

GAHC010130852013



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

Case No. : WP(C)/4205/2013

R.P. ASSOCIATES PVT. LTD.
A COMPANY INCORPORATED UNDER THE COMPANIES ACT, 1956 AND
HAVING ITS REGISTERED OFFICE AT VILL- AMBHER, JORABAT,
GUWAHATI- 781023 IN THE DIST. OF KAMRUP METRO, ASSAM AND ITS
OFFICE NEAR UNIVERSAL PIPES PVT. LTD, INDUSTRIAL AREA,
BAMUNIMAIDAN, GUWAHATI- 781021, ASSAM AND IS REP. BY ITS
PRINCIPAL OFFICER/DIRECTOR.

VERSUS

THE NEW INDIA ASSURANCE COMPANY LTD. and 3 ORS
HAVING ITS REGISTERED AND HEAD OFFICE AT NEW INDIA ASSURANCE
BUILDING, 87 MAHATMA GANDHI ROAD, FORT, MUMBAI- 400 001 AND ITS
NORTH EASTERN REGIONAL OFFICE, AT. G.S. ROAD, BHANGAGARH,
GUWAHATI AND IS REP. BY THE CHIEF REGIONAL MANAGER, NEW INDIA
ASSURANCE COMPANY LTD., NORTH EASTERN REGIONAL OFFICE, G.S.
ROAD, BHANGAGARH, GUWAHATI.

2:CHIEF REGIONAL MANAGER

NEW INDIA ASSURANCE COMPANY LTD. NORTH EASTERN REGIONAL
OFFICE
G.S. ROAD
BHANGAGARH
GUWAHATI.

3:MANAGER

NEW INDIA ASSURANCE COMPANY LTD
CENTRALISED CLAIM HUM NORTH EASTERN REGIONAL OFFICE
G.S. ROAD
BHANGAGARH
GUWAHATI

Advocate for the Petitioner : Mr. G. N. Sahewalla, Sr. Advocate
Ms. K. Bhattacharjya, Advocate

Advocate for the Respondents : Mr. Sisir Dutta, Sr. Advocate
Mr. S. Dutta, Advocate

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 29.08.2023

Date of Judgment : 29.08.2023

JUDGMENT AND ORDER (ORAL)

The instant writ petition has been filed by the petitioner being aggrieved by the communication dated 05.09.2012 as well as the communication dated 06.11.2012 and further seeking a direction upon the respondent Insurance Company to entertain the claim of the petitioner in respect to Insurance Policy bearing No.53070231110100000345 in respect to the vehicle bearing Registration No.AS-01-AN-3943.

2. From a perusal of the writ petition, it reveals that the petitioner is the owner of a vehicle being TATA Sumo VICTA bearing Registration No.AS-01-AN-3943. The vehicle of the petitioner was duly insured with the respondent No.1 and was issued an Insurance Policy bearing policy number 53070231110100000345 with a coverage period from 23.04.2011 to 22.04.2012.

3. On 19.02.2012, at around 6:45 a.m., the vehicle of the petitioner met with an accident at Bharatgaon Mayong PWD Road at Santipur under Jagiroad Police Station. The accident was brought to the notice of the concerned Police Station, namely, Jagiroad Police Station which was registered as Jagiroad P.S. GDE No.468 dated 19.02.2012. The respondent Company was also informed about the said accident vide the communication

dated 20.02.2012. The petitioner, thereupon, approached the authorized dealer for repairing of his vehicle. Upon repairing being carried out, the total cost of the repairing worked out to Rs.1,51,898/-.

4. It is the further case of the petitioner that during this period when the vehicle was under repairs, i.e. from 12.03.2012 to 28.05.2012, the petitioner had to incur an amount of Rs.1,14,000/- to avail service of hired taxi for transportation of his staffs. Accordingly, the petitioner had incurred a total expenditure as stated in the writ petition to the tune of Rs.2,65,000/-. The petitioner had lodged his claim on 20.02.2012 and subsequently had also informed the respondent authority of the amount incurred by the petitioner. Be that as it may, the respondent authorities vide the communication dated 05.09.2012 informed the petitioner that the driving licence was not valid at the time of the accident for which the petitioner would not be entitled to the claim so made. A further perusal of the said communication dated 05.09.2012 would show that it is the case of the respondent No.1 that though the driver of the vehicle had a driving licence and the said driving licence was valid up to 28.04.2012 for driving transport vehicle but the said driving licence was not valid for driving non-transport vehicle. It further reveals that pursuant thereto vide another communication dated 06.11.2012, the Manager, Centralized Claim Hub of the respondent No.1 Company had formally informed the petitioner that the repudiation of the claim of the petitioner was based upon a communication issued by the DTO dated 01.09.2012.

5. The petitioner being aggrieved, challenged the communications dated 05.09.2012 as well as 06.11.2012 and sought for a direction for reimbursement to the petitioner the cost so incurred for repairing his vehicle as well as for other expenses, by way of the instant writ petition.

6. This Court further takes note of that the instant writ petition was filed on 07.07.2013 and notice was issued on 27.09.2013. Vide an order dated 10.06.2015, the instant writ petition was admitted. The record further reveals that the respondent Nos.1,

2 & 3 had filed an affidavit-in-opposition on 23.04.2014. In paragraph No.5 of the said affidavit-in-opposition, it was mentioned that the accident occurred on 19.02.2012 and after verifying all the vehicular documents, it was found that the driving license of the driver of the vehicle was not valid and as he was authorized to drive transport vehicle only at the relevant time of accident. It was also stated that at the time of accident i.e. 19.02.2012, the license for non-transport vehicle had expired. It was further mentioned that the vehicle in question is a private car and the driver did not have a driving license towards driving non-transport vehicle and in absence of necessary endorsement in his license to that effect, he could not have driven the private car in question for which the Insurance Company cannot be saddled with the liability. To the said affidavit-in-opposition, a reply has also been filed thereby reiterating its statement made in the writ petition and denied to the statements as well as the contentions made in the affidavit-in-opposition.

7. I have heard the learned counsels for the parties. This Court had put a specific query upon Mr. Sisir Dutta, the learned senior counsel representing the respondent Insurance Company as to whether there is any condition in the Insurance Policy issued in respect to the petitioner's vehicle that a licence which is valid for driving a transport vehicle would not be permitted or would not be deemed to be a licence for driving the vehicle in question. This Court further enquired with the learned senior counsel for the respondent Insurance Company as to whether the provision of the Motor Vehicles Act, 1988 prohibits a private vehicle to be driven by a driver having a transport vehicle licence. Neither any condition was shown in the Insurance Policy nor any provision was shown in Motor Vehicles Act, 1988 which did not permit the driver having a transport licence to drive a private vehicle. On the other hand, this Court taking into account the provision of Section 2 (33) as well as the Section 2 (47) of the Motor Vehicles Act, 1988 wherein the term "private service vehicle" as well as "transport vehicle" respectively have been defined shows that a transport vehicle would also include a private service

vehicle as defined in Section 2 (33) of the Motor Vehicles Act, 1988. Under such circumstances, it is the opinion of this Court that the repudiation of the claim of the petitioner on the ground that the driver did not have a non-transport vehicle driving licence though had a transport vehicle driving licence is bad in law, and accordingly, the impugned communications dated 05.09.2012 and 06.11.2012 are set aside and quashed.

8. This Court further directs the respondent No.1 to take a call on the claim made by the petitioner in respect to his vehicle afresh on the materials available or to be placed by the petitioner if so desired within 30 days from the date a certified copy of the instant order is served upon the Regional Manager of the respondent No.1.

9. With the above observation and direction, the instant writ petition stands disposed of.

JUDGE

Comparing Assistant