

GAHC020004842021



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

Case No. : MACApp./11/2021

The Divisional Manager, National Insurance Company Limited,
Dimapur, Nagaland.

-Versus-

1. Smti. Prabitra Pradhan,
W/o- Lt. Santa Bahadur.

2. Miss Karishma Pradhan,
D/o- Late Santa Bahadur

3. Mr. Karan Pradhan,
S/o- Late Santa Bahadur

4. Miss Khushi Pradhan,
D/o- Late Santa Bahadur
Permanent resident of Kathikho Karong,
P.O. Karong, Senapati, Manipur.

Presently residing at: United North Block-B,
Burma Camp, Dimapur- 797112, Nagaland

5. Shri Chandeshwar Singh,
S/o- Mr. L.T.V.N. Singh, 16 Assam Rifles,
C/o- 99APO Kohima, 797001, Nagaland
(owner of the vehicle)

6. Shri Dinesh Chetry,
S/o- Abirman Chetry,
Address: Kumarbandha Road, P.O.- Rowriah, District:- Jorhat,
Assam (Driver of the vehicle)

:: BEFORE ::

HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA

For the Appellants	: Ms. Moajungla, Advocate
For the Respondent	: Mr. P. B. Chetry, Advocate (for respondent No. 1 to 4)
	: Mr. Y. P. Gupta, Advocate (for respondent No. 5)
	: None appeared for respondent No. 6
Date of Hearing &	: 16.05.2023
Date of Judgment	

JUDGMENT & ORDER

(Mridul Kumar Kalita, J)

1. Heard Ms. Moajungla, learned counsel for the appellant. Also heard Mr. P. B. Chetry, learned counsel for the respondents No. 1 to 4 and Mr. Y. P. Gupta, learned counsel for the respondent No. 5. None has appeared for the respondent No. 6.

2. This MAC Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, by the appellant, namely, the Divisional Manager, National Insurance Company Limited, Dimapur, Nagaland impugning the judgment and award dated 02.08.2021 passed by learned Member, Motor

Accident Claims Tribunal, Dimapur, Nagaland in MAC Case No. 49/2018, whereby the appellant was directed to pay a compensation amount of Rs.6,14,500/- (Rupees Six Lakh Fourteen Thousand Five Hundred only) to the claimants with an interest @ 9% per annum from the date of filing of the claim petition till full satisfaction of the award.

3. The facts relevant for adjudication of this appeal, in brief, are as follows:-

(i) That on 05.01.2018, at around 3:00 p.m., one Shanta Bahadur was hit by a Tata Truck bearing registration No. NL-01-K-6895 at No Entry Point of Khathikho, Nepali Basti, Senapati, Manipur along National Highway No. 2 at 5 K.M. North of Senapati Police Station. It was alleged that the accident occurred due to rash and negligent driving of the said Tata truck bearing registration No. NL-01-K-6895 at a restricted area by the driver of the said truck.

(ii) The wife and children of late Shanta Bahadur filed the above mentioned Motor Accident Claims case before the Motor Accident Claims Tribunal, Dimapur, Nagaland claiming compensation for the death of late Shanta Bahadur in the vehicular accident stated herein before. The present appellant was arrayed as Opposite Party No. 3 in the said claims case. The present appellant contested the claim by filing written statement and participating in the inquiry. However, after completion of the inquiry learned Member, Motor Accident Claims Tribunal, Dimapur, Nagaland passed an award in favour of the claimants (*respondents No. 1 to 4 in the present appeal*) directing the present appellant to pay a compensation amount, as stated herein before, to the claimants.

4. Ms. Moajungla, learned counsel for the appellant, while making her submission has stated that the main ground on which this appeal has been preferred is that the learned Member, Motor Accident Claims Tribunal, Dimapur has failed to take into consideration that the driving license of the driver of the offending vehicle bearing registration No. NL-01-K-6895 was found to be fake and in spite of the said finding the present appellant was directed to pay compensation to the claimants (*respondents No. 1 to 4 in the present appeal*) by overlooking the Apex Court's guidelines in this regard as well as failed to exercise its power judiciously.

5. On the other hand, Mr. Y. P. Gupta, learned counsel for the respondent No. 5 has submitted that while discussing the Issue No. 3 in the impugned judgment and award passed in MAC Case No. 49/2018, learned Member, Motor Accident Claims Tribunal, Dimapur has considered the plea of the opposite party No. 3 (*present appellant*) regarding possession of a fake driving license by the driver of the offending truck bearing registration No. NL-01-K-6895 and has aptly dealt with the submission in light of the observations made by Hon'ble Apex Court in the judgments cited by learned counsel for the claimants.

6. Mr. Y. P. Gupta, learned counsel for the respondent No. 5 has further submitted that the owner of the offending vehicle bearing registration No. NL-01-K-6895, while deposing as DW-2 before learned Member, Motor Accident Claims Tribunal, Dimapur in the MAC Case No. 49/2018 has deposed that he became aware of the fact that Shri Dinesh Chetry (driver of the offending vehicle) was having a fake driving license only when he received investigation report and he had no knowledge that Mr. Dinesh

Chetry was possessing a fake driving license and he has further deposed that he had kept a photocopy of the driving license provided by the driver and believing same to be genuine.

7. Mr. Y. P. Gupta, learned counsel for the respondent No. 5 has further submitted that at Page No. 11 of the impugned judgment, learned Member, Motor Accident Claims Tribunal, Dimapur has succinctly discussed the plea of the opposite party No. 3 regarding fake driving license. Considering the fact that this Court finds that learned Member, Motor Accident Claims Tribunal, Dimapur, Nagaland has correctly dealt with the plea of fake license raised by the opposite party No. 3, it would be appropriate to quote the relevant portions of the impugned judgment herein below:-

“O.P. 1 also submitted that the Driver of the vehicle was appointed by him and the driver produced driving license bearing No. 136655-UKL issued by the DTO Ukhrul and he was also asked to drive the vehicle as a test driving and to the satisfaction of the opposite party No. 1, Shri Dinesh Chetry was an expert driver and accordingly a photo copy of his driving license was retained by the vehicle owner for his office record and thereafter the driver was driving his different vehicles from time to time. The opposite party No. 1 has relied on the Apex Court decision in United India Insurance Co. Ltd Vs Lehu and others, (2003) 3 Supreme Court Cases 338, wherein it was held in that, “When an owner is hiring a driver he will therefore have to check whether the driver has a driving license. If the driver produces a driving license which on the face of it looks genuine, the owner is not expected to find out whether the license has in fact been issued by a

competent authority or not. The owner would then take the test of the driver. If he finds that the driver is competent to drive the vehicle, he will hire the driver. We find it rather strange that Insurance Companies expect owners to make enquiries with RTO's, which are spread all over the country, whether the driving license shown to them is valid or not. Thus where the owner has satisfied himself that the driver has a license and is driving competently there would be no breach of Section 149(2)(a)(ii). The Insurance Company would not then be absolved of liability. If it ultimately turns out that the license was fake the Insurance Company would continue to remain liable unless they prove that the owner/insured was aware or had noticed that the license was fake and still permitted that person to drive. More importantly even in such a case the Insurance Company would remain liable to the innocent third party, but it may be able to recover from the insured."

Further, O.P 1 has also relied on the judgment passed by the Hon'ble Apex Court in the case of Nirmela Kothrai vs United India Insurance Company Limited, reported in (2020) 4 SCC 49, where it was held that, "While hiring a driver the employer is expected to verify if the driver has a driving license which on the face of it looks genuine, the employer is not expected to further investigate into the authenticity of the license unless there is cause to believe otherwise. If the employer finds the driver to be competent to drive the vehicle and has satisfied himself that the driver has a driving license there would be no breach of section 149(2)(a)(ii) and the insurance company would be liable under the policy. It would be unreasonable to place such a high onus on the insured to make enquiries with

RTOs all over the country to ascertain the veracity of the driving license. However, if the insurance company is able to prove that the owner/insured was aware or had noticed that the license was fake or invalid and still permitted the person to drive, the insurance company would no longer continue to liable."

8. In view of what has been observed by the Hon'ble Supreme Court of India in the above mentioned judgments relied upon by the learned Member, Motor Accident Claims Tribunal, Dimapur, nothing needs to be added as this Court is also of the considered opinion that in the instant case also the owner of the vehicle involved in the accident bearing registration No. NL-01-K-6895 had verified whether the driver who was employed by him had a driving license and the said driving license was also produced and on its face it looked genuine and the owner also retained a copy of the same with him. It is also in evidence that the owner of the vehicle, involved in the accident, bearing registration No. NL-01-K-6895 had verified the driving skills of the driver engaged by him to his satisfaction. Under such circumstances, he is not expected to make any further enquiries to ascertain the veracity of the driving license produced by his driver. Moreover, the opposite party No. 3 (Insurance Company), in MAC Case No. 49/2018, had failed to produce any evidence to show that the owner of the vehicle bearing registration No. NL-01-K-6895 was aware that his driver was having a fake driving license and still permitted to drive the said vehicle.

9. Thus, in the instant case, it appears that the owner of the vehicle involved in the accident took all necessary precautions before engaging opposite party No. 2 (*respondent No. 6 in the instant appeal*) as his driver

and merely because of the fact that later on, the driving license which was produced by the driver of the offending vehicle was found to be fake, the Insurance Company cannot be absolved of its liability to indemnify the owner in case of any liability which may be incurred by him in respect of death or bodily injury to any person arising out of the use of such vehicle in public place.

10. For the reasons stated above, this Court is of the considered opinion that the present appeal filed by the Insurance Company is devoid of any merit and is accordingly dismissed.

11. The appellant is directed to pay the remaining amount of the award as per the impugned judgment after deducting the 70% of the award amount that has been deposited before the Registry of this Court and which has already been withdrawn by the respondents, within a period of 2(two) months from today. The statutory amount of Rs.25,000/- which was deposited by the appellant before the Registry of this Court at the time of filing of this appeal shall also be adjusted against the award while making the final payment and claimants/respondents No. 1 to 4 may be permitted to withdraw the said statutory amount after proper identification.

12. With the above observation, this appeal is, accordingly, disposed of.

JUDGE

Comparing Assistant