

GAHC010209902015



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

Case No. : MACApp./134/2015

SRI RANJAN KUMAR DAS
S/O KANTI KUMAR DAS, R/O PUB BONKONWAR NAGAR, P.O. KHARGHULI

VERSUS

MUSTT RAHIKON BIBI and 5 ORS
W/O LATE MOKIBUR RAHMAN

2:MD. MUKTAR RAHMAN

S/O LATE MAKIBUR RAHMAN

3:MISS RAZIA BEGUM

D/O LATE MAKIBUR RAHMAN

4:MISS RASHIDA BEGUM

D/O LATE MAKIBUR RAHMAN

5:MISS REZINA BEGUM

D/O LATE MOKIBUR RAHMAN
SL. NOS. 2 TO 5 ARE MINOR SON AND DAUGHTERS OF LATE MOKIBUR
RAHMAN AND THEY ARE UNDER CARE AND CUSTODY OF THEIR
NATURAL GUARDIAN
MOTHER MUSSTT. ROHIKON BIBI
THE SERIAL NO. 1 AND THE SL. NO. 1 WILL REPRESENTED THE SL. NO. 2
TO 5 IN THE INSTANT APPEAL BEFORE THIS HON'BLE COURT. SL. NO. 1
TO 5 ARE R/O VILL. SAIKIAPARA
P.O. KALITAKUCHI
P.S. HAJO WITHIN DIST. KAMRUP R

ASSAM.

6:THE CHIEF REGIONAL MANAGER

NATIONAL INSURANCE CO. LTD.
REGIONAL OFFICE AT GUWAHATI-78100

Advocate for the Petitioner : MR.P P DAS

Advocate for the Respondent : MS.I DASR-6

**BEFORE
HONOURABLE MR. JUSTICE BUDI HABUNG**

JUDGMENT

Date : 18-03-2024

Heard Mr. P.P. Das, learned counsel for the appellant. I have also heard Mr. D. Mondal, learned counsel for the respondent Nos. 1 to 5 and Ms. S. Roy, learned counsel for respondent No. 6/National Insurance Company Ltd.

2. This appeal has been directed against the judgment and award dated 19.02.2015, passed by the learned Member, Motor Accident Claims Tribunal No. 2 Kamrup (M) at Guwahati in MAC Case No. 2511/2012, whereby the learned Tribunal while awarding, the amount of Rs. 9,76,000/- for the death of the deceased in the motor accident had directed the owner of the vehicle/ Appellant to pay the awarded amount to the claimant within a period of 90 days from the date of the said order with an interest @ 6% p.a from the date of filing the claim petition till its realization.

2. However, at the outset, the learned counsel for the appellant made it clear at the Bar, that the factum of the case and the quantum of compensation awarded by the learned Tribunal in the impugned order is not under challenged; what is challenged in this appeal is only with regards to the liability fixed upon

the appellant for payment in deciding the issue no. 3 i.e **whether the insurance policy was valid on the day of accident to cover up the accident.**

3. It is submitted that at the time of incident the offending motorcycle bearing registration No. AS-01/Y8979 owned by the appellant/opposite party No. 1 was duly covered by the Insurance Policy issued by the opposite party No. 2, National Insurance Company Limited on 20.02.2012. The said Insurance policy was valid with effect from **20.02.2012 to till the midnight of 19.02.2013.** And as the incident took place on **16.12.2012**, the Insurance Policy of the offending vehicle was duly covered and valid. However, during the trial, the owner of the vehicle inadvertently and by mistake had produced and exhibited the Insurance Policy of the subsequent year instead of the said current year. The insurance policy which was mistakenly produced before the Tribunal had an insurance coverage from the period of 15.02.2013 to till 14.03.2014. And it was Exhibited as Exhibit-(c) instead of the Insurance Policy which covers from the period of **20.02.2012 to 19.02.2013.** The Insurance Co. where the vehicle was insured also did not point out the said mistake. This production of wrong policy document misleads the learned Tribunal. And basing on the said wrong insurance policy paper being exhibited which covers for the period from **15.03.2013 to 14.03.2014** instead of the Policy paper which covers for the incident period from **20.02.2012 to 19.02.2013**, the learned Tribunal found that the vehicle in question had no valid insurance policy at the time of accident and as such the insurance does not cover for the period when the incident occurred. As a result, there has been an incorrect determination of liability and the owner of the vehicle has wrongly been held liable for payment of awarded compensation. Hence, this appeal.

4. The appellant filed IA (Civil) No.2162/2021 under order 41 Rule 27(2) read with section 30 and 151 of CPC contending that at the time of accident, the offending motorcycle owned by him was duly insured with the respondent Insurance company under Policy No. 35100732226302754082. And the said policy was valid with effect from **20.02.2012 to till the midnight 19.02.2013**. The said policy paper has been annexed as Annexure-I to the said application. The respondent No. 6/ national Insurance Company Ltd filed an affidavit-in-opposition. In para-No. 5 and 7 of the said affidavits in opposition, the respondent No. 6 has fairly admitted that at the time of incident the offending vehicle owned by the appellant bearing No. AS01/Y8979 was under the Policy coverage of National Insurance Company Limited bearing Policy No. B5100731116202754082. For better understanding the said paragraph no. 5 is produced herein below:

Para 5: That with regard to the statements made in paraphs 5 of the petition, the deponent begs to state that the policy bearing No.35100731116202754082 was issued against the engine No.KC13EEBGJ04168 and Cassis No. MBLKC3EEBGJ0319 valid from 20.02.2012 to midnight of 19.02.2013 and the insured of the said policy was Mr. Rajen Kumar Das.

5. However, the learned counsel for the respondent No. 6 Insurance Company submits that as the claimant/OP No. 1 did not produce the correct Insurance Policy which covered the period of incident, the learned Tribunal has made the owner of the vehicle liable to pay the awarded compensation.

6. The learned counsel for the respondent No. 6 further submits that since the insurance of the vehicle bearing registration No. AS 01/Y8979 was owned by

the appellant/opposite party No.1 was under the policy coverage and was valid at the time of incident, the liability for payment of the awarded compensation will now be shifted to the Insurance Company for which the Insurance Company is ready and willing to pay.

7. It is evident that the owner of the vehicle inadvertently produced an incorrect insurance policy during the trial. However, the appellant has now produced a valid policy document that covers the insurance at the time of incident. The insurance company has accepted and admitted this document and indicated their willingness to pay the liability. Therefore, it is only fair and just to shift the liability from the owner to the insurance company.

8. However, the insurance company contends that for the mistake of owner they should not be liable for the payment of interest for the period from the date of the judgment of the Tribunal until the realization of the awarded amount. This prayer is hereby rejected.

9. The liability of the insurance company is not contingent upon the mistake made by the appellant in producing the incorrect insurance policy during the trial. The insurance company's liability arises from the valid policy document produced in this appeal, which covers the insurance at the time of the incident. Therefore, they are liable to pay awarded amount, including the interest.

10. In the light of the aforementioned facts and supporting documents produced and on consideration of admission of the respondent insurance company that the insurance coverage of the offending vehicle was valid at the time of incident, the appeal succeeds. Accordingly, this court shifts the liability from the owner of the vehicle to the insurance company. The National Insurance

Co. Ltd is directed to pay the awarded amount of compensation to the claimant with 6% interest per annum from the date of filing the claim petition till its realization in terms of the judgment and order dated 19.02.2015. The payment shall be made within 60 days from the date of receipt of this order.

11. The appeal is allowed to the extend as indicated above, and the judgment and award of the Tribunal dated 19.02.2015 is modified accordingly.

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

13. Send back the records.

JUDGE

Comparing Assistant