

GAHC020000542018



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

Case No. : MACApp./17/2018

THE ORIENTAL INS. CO. LTD.
DIMAPUR

VERSUS

IMKONGTEMSU AND 2 OTHERS
DIMAPUR

2:CHRIELEZO BIO
NAGABAZAR
KOHIMA

3:B.NUNGSANG AO
CHANGTIA VILLAGE
MOKOKCHUN

Advocate for the Appellants : Mrs. Anjana Modi, Advocate

Advocate for the Respondent : Mr. Pfosekho Pfotte, Advocate

Linked Case : MACApp./18/2018

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Advocate for the Appellants : Mrs. Anjana Modi, Advocate

Advocate for the Respondent : Mr. Pfosekho Pfotte, Advocate

**Before
Hon'ble Mr. Justice Mridul Kumar kalita**

For Appellant (s) : Mrs. Anjana Modi, Advocate

For respondent(s) : Mr. Pfosekho Pfotte, Advocate

Date of hearing : 29.05.2023

Date of judgment : 02.06.2023

JUDGMENT AND ORDER (CAV)

(Mridul Kumar Kalita, J)

1. By this common judgment, it is proposed to dispose of two appeals namely, MAC Appeal No. 17(k)/2018 and MAC Appeal No. 18(k)/2018, as the claim cases to which these appeals are related to arise out of the same accident and were disposed of by a common judgment and award dated 12.03.2018 by the learned Member, Motor Accident Claims Tribunal, Dimapur, Nagaland in MAC Case No. 143/2022 and MAC Case No. 144/2022.

2. I have heard Mrs. Anjana Modi, learned counsel for the Appellant in both the cases. I have also heard Mr. Pfosekho Pfotte, learned counsel for

the Respondent No. 2 in both the cases. None has appeared for the Respondent Nos. 1 and 3 in both the MAC Appeals, in spite of due service of notices on them.

3. The facts relevant for adjudication both the above mentioned appeals, in brief, are as follows:

(i) That Respondent No. 1 in MAC Appeal No. 17(k)/2018, namely, Shri Imkongtemsus and Respondent No. 1 in MAC Appeal No. 18(k)/2018, namely, Shri Subongmeren were travelling in a Maruti Car bearing registration No. NL 01 1969 on 22.01.2001 from Dimapur, Kohima. The vehicle was driven by Shri B. Nungsang Ao (*Respondent No. 3 in both the appeals*).

(ii) On the way, at about 7.00 pm, before reaching Mediziphima Town, the said car met with an accident while negotiating a curve of the road and it skidded and fell down into a deep gorge by the side of the road and in the said accident both the Respondents (*Respondent No. 1 in MAC Appeal No. 17(k)/2018, namely, Shri Imkongtemsus and Respondent No. 1 in MAC Appeal No. 18(k)/2018, namely, Shri Subongmeren*) sustained serious injuries. The driver of the vehicle also sustained injuries. They were all evacuated to Dimapur

(iii) The vehicle involved in the accident (Maruti Car) was owned by Respondent No. 2 and was driven by Respondent No. 3. Shri Imkongtemsus, the Respondent No. 1 in MAC Appeal No. 17(k)/2018 approached the Motor Accident Claims

Tribunal, Dimapur by filing a claim petition under Section 166 of the Motor Vehicle Act seeking compensation for the injuries sustained by him in the aforementioned vehicle accident. The said claim petition was registered as MAC Case No. 143/2002. Similarly, Shri Subongmeren, Respondent No. 1 in MAC Case No. 18/2018 also filed a claim case before Motor Accident Claims Tribunal, Dimapur seeking compensation for injuries suffered by him in the aforesaid motor vehiclular accident. The said claim case was registered as MAC Case No. 144/2002. The present Appellant i.e., Oriental Insurance Company Ltd. contested both the above mentioned claim cases before Motor Accident Claims Tribunal, Dimapur.

(iv) That after completion of the enquiry, learned Member, Motor Accident Claims Tribunal, Dimapur disposed of both the claim cases, namely, MAC Case No. 143/2002 and MAC Case No. 144/2002, by a common judgment dated 12.03.2018, whereby the claimants in MAC Case No. 143/2002 was awarded a total compensation amount of Rs. 4,39,400/- only with 9% interest thereon. Similarly, the claimant in MAC Case No. 144/2002 was awarded a total compensation amount of Rs. 3,83,666/- with 9% interest thereon however, it is pertinent herein that the learned Member, Motor Accident Claims Tribunal, Dimapur had not specifically mentioned as to from which date the interest @ 9% is to be calculated.

4. Being aggrieved by the aforesaid common judgment and award, dated 12.03.2018, passed by learned Member, Motor Accident Claims

Tribunal, Dimapur, the present appellants have preferred the present appeals mainly on following grounds:

- a)** That, the learned Member, Motor Accident Claims Tribunal, Dimapur failed to consider that in both the motor accident claim cases the insurance policy involved was an "Act Policy" covering third party liability only and the claimant in both the claim cases were not the third party as they were the occupants in the vehicle.
- b)** That, the learned Member, Motor Accident Claims Tribunal, Dimapur failed to appreciate the fact that there was no loss of earning capacity of the claimants as admitted by them during the enquiry.
- c)** That the learned Member, Motor Accident Claims Tribunal, Dimapur awarded a higher rate of interest ignoring the guidelines of Hon'ble Apex Court in this matter.

5. Mrs. Anjana Modi, learned counsel for the appellant, has submitted that in both the claim cases, the learned Member, Motor Accident Claims Tribunal, Dimapur failed to consider the fact that the Insurance policy against the vehicle bearing registration No. NL 01 1969 (*Maruti Car*), which was involved in the accident, was not a comprehensive Insurance Policy, but only an "Act Only Policy" which covers risk incurred in relation to third party only. Ms. Anjana Modi, learned counsel for the appellant, has further submitted that in view of the observations made by Hon'ble Apex Court, an occupant of a vehicle which is involved in the accident may not be regarded as third party vis-à-vis an insurance policy which is only an "Act Only Policy". She has submitted that the present claimants (Respondent Nos.1 in both the appeal) were gratuitous passengers only.

In support of her submission, Mrs. Anjana Modi, learned counsel for the appellant, has cited a ruling of Hon'ble Supreme Court in “**National Insurance Company Ltd. Vs. Balakrishnan and Another**” reported in “**(2013) 1 SCC 731**”, wherein it was observed as follows”

26. 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 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 the 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. We may hasten to clarify that the earlier pronouncements were rendered in respect of the "Act policy" which admittedly cannot cover a third-party risk of an occupant in a car. But, if the policy is a "comprehensive/package policy", the liability would be covered. These aspects were not noticed in Bhagyalakshmi [(2009) 7 SCC 148 : (2009) 3 SCC (Civ) 87 : (2009) 3 SCC (Cri) 321] and, therefore, the matter was referred to a larger Bench. We are disposed to think that there is no necessity to refer the present matter to a larger Bench as IRDA, which is presently the statutory authority, has clarified the position by issuing circulars which have been reproduced in the judgment by the Delhi High Court and we have also reproduced the same.

6. Mrs. Anjana Modi, learned counsel for the appellant, has also cited a judgment of Hon'ble Supreme Court in “**New India Assurance Company Ltd. Vs. Asha Rani and Other**” reported in **(2003) 2 SCC 223**, wherein it was observed as follows:-

“9 In Satpal case [New India Assurance Co. v. Satpal Singh, (2000) 1 SCC 237 : 2000 SCC (Cri) 130] the Court assumed that the provisions of Section 95(1) of the Motor Vehicles Act, 1939 are identical with Section 147(1) of the Motor Vehicles Act, 1988, as it stood prior to its amendment. But a careful scrutiny of the provisions would make it clear that prior to the amendment of 1994 it was not necessary for the insurer to insure against the owner of the goods or his authorised representative being carried in a goods vehicle. On an erroneous impression this Court came to the conclusion that the insurer would be liable to pay compensation in respect of the death or bodily injury caused to either the owner of the goods or his authorised representative when being carried in a goods vehicle the accident occurred. If the Motor Vehicles Amendment Act of 1994 is examined, particularly Section 46, by which the expression "injury to any person" in the original Act stood substituted by the expression "injury to any person including owner of the goods or his authorised representative carried in the vehicle", the conclusion is irresistible that prior to the aforesaid Amendment Act of 1994, even if the widest interpretation is given to the expression "to any person" it will not cover either the owner of the goods or his authorised representative being carried in the vehicle. The objects and reasons of clause 46 also state that it seeks to amend Section 147 to include owner of the goods or his authorised representative carried in the vehicle for the purposes of liability under the insurance policy. It is no doubt true that sometimes the

legislature amends the law by way of amplification and clarification of an inherent position which is there in the statute, but a plain meaning being given to the words used in the statute, as it stood prior to its amendment of 1994, and as it stands subsequent to its amendment in 1994 and bearing in mind the objects and reasons engrafted in the amended provisions referred to earlier, it is difficult for us to construe that the expression "including owner of the goods or his authorised representative carried in the vehicle" which was added to the pre-existing expression "injury to any person" is either clarificatory or amplification of the pre-existing statute. On the other hand it clearly demonstrates that the legislature wanted to bring within the sweep of Section 147 and making it compulsory for the insurer to insure even in case of a goods vehicle, the owner of the goods or his authorised representative being carried in a goods vehicle when that vehicle met with an accident and the owner of the goods or his representative either dies or suffers bodily injury. The judgment of this Court in Satpal case [New India Assurance Co. v. Satpal Singh, (2000) 1 SCC 237 : 2000 SCC (Cri) 130] therefore must be held to have not been correctly decided and the impugned judgment of the Tribunal as well as that of the High Court accordingly are set aside and these appeals are allowed. It is held that the insurer will not be liable for paying compensation to the owner of the goods or his authorised representative on being carried in a goods vehicle when that vehicle meets with an accident and the owner of the goods or his representative dies or

suffers any bodily injury."

7. Mrs. Anjana Modi, learned counsel for the Appellant also cited the judgment of this Court, wherein this Court in ***"Sri Dugdha Rabha Vs. M/s National Insurance Company Ltd. and 6 Others"*** (MAC Appeal 30/2013), relied upon ***"National Insurance Company Ltd. Vs. Balakrishnan and Another"*** (*supra*), this Court observed as follows:

"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. "

8. Relying on the aforesaid rulings, learned counsel for the appellants has submitted that as in the instant case both the claimants were gratuitous passengers in a private vehicle and were inside the vehicle and as the insurance policy in the instant case was only "Act Only Policy", which does not cover third party risk of an occupant in a car, the present appellants are not liable to indemnify the owner for the liability incurred by him for injuries suffered by the claimants (Respondent No.1 in both the claim cases) in the accident in question.

9. On the other hand, Mr. Pfosekho Pfoffe, learned counsel for the Respondent No. 1 in both the appeals has submitted that the vehicle

involved in the instant case was not a goods carrying vehicle and it was a private vehicle with the passenger carrying capacity of four passenger only and at the time of accident only three occupants were there in inside the said vehicle, which was well within its carrying capacity. Learned counsel for the Respondent No. 1 by citing a ruling of Hon'ble High Court of Andhra Pradesh in "***New India Assurance Company Ltd. Vs. Palamani Suresh and Another***" reported in ***2010 SCC Online AP 106***, has submitted that in the said case Hon'ble High Court of Andhra Pradesh dismissed the appeal by the insurance company against grant of compensation to the claimant, who was travelling in a jeep along with the driver and who got injured when the said jeep met with an accident and the said jeep was covered with "Act Only insurance Policy" only. It was observed by Hon'ble High Court of Andhra Pradesh in the aforesaid judgment that the expression "third party" is wide enough to cover any person other than the insurer and nothing is mentioned in the policy that the premium against the said policy was received only towards third party driver. It was further observed that if a private vehicle allowed to carry person or the owner or driver as per the condition of registration, all such persons come within the expression third party.

10. I have considered rival submission made by learned counsel by both parties as well as perused the materials available on record carefully.

11. As regards contention of the learned counsel for the appellants that the learned Member, Motor Accident Claims Tribunal, Dimapur has failed to properly apply its mind while imposing an interest @ 9% without indicating as to since when the said 9% interest would be computed, it appears from perusal of the impugned judgment that learned Tribunal

has, in fact not mentioned as to since when the 9% interest shall be computed. On perusal of the records of MAC Case No. 143/2002 and MAC Case No. 144/2002, it appears that as both the case were analogous, learned tribunal also took up both the matters together and order sheets of the inquiry were maintained in MAC Case No. 143/2002. It appears that both the cases were filed on 06.08.2002. However, it also appears that from 11.09.2003, till 17.12.2013, i.e., for about more than 10 years, no proceedings of the inquiry was maintained. It appears that the parties again appeared before learned Tribunal on 05.02.2014 and both the cases were ultimately disposed of on 12.03.2018. Thus, it appears that for the period from 17.09.2003 till 05.02.2014 no proceedings were maintained for this period of more than 10 years, therefore, the party liable to pay compensation may not be burdened with the additional liability to pay interest for the said period without any fault of their own. It is therefore, directed that the interest @ 9% shall have to be paid by the party liable to pay compensation from the date of institution of the claim petition, however, the period from 17.09.2003 till 05.02.2014 shall be excluded there from.

12. As regards, the submission of learned counsel for the appellant that the appellant is not liable to pay compensation as the insurance policy of the appellant insurance company, which the Respondent No. 2 had in respect of the vehicle involved in the accident, was only an "Act only policy" under Section 147 of the Motor vehicles Act 1988, which does not cover a third party risk of an occupant in a car. It appears that in the instant case the accident did not involve any other vehicle other than the Maruti Car bearing registration No. NL 01 1969, owned by Respondent

No.2. The accident occurred when the said Maruti Car fell down into a deep gorge while negotiating a curve in the road and the Respondent No. 1 in both the claim cases were the occupant of the said vehicle when the said accident occurred. Though, there is divergence of opinion as to whether the insurance company may be fastened with liability to indemnify the owner if the policy is only a statutory policy under Section 147 of the Motor Vehicles Act, 1988, however, from the observation made by Hon'ble Supreme Court of India in “**National Insurance Company Ltd. Vs. Balakrishnan and Another**” (*Supra*), wherein it has observed that in case of “Act only policy”, it does not cover a third party risk of an occupant in car. However, it is also observed by Hon'ble Supreme Court of India, in a catena of judgments, that this may not be the case where the insurance policy is a “Package Policy” or a “Comprehensive Policy”. It was observed that if the insurance policy involved is a “Comprehensive Policy”, the insurance company is liable to indemnify the owner/holder of the policy in case of any liability arising out of injury or death of an occupant in a vehicle which is involved in the accident. In the instant cases, on perusal of the insurance policy, which is exhibited as Ext.8, it appears that it is clearly mentioned in the policy itself that the same is an “Act Only Policy”. Hence, in view of the law clarified by Hon'ble Supreme Court, in this regard, as of now, this Court is constrained to observe that the appellant insurance company in the present appeals is not liable to indemnify the owner, i.e., the Respondent No.2 for the liability of payment of compensation to the claimants in both the claim cases mentioned herein before. The impugned judgment is accordingly modified to the extent indicated herein above.

13. With the above observation, the present appeals are accordingly allowed.

14. The appellants are allowed to receive back the statutory deposits of Rs. 25,000/- deposited by it in each of the above mentioned appeals. The Registry shall do needful in this regard.

15. Let the case records of MAC Case No. 143/2002 and MAC Case No. 144/2002 be sent back to the Motor Accident Claims Tribunal, Dimapur along with all the connected files and the copy of this judgment.

JUDGE

Comparing Assistant