

GAHC040009922020



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

Case No. : MACApp./5/2020

NATIONAL INSURANCE COMPANY LTD
HAVING ITS REGD. OFFICE AT KOLKATA, REGIONAL OFFICE AT G.S
ROAD, GUWAHATI, ASSAM-781005, REPRESENTED BY ITS BRANCH
MANAGER, NORTH LAKHIMPUR BRANCH, G.H.S. ROAD, LAKHIMPUR,
ASSAM.

VERSUS

KAPPY
W/O LT. RIN TSERING, R/O VILL. NYUKMADUNG, PO/PS DIRANG , DIST.
WEST KAMENG,A P.

Advocate for the Petitioner : B Ghosh

Advocate for the Respondent : T Tsering

BEFORE
HONBLE MR. JUSTICE KARDAK ETE

JUDGMENT

Date : 28-03-2024

Heard Mr. B. Ghosh, learned counsel for the appellant and
also heard Mr. T. Tsering, learned counsel for the
respondent/claimant.

2. This is an appeal under Section 173 of the Motor Vehicle Act, 1988, assailing the Judgment and Order dated 21.12.2019, passed by the learned Member, MACT at Bomdila, West Kameng District in MAC Case No. 04/2018, whereby, an amount of Rs.8,52,750/-(Rupees Eight Lakhs Fifty two Thousand Seven Hundred Fifty)only on different heads with the interest @6% per annum from the date of filing of the claim petition till actual realization, is awarded to the claimant.

3. The case, in brief, is that a written FIR was received on 30.01.2018 filed by one Mr. Rinchin Norbu to the effect that at around 1400 hours a vehicle bearing registration No.AR-04-4656(Alto) met with an accident at Padma, Dirang, wherein one Rin Tsering and his wife, Smti Kappy were travelling in the said vehicle on being self-driven by Rin Tsering and the said Rin Tsering died on the spot and his wife sustained simple injury. Thereafter, the case was registered being Dirang P.S. Case No. 04/2018 under Section 279/304(A)/337 of IPC, 1860. During the investigation, it was found that accident took place due to sudden steering failure.

4. The claimant/respondent herein has filed a claim petition under Section 166 of Motor Vehicle Act, 1988 claiming compensation of Rs.10,90,000/-(Rupes Ten Lakhs Ninety Thousand)only against the appellant on account of the death of her husband late Rin

Tseringdueto the vehicle accident of the car.

5. The appellant/opposite party had filed written statementdenying all the allegation and liabilities. The appellant had taken a plea that since the deceased was the owner cum driver of the vehicle involved in the accident, the claimant is not entitled to get any compensation from the appellant save and except the liability which is limited to Rs.2,00,000/-(Rupees Two Lakhs)only as per the policy. It is settled law that insured is indemnified against claim made by the third party. The deceased is not a third party as the deceased was the owner cum driver of the vehicle. Therefore, the claimant has no right to file the claim petition.

6. Learned Tribunal has framed 6 (six) issues. After consideration of the issues and evidences, the Learned Tribunal has awarded a sum of Rs.8,52,750/-(Rupees Eight Lakhs Fifty Two Thousand Seven Hundred and Fifty) only on different heads with the interest @6% per annum from the date of filing of the claim petition till actual realization, to the claimant.

7. Mr. B. Ghosh, the learned counsel for the appellant, submits that impugned Judgment and Order dated 21.12.2019, directing the appellant/insurer to pay a sum of Rs.8,52,750/- (Rupees Eight Lakhs Fifty-Two Thousand Seven Hundred and Fifty) only with interest @6% per annum from the date of filing of the claim petition till

payment is not payable at all as the deceased was the ownercumdriver of the offending vehicle involved in the alleged accident. The learned Member, MACT, has erroneously considered compensation as third party insurance. The compensation under Section 166 of the Motor Vehicle Act is for the third party. Since, the deceased was the owner-cum-driver of the vehicle involved in the alleged accident, he cannot be treated as third party.

8. Mr. B. Ghosh, learned counsel, submits that as per the policy, an amount of Rs.7,50,000/-(Rupees Seven Lakhs Fifty Thousand)only is for the third party property damage only and for the deceased who was owner-cum-driver of the vehicle is limited to Rs.2,00,000/-(Rupees Two Lakhs)only. The claimant has already received the amount of Rs.2,00,000/-(Rupees Two Lakhs) only from the appellant as a personal accident coverage for the death of her husband, who was the owner cum driver of the vehicle involved in the accident.

9. Mr. Ghosh, learned counsel, further submits that alleged accident took place due to fault of the deceased himself and no other vehicle was involved and the provision of Section 166 of the Motor Vehicle Act, 1988 is provided for third party claim. The deceased being the owner cum driver of the vehicle cannot be treated as third party. Therefore, he submits that the learned Member, MACT, has committed a gross error by entertaining the

claim petition of the claimant under Section 166 of the Motor Vehicle Act and as such, the award dated 21.12.2019, is liable to be set aside and quashed as the same has been awarded on total misconception of the provision of the law.

10. In support of his submissions, Mr. Ghosh, learned counsel for the appellant, has placed reliance on the following judgments;

1. New India Assurance Co.Ltd –versus- Joy Shree Kakati reported in **(2019) 8 GLR 713.**

2. National Insurance Co. Ltd. –Versus- Ashalata Bhowmik and Ors. reported in **(2018) 9 SCC 801.**

3. Vasuki –versus- Santhi &Anr. reported in **(2012) 16 SCC 730**

11. Mr. T. Tsering, learned counsel for the respondent/claimant, on the other hand, submits that the accident occurred due to steering failure of the vehicle and there was no rash and negligence on the part of the deceased who was the owner cum driver of the vehicle. Unless, the accident is proved to be rash and negligence on the part of the owner cum driver of the vehicle, the claimant is entitled for compensation on the death of her husband though he was the owner cum driver of the vehicle involved in the accident. Therefore, the vehicle being insured, the appellant is liable to pay the compensation. Therefore, he submits that the impugned judgement and order dated 21.12.2019, needs no interference.

12. Mr. T. Tsering, learned counsel for the respondent has placed reliance on the following judgments;

1.The New India Assurance Company Limited – versus-Smti Arati Das of the Tripura High Court reported in **Manu/TR/0098/2017**, in MAC Appl No.16 of 2014.

2.National Insurance Co. Ltd. –Versus- Ashalata Bhowmik and Ors. reported in **(2018) 9 SSC 801**.

3.Biblesh and other –versus-New India Assurance Company, reported in **(2010) 8 SSC 591**.

13. Due consideration has been extended to the submissions of the learned counsel for the parties and also perused the records.

14. Late Rin Tsering, was the registered owner of the alto car bearing registration No.AR-04-4656, which met an accident on 30.01.2018, at around 1400 hours, wherein, the vehicle was driven by him. He was travelling with his wife (claimant/respondent). Late Rin Tsering, died on the spot and his wife sustained simple injury. The said vehicle was insured with the appellant company. The claimant/respondent herein filed claim petition under Section 166 of the Motor Vehicle Act, 1988 before the Claims Tribunal against the appellant company claiming compensation of Rs. Rs.10,90,000/- (Rupees Ten Lakhs Ninety Thousand)only. The appellant/insurance

company filed their written statement and a plea was raised that the claim petition was not competent because the deceased was not a third party being the owner cum driver of the vehicle involved in the accident and as per the terms of the policy, the appellant is only required to indemnify the owner in case of third party loss. The liability of the appellant/insurance company is limited to Rs.2,00,000/-(Rupees Two Lakhs) only.

15. It is seen that the Tribunal has framed 6(six) issues, which are as under:

1. Whether the application is maintainable in law and fact?
2. Whether the vehicular accident bearing registration no.AR-04-4656 occurred at Padma, Dirang on 30.01.2018?
3. Whether the offending vehicle was insured by the National Insurance Company Limited?
4. Whether the driver of the offending held a valid driving licence at the time of the vehicular accident?
5. Whether the deceased was the owner and driver of the offending vehicle at the relevant time?
6. Whether the claimant is entitled for monetary compensation or any other relief?

16. On careful consideration of the record, it transpires that the

issue of maintainability or the competence of the claim petition has not been properly dealt with by the learned Member, Motor Accident Claim Tribunal inasmuch the issues No.1 to 5 have been taken up and considered together without particularly considering the plea raised by the appellant.

17. Admittedly, the deceased was the owner cum driver of the vehicle, who is not a third party. The compensation under Section 166 of the Motor Vehicle Act, 1988 is for the third party. Though the accident appears to have been occurred due to the failure of steering of the vehicle and there is no rash and negligence on the part of the driver and since the deceased was owner cum driver of the vehicle, the entitlement is limited to Rs.2,00,000/-(Rupees Two Lakhs), as per the policy.

18. Section 166 of the Motor Vehicle Act, 1988 provides that an application for compensation arising out of the accident of the nature specified in Section 165, one may made, *inter alia*, by all or any of the legal representatives of the deceased where death has resulted from the accident.

19. A claim petition has been filed by the wife of the deceased (claimant/respondent herein) claiming compensation on account of the death of her husband, who was the owner cum driver of the vehicle involved in the accident. The issue is as to whether the claim

is entitled for compensation and whether the claim petition is maintainable in view of the fact that the deceased was the owner cum driver of the vehicle involved in the accident.

20. It is an admitted position that the deceased was the owner cum driver of the vehicle involved in the accident. Accident occurred due to the failure of the steering of the vehicle. The deceased being the owner of the vehicle is not a third party within the meaning of the Act. It is also the fact that the accident occurred not due to the rash and negligence driving of the deceased.

21. The deceased was the owner cum driver of the vehicle and accident did not involve motor vehicle other than the one which deceased was driving. The liability of the appellant/insurance company is to the extent of indemnification of the insured against the deceased for an injured person, a third person or in respect of damages of property.

22. In the case of **Joy Shree Kakati** (supra), this court has observed which is reproduced herein below:-

"21. The perusal of the policy (Ext.10) shows, that the deceased as owner of his vehicle, paid an extra premium for personal accident coverage and, therefore, the liability of the insurer in the instant case for death or injury of the owner, could not be beyond what is

provided in the policy as per contract between the insurer and insured. Since the deceased himself was the owner of the vehicle insured with Bajaj Allianz General Insurance Co.Ltd., the Bajaj Allianz General Insurance Co.Ltd. is not liable to pay any compensation as directed by the Tribunal for the simple reason, that as per policy and also as per the provision of section 147 of the MV Act, Bajaj Allianz General Insurance Co.Ltd. has no liability for the death or injury of the owner, except what is provided in the policy under personal accident coverage."

23. In **Ashalata Bhowmik** (supra), the Hon'ble Supreme Court has held which is reproduced herein below:-

"5. The High Court accepted the contention of the appellant that the deceased was not a third party and that the accident had occurred due to the rash and negligent driving of the offending vehicle. However, the High Court directed the appellant to pay the compensation with a rider that the said order shall not be treated as a precedent. On perusal of the policy of the insurance, the High Court in the course of the order observed that indemnification extended to personal accident of the owner-cum-driver was limited to the extent of Rs.2,00,000/-. The finding of the High Court on this question is as under:

"As it has been established by the claimant- respondents that the premium was paid for the personal accident the insurance company is liable to pay the said compensation, even though it is limited to Rs.2,00,000/- to the claimant- respondents. There is no challenge, however, against the determination of the compensation."

6.Learned counsel for the appellant has contended that the deceased himself was driving the offending vehicle and has caused the accident. No other vehicle was involved in the accident. He cannot be treated as a third party. Therefore, the High Court has rightly held that the claim petition filed by the respondents was not maintainable. In view of this finding, the High Court was not justified in directing the appellant to pay the compensation. Learned counsel appearing for the respondents, on the other hand, has sought to justify the impugned order.

7. We have carefully considered the submissions of the learned counsel made at the Bar and perused the materials placed on record. It is an admitted position that the deceased was the owner-cum-driver of the vehicle in question. The accident had occurred due to the rash and negligent driving of the vehicle by the deceased. No other vehicle was involved in the accident. The deceased himself was responsible for the

accident. The deceased being the owner of the offending vehicle was not a third party within the meaning of the Act. The deceased was the victim of his own action of rash and negligent driving. A Claimant, in our view, cannot maintain a claim on the basis of his own fault or negligence and argue that even when he himself may have caused the accident on account of his own rash and negligent driving, he can nevertheless make the insurance company to pay for the same. Therefore, the respondents being the LRs of the deceased could not have maintained the claim petition filed under [Section 166](#) of the Motor Vehicles Act.

9. Therefore, the High Court was not justified in directing the appellant/insurer to pay the compensation determined by the Tribunal. Since the indemnification extended to personal accident of the deceased is limited to Rs. 2,00,000/- under the contract of insurance, the respondents are entitled for the said amount towards compensation. Hence, the appellant is directed to deposit the said sum of Rs. 2,00,000/- with interest @ 9 per cent per annum from the date of the Claim Petition till the date of deposit with the Tribunal within a period of four weeks from today.”

24. In the case of **Vasuki** (Supra), the Hon’ble Supreme Court has held which is reproduced herein below:-

"Mr. Abhishek Gola, learned counsel for the insurance company pointed out that in terms of Indian Motor Tariff, the liability of the insurance company is limited in respect of personal accident coverage, therefore, the liability of the insurance company is limited. However, he could not point out any clause from the policy to show that the liability of the insurance company is limited. Mr. Gola, learned counsel also could not point out any clause from the policy that the Indian Motor Tariff would be applicable in respect of the liability of personal accident coverage for the owner and driver. Mr. Gola, learned counsel has referred to a judgment of this Court reported in (2020) 2 SCC 550, titled '[Ramkhiladi&Anr. Vs. United India Insurance Company &Anr.](#)' to contend that the personal accident coverage is limited. It is argued that it was a case of motorcycle whereas the liability of the insurance company is limited to Rs.1,00,000/- in respect of personal accident coverage but in respect of four-wheeler, the liability is limited to Rs.2,00,000/-."

"The judgment in [Ramkhiladi](#) (supra) was a case where there was an accident between two motorcycles. One motorcycle which was other than driven by the deceased, the owner, driver and the insurance company were not impleaded as respondent." Therefore, in terms of the policy, the personal accident benefit was limited to a sum of Rs.1,00,000/- which

was produced before the Court.”

“The arguments that the driver cannot be treated to be third party as against the owner is not disputed but the fact is that the insured having taken a personal accident policy in respect of the owner if she herself was driven or the driver who happens to be her husband, the liability of the insurance company is limited.”

25. In the case of **Smti Arati Das** (supra) by High Court of Tripura in MAC Appl No.16 of 2014, it is observed which is reproduced herein below:-

“16. There cannot be any amount of doubt that owner- cum-driver is covered by the policy in the case in hand. Thus insurance company by virtue of such indemnity is liable to make good damage after ascertaining the same. For the decision in Suchitra Choudhury (Dey) (supra), a great amount of confusion has emerged even though according to this court there cannot be any space for confusion. The law is very clear in this regard. When the accident takes place for negligence of the owner who was driving the vehicle at the relevant point of time he cannot maintain a petition under [Section 163A](#) of the Motor Vehicle Act. Negligence or no negligence would but in a case when there is no negligence but a sudden act on the road, despite due alert, caused the accident whether in such cases the application under Section 163A would be

maintainable or not.

17. In [Bimlesh](#) (supra), the accident occurred in order to save a dog and the owner-cum-driver died. Admittedly, that was not a case involving a third party. Under the act policy, the insurer is liable to indemnify the owner of the third party loss. In that case, initially the claims tribunal held that the claim petition was not maintainable and the said order was also maintained by the Punjab and Haryana High Court. But the apex court has MAC APPL 16 of 2014 clearly observed that the objection raised by the insurance company about maintainability of the claim petition is intricately connected with its liability which in the facts and circumstances of the case is dependent on determination of the effect of the additional premium paid by the insured to cover the risk of the driver and other terms of the policy including terms of the policy contained in the para 5. Hence the judgment holding that the claim petition was not maintainable was interfered with and the claim petition was remitted for reconsideration the tribunal.

18. From a reading of [Bimlesh](#) (supra), this court finds that that was an order of remand, and no law was clearly laid whether a petition under [Section 163A](#) of the Motor Vehicle Act would be maintainable or not, but the apex court indicated to its maintainability. This court is of the opinion that the question is no doubt very intricate when no negligence has

been proved by the appellant or any other person in the proceeding. [Section 163A](#) of the Motor Vehicles Act is for no-fault of liability. For the victim of the accident it is basically to realise the claim from the owner or from the insurer if they indemnified the damages of the owner. Whether within the scope of [Section 163A](#) of the Motor Vehicles Act, the death of the owner-cum-driver of the vehicle which met the accident can be included or not? According to this court, this cannot be included else it would do a violence to provisions under Section 163A, inasmuch as the MAC APPL 16 of 2014 tribunal cannot be the proper forum. An initial claim has to be raised before the insurance company as it happens in the matter of personal insurance claim and if in the event the insurance company does not properly ascertain the damage and pay the just and reasonable compensation or in terms of the policy, it would be open to the aggrieved to approach the forum constituted under [Consumer Protection Act, 1986](#). Since in this case, the tribunal has ascertained the damage and there is no challenge to the quantum by the appellant [the insurer], the insurer is directed to pay the said amount by excluding the penal rate of interest as imposed within a period of 3(three) months from today. Needless to say, such payment shall be made on deducting the amount, if any, already paid. On such deposit claimant-respondents shall be entitled to receive the amount in the proportion as decided by the tribunal."

26. I have considered the case laws relied on by the learned counsel for the parties. On perusal of the above case laws, it is clear that if the accident occurred due to the fault or negligence or the deceased has caused the accident on account of his own rash and negligence driving, it can never make the insurance company to pay for the same. In other words, if the accident occurred due to rash and negligence driving of the owner cum driver of the vehicle involved in the accident, the claim petition is not maintainable. In the present case, the issue is as to whether the deceased is a third party being the owner cum driver of the vehicle involved in the accident and on account of the death of the owner cum driver of the vehicle involved in the accident, whether claimant is competent to maintain the claim petition.

27. In the present case, although there was no proof of rash and negligence driving, the deceased being owner cum driver of the vehicle involved in the accident, who is not a third party, the claim petition under Section 166 of the Motor Vehicle Act, 1988 cannot be maintained.

28. The deceased as owner of his vehicle, paid a premium for personal accident coverage and therefore, the liability of the appellant for death or injury of the owner, could not be beyond what is provided in the policy as per contract between the insurer and insured. Since the deceased himself was the owner of the vehicle,

the appellant is not liable to pay any compensation as directed by the learned Tribunal. The appellant has no liability for the death or injury of the owner, except what is provided in the policy under personal accident coverage.

29. As noted above, since the deceased was owner cum driver of the vehicle, although there was no rash and negligence on the part of the deceased, the deceased not being the third party, in my considered opinion, the claim petition under Section 166 of the Motor Vehicle Act, 1988, is not maintainable and the learned Tribunal has failed to consider this aspect of the matter thereby rendered an erroneous conclusion.

30. In view of the discussions made herein above, the Judgment and Order dated 21.12.2019, passed by the learned Member MACT, Bomdila, West Kameng District in MAC Case No. 04/2018, is hereby set aside and quashed. However, in view of the statement made at the bar that the claimant was only paid a sum of Rs.2,00,000/- (Rupees Two Lakhs), as per the policy by the appellant, and no fault liability has not been extended to the claimant, it is provided that the appellant shall forthwith pay a sum under no fault liability to the claimant, as per the provision of law.

31. The appeal is allowed in the above terms. No order as to costs.

JUDGE

Comparing Assistant