

GAHC010175802019



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

PRINCIPAL SEAT AT GUWAHATI

MAC Appeal No. 555 OF 2019

ORIENTAL INSURANCE COMPANY LTD.

(A CENTRAL GOVT. UNDERTAKING) HAVING ITS REGIONAL OFFICE AT GHY, ULUBARI,
GHY-07, REP. BY THE REGIONAL MANAGER, GAUHATI REGIONAL OFFICE, ULUBARI,
GHY-07

.....APPELLANT.

VERSUS

1. ABDUL BATEN AND 3 ORS

S/O- AZIZUR RAHMAN, R/O- DOMONI, P.O. KHAIRABARI, P.S. BARPETA ROAD,
DIST- BARPETA, ASSAM, PIN- 781315

2. SOMELA KHATUN

W/O- ABDUL BATEN

R/O- DOMONI

P.O. KHAIRABARI

P.S. BARPETA ROAD

DIST- BARPETA

ASSAM

PIN- 781315

3. MD. TUFAZZUL HOQUE

S/O- EZZAT ALI

R/O- CHUKRUNGBARI PATHAR

P.O. GOBARDHANA

P.S. CHUKRUNGBARI
DIST- BAKSA (BTAD)
ASSAM, PIN- 781315

4. ABU SHAMA AHMED
S/O- KOSER ALI
R/O- VILL- NICHUKA (NEAR SADAR BAZAR)
P.S. BARPETA ROAD
P.O. KALABHANGA
DIST- BARPETA
ASSAM
PIN- 781315.

.....RESPONDENTS.

Advocates for the appellant : Mrs. R D Mozumdar
Advocate for the respondent : Mr A Hussain, R-1 & R-2.

BEFORE
HON'BLE MRS. JUSTICE MALASRI NANDI

Date of hearing : 21.03.2023

Date of Judgment : 08.05.2023

JUDGEMENT AND ORDER (CAV)

Heard Mrs R D Mozumdar, learned counsel appearing for the appellant. Also heard Mr A Hussain, learned counsel appearing on behalf of the respondent Nos. 1 and 2.

2. The Insurance Company is on appeal under Section 173 (1) of the Motor Vehicles Act, 1988, against the Judgment and Award dated 15.05.2019, passed by the learned Member MACT No. 1, Kamrup (M) , Guwahati, in MAC Case No. 2183/2015.

3. The brief facts of the case is that on 09.02.2015, at about 01:50 pm, when the minor son of the claimant/respondent, Sakibur Rahman was standing on the roadside of PWD road in front of his house, suddenly a vehicle bearing No. AS-15/C-1671, coming from Barpeta Road towards Domonighat in a rash and negligent manner, knocked down the minor son of the claimants/respondent Nos. 1 and 2, as a result of which, he died on the spot.

4. The appellant/Insurance Company as opposite party contested the case by filing written statement, wherein it is stated that the Insurance Company declined to accept the liability, if there was any violation of the terms and conditions of the insurance policy and or the driver was not having valid and effective driving licence at the relevant time of accident.

5. On the other hand, the owner/driver of the vehicle also submitted their written statement and admitted that the vehicle bearing AS-15/C-1671 was involved in the accident, resulting in death of the minor son of the claimant/respondent, but denied all other averments, made by the claimant in the claim petition. They have stated that at the relevant time of accident, the vehicle was duly insured with the Oriental Insurance Company and the driver had valid licence and as such, the Insurance Company is liable to pay compensation, if awarded by the Tribunal.

6. In this case, the claimant was examined as PW-1 and the Insurance Company also adduced two witnesses in support of their plea. After hearing the arguments advanced by the learned counsel for both the parties, the learned Tribunal has delivered the judgment awarding compensation amounting to Rs. 3,00,000/- (Rupees Three Lacs) only in favour of the claimants/respondents.

7. The factum of accident has not been challenged in this appeal. The learned counsel for

the Insurance has only submitted that the driver of the offending vehicle did not possess a valid driving licence to drive a public service vehicle. On the face of the driving licence, it can be seen if the driver had an endorsement to drive a public service vehicle, which is clear violation of the policy conditions. As such, the appellant/Insurance Company is not liable to pay the compensation as awarded by the Tribunal. Thus, the judgment dated 15.05.2019, deserves to be set aside.

8. In support of his submission, the learned counsel for the appellant/Insurance Company has relied on the following case-laws

1. 2004 ACJ 721; (***Oriental Insurance Company Limited -Vs- Shri Nanjappan & Others***)
2. (2018) 2 SCC (Cri) 1; (***Pappu & Ors -Vs- Vinod Kumar Lamba and Another***).
3. GHC MAC Appeal No. 66 of 2014 (***National Insurance Co. Ltd. vs. Sikandar Ali & Ors.***)
4. GHC IA(Civil) No. 3149/2017 in MAC Appeal No. 467 of 2017 (***Oriental Insurance co. Ltd. vs. Sonali Kalita & 3 Ors.***)

9. On the other hand, the learned counsel for the claimants/respondents argued that though it is alleged that the driver was not having a valid driving licence to drive the vehicle, but it is clearly stated in the driving licence that the driver had valid licence to drive transport vehicle. The offending vehicle bearing No. AS-15/C-167 is a cruiser, and the driver of the vehicle is authorized to drive a transport vehicle. Under such circumstances, the driver of the vehicle is holding a valid driving licence to drive a transport vehicle, which includes the cruiser also. The learned Tribunal has rightly delivered the judgment awarding compensation in the

favour of the claimants/respondents, which needs no interference by this Court.

10. I have considered the submissions made by the learned counsel for both the parties. I have also gone through the judgment of the learned Tribunal.

11. The appellant's side has only filed the appeal challenging the fact that the driver had no valid driving licence to drive a public service vehicle at the relevant time of accident.

12. The Insurance Company has examined two witnesses. DW-1 is Sarvesh Suman, who was the Administrative officer of the Oriental Insurance Company Limited during that period. He admitted that at the time of accident, the insurance policy of the vehicle was valid. According to him, the driver of the offending cruiser vehicle was authorized to drive motorcycle and LMV only, but the offending vehicle is a cruiser, which is a public service commercial vehicle. As such, the driver of the vehicle did not possess the valid driving licence to drive the offending vehicle and Insurance Company is not liable to pay any compensation to the claimant.

13. In his cross-examination, DW-1 replied that in the second page of the driving licence of the driver, it was mentioned that he was authorized to drive a transport vehicle and as a paid employee.

14. The learned Tribunal has delivered the Judgment on the issue of driving licence by stating that though the Insurance Company raised the point that the driver was not authorized to drive the offending vehicle, but none has come from DTO office to prove the same. Thus, the Insurance Company has failed to prove that the driver of the vehicle did not have valid driving licence at the time of accident. Hence, the Insurance Company is liable to pay compensation to the claimants/respondents.

15. As per the Insurance Company, the driver was not having a valid driving licence for driving commercial vehicle on the date of accident. Learned counsel for the appellant/Insurance Company submits that as the driver of the offending vehicle was not having a valid licence for driving a commercial vehicle, so the owner of the offending vehicle had violated the terms and conditions of the insurance policy. So, the Insurance Company should be exonerated completely and the liability, if any, is of the driver and the owner.

16. In the case of ***United India Insurance Company Limited vs. Sujata Arora & Ors.***; 2013 TAC 29 (SC), in which no liability was fastened upon the Insurance Company. It reveals that in the said case, the owner of the vehicle had already paid the amount to the claimants and therefore, the Insurance Company was completely exonerated.

17. In another case, ***National Insurance Company Limited vs. Kusum Rari***; reported in 2006 ACJ 1336, the Hon'ble Supreme Court has held that where the driver did not possess a valid licence to drive a commercial vehicle, the Insurance Company may recover the amount from the owner by initiating recovery proceedings before executing Court. It transpires that by the said judgment, only recovery rights can be granted to the Insurance Company and the Insurance Company is liable to pay the awarded amount to the claimant and thereafter, may recover the same from the owner.

18. In the case in hand, one xerox copy of the driving licence of the driver is available in the record, from which it reveals that the driving licence No. T/3751/CHR/13 was issued to Md Tuffazzal Hoque by DTO, Chirang, BTAD to drive motor cycle and LMV, i/c PSV, which implies public service vehicle. In the second page of driving licence, it is also mentioned that the driver was authorized to drive transport vehicle and as a paid employee. So, from the

driving licence available in the record, it can be presumed that the driver of the vehicle was authorized to drive light motor vehicle, motor cycle and public service vehicle also.

18. As per the accident information report, vide Exhibit-No. 2, the driving licence of the driver, Md Tuffazzal Hoque, bearing No. T/3751/CHR/13 was valid upto 13.03.2016. The accident occurred on 09.02.2015. So, the driver of the vehicle was having valid driving licence on the date of accident.

19. It is also an admitted fact that the vehicle was duly insured with the appellant/Insurance Company at the relevant time of accident. Hence, Insurance Company, i.e., the appellant is liable to pay the compensation to the claimants/respondents. No other point has been raised in the appeal. I do not find any infirmity in the Judgment and Order dated 15.05.2019, passed by the learned Member, MACT No. 1, Kamrup (Metro), Guwahati, in MAC Case No. 2183/2015.

20. In the result, appeal stands dismissed.

21. Send back the LCR.

22. The statutory amount in deposit, if any, be refunded accordingly.

JUDGE

Comparing Assistant