

GAHC010235992013



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

Case No. : MFA/35/2013

NATIONAL INSURANCE CO LTD
SUBSIDIARY OF GENERAL INSURANCE CORPORATION OF INDIA
REGISTERED HEAD OFFICE AT 3, MIDDLETON STREET, CALCUTTA 700071
REPRESENTED BY THE ASSTT. MANAGER, GAUHATI REGIONAL OFFICE,
BHANGAGAR, GUWAHATI 781005

VERSUS

JADU GOGOI and ANR
S/O SRI GANGADHAR GOGOI, R/O VILL. PANJAN, P.O. and P.S.
SARUPATHAR, DIST. GOLAGHAT, ASSAM.

2.:JITENDRA SAIKIA

S/O SRI BINESWAR SAIKIA
R/O VILL. PONKA GAON
P.O KANAIGHAT
DIST. GOLAGHAT
ASSAM

For the Petitioner(s) : Mrs. R. D. Mozumdar, Advocate

For the Respondent(s) : Mr. S. Dutta, Sr. Advocate

: Ms. S. Mochahari, Advocate

Date of Hearing : **10.05.2024**
Date of Judgment : **10.05.2024**

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

Heard Mrs. R. D. Mozumdar, the learned counsel appearing on behalf of the Appellant and Mr. S. Dutta, the learned Senior counsel assisted by Ms. S. Mochahari, the learned counsel appearing on behalf of the Respondents.

2. This is an appeal under Section 30 of the Workmen's Compensation Act, 1923 presently the Employee's Compensation Act, 1923 challenging the award dated 14.12.2012 in W.C. Case No.51/2008 whereby the learned Commissioner for Employee's Compensation at Golaghat (hereinafter referred to as "the learned Tribunal") had awarded an amount of Rs.3,07,540/- along with simple interest @9% per annum on the total amount of compensation from the date of filing of the petition till the date of realization. It was also mentioned that the Appellant herein will be liable to pay the said compensation along with interest to the claimant and the amount was directed to be deposited within 30 (thirty) days from the date of the said order.

3. This Court vide an order dated 15.03.2013 admitted the instant appeal by formulating two substantial questions of law which are reproduced herein under:

"1. Whether, in view of the specific requirement of the policy regarding valid driving license, if the driver was not holding a valid and effective driving license to drive the vehicle and he had a driving license which authorized him to drive private vehicle and not as paid driver, the appellant was liable to pay any compensation to the respondent as per the terms of the policy of the vehicle?"

2. Whether, when a fact is not in dispute, additional evidence is to be led to

prove the same?"

4. The first substantial question of law relates to as to whether the Appellant Insurance Company would be liable if the driver was not holding a valid and effective driving license to drive the vehicle inasmuch as the driver had a driving license which authorized him to drive private vehicle and not as paid driver.

5. This Court has duly taken note of the judgment of the learned Tribunal wherein the very aspect of the matter has been duly considered and it was opined that the Employee's Compensation Act, 1923 did not require that the claimant is required to prove whether he has possessed any driving license either private or profession. It was opined that the claimant was only required to prove that he was an employee/workman and thereupon the owner and the insurer are jointly and severally liable for compensation if the accident occurs during the course employment. In the opinion of this Court, the said opinion rendered by the learned Tribunal is inconsonance with the judgment of the Supreme Court in the case of ***S. Iyyapan Vs. United India Insurance Company Ltd. and Another*** reported in **(2013) 7 SCC 62** and in that regard, this Court finds it very relevant to reproduce paragraph Nos. 17, 18 and 19 which are herein under:

“17. Reading the provisions of Sections 146 and 147 of the Motor Vehicles Act, it is evidently clear that in certain circumstances the insurer's right is safeguarded but in any event the insurer has to pay compensation when a valid certificate of insurance is issued notwithstanding the fact that the insurer may proceed against the insured for recovery of the amount. Under Section 149 of the Motor Vehicles Act, the insurer can defend the action inter alia on the grounds, namely,

(i) the vehicle was not driven by a named person,

- (ii) *it was being driven by a person who was not having a duly granted licence, and*
- (iii) *person driving the vehicle was disqualified to hold and obtain a driving licence.*

Hence, in our considered opinion, the insurer cannot disown its liability on the ground that although the driver was holding a licence to drive a light motor vehicle but before driving light motor vehicle used as commercial vehicle, no endorsement to drive commercial vehicle was obtained in the driving licence. In any case, it is the statutory right of a third party to recover the amount of compensation so awarded from the insurer. It is for the insurer to proceed against the insured for recovery of the amount in the event there has been violation of any condition of the insurance policy.

18. *In the instant case, admittedly the driver was holding a valid driving licence to drive light motor vehicle. There is no dispute that the motor vehicle in question, by which accident took place, was Mahindra Maxi Cab. Merely because the driver did not get any endorsement in the driving licence to drive Mahindra Maxi Cab, which is a light motor vehicle, the High Court has committed grave error of law in holding that the insurer is not liable to pay compensation because the driver was not holding the licence to drive the commercial vehicle. The impugned judgment is, therefore, liable to be set aside.*

19. *We, therefore, allow this appeal, set aside the impugned judgment of the High Court and hold that the insurer is liable to pay the compensation so awarded to the dependants of the victim of the fatal accident. However, there shall be no order as to costs."*

6. The above principles as laid down by the Supreme Court in the said judgment in the opinion of this Court squarely applies inasmuch as the Employee's Compensation Act, 1923 only mandates as regards entitlement of

compensation if there is an employer/employee relationship. The said aspect of the matter was duly proved on the basis of the evidence and that being a finding of fact, this Court cannot disturb the said finding of fact in the present proceedings. Under such circumstances, in the opinion of this Court, the said substantial question of law does not arise. Be that as it may, if it is the case, where the Appellant herein is of the opinion that the driver did not have the licence, the Appellant herein would be at liberty to take appropriate steps against the owner as envisaged under law. The above therefore answers the first substantial question of law.

7. The second substantial question of law which has been framed is when the fact is not in dispute, additional evidence is to be led to prove the same. In the opinion of this Court, the said substantial question of law so formulated is absolutely vague for which the same cannot be said to be a substantial question of law involved in the instant appeal.

8. Taking into account the above, this Court finds no merit in the instant appeal for which the instant appeal stands dismissed.

9. Before parting with the record, this Court makes it clear that the dismissal of the instant appeal shall not preclude the Appellant Insurance Company to take such steps against the owner, if otherwise permissible under law.

10. It has also been brought to the attention of this Court that the amount as directed by the learned Tribunal had already been deposited before the Registry of this Court pursuant to the order passed by this Court at the time of admission of the instant Appeal. Under such circumstances, the Respondent No.1 who is the claimant would be at liberty to seek release of the said amount by filing an application before the Registry and the Registry shall after making proper

verification and identification, release the amount to the Respondent No.1/claimant.

JUDGE

Comparing Assistant