number mentioned in Exhibit-1 was issued by the appellant/Insurance company or the policy number mentioned in the written statement by the owner of the vehicle was the valid policy of the vehicle bearing Registration No. AS-02/6923. The owner of the vehicle was also not asked to produce the policy of the vehicle to ascertain whether any policy of the vehicle was existent on the date of accident.

14. The learned Tribunal has delivered the judgment by holding that-

“Exhibit-1 reveals that the offending vehicle was insured with the Oriental Insurance Company but the DW-1 testified that the policy number 93101/N/252 is not a policy of the Oriental Insurance Company Limited. If the Exhibit-1 is properly scrutinized, it is revealed that the policy number of the offending vehicle, i.e., Bajaj Super bearing Registration No. AS-02/6923 is 93101/W/252 is the policy number and not 93101/N/252. The letter 'W' was wrongly read as the letter 'N'.”

15. But the learned Tribunal also did not make any enquiry whether the Insurance Company issued any policy vide No. 93101/W/252. Thus, the case is at the same stage that without finding the fact whether the offending vehicle was duly insured under any policy issued by the appellant/Insurance Company, the appellant/Insurance Company was directed

to pay the compensation to the respondent No. 1/claimant. Under such backdrop, there is no other option but to remand the case to ascertain the policy of the vehicle on the date of accident.

16. Hence, the case is remanded back to the Member, MACT, Nagaon. The learned Tribunal is directed to ascertain whether any policy of the vehicle bearing Registration No. AS-02/6923, was in existence on the date of accident, by producing documentary evidence.

17. As it appears that the matter is very old pending one, both the parties are directed to appear before the learned Member, MACT, Nagaon, within a period of one month. Accordingly, the learned Tribunal is directed to dispose of the matter only on the issue as stated above, and deliver the judgment afresh, preferably within a period of 3 (three) months.

18. In the result, the appeal stands partly allowed.

19. Send down the LCR.

20. Statutory amount be refunded to the Insurance Company.

JUDGE

Comparing Assistant