

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.407 of 2018

Branch Manager, The New India Assurance Co. Ltd. and the Constituted Attorney, Regional Office The New India Assurance Co. Ltd., 6th Floor, B.S.F.C. Building, Fraser Road, Patna - 1.

... .. Appellant/s

Versus

1. Sri Hari Ballabh Singh son of Late Ram Sahay Singh, Resident of Village - Rakia, P.S. - Bihra, Dist. - Saharsa.
2. Dinesh Kumar Goyal son of Late Bajrang Das Goyal, Resident of Swestika Apartment - 2, Model Bypass, Sevak Road, Silliguri, P.S. - Shakti Nagar, Dist. - Jalpaigudi.
3. M/s Delhi-Assam Roadways Corporation Ltd. N-3, Himland Horse Karampura Commercial Complex, Delhi

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Raj Kumar Singh Vikram, Advocate
For Respondent no.1	:	Mr. Prabhat Ranjan Singh, Advocate
For Respondent no.3	:	Mr. Manish Kumar, Advocate
		Mr. Sanjay Parasmani, Advocate

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA

ORAL JUDGMENT

Date : 24-09-2024

Heard learned counsel for the appellant/Insurance Company and learned counsel for the claimant/respondent no.1 as well as the owner of the vehicle/respondent no.3.

2. This appeal has been filed under Section 173 of the Motor Vehicle Act, 1988 (hereinafter referred to as 'the Act') by New India Assurance Co. Ltd. through its Branch Manager (hereinafter referred to as 'Insurance Company') against the judgment dated 06.11.2017 and award dated 02.02.2018 passed by learned Additional District Judge-II-cum M.A.C.T., Saharsa



(hereinafter referred to as 'Learned Tribunal') in M.V. Case No.14 of 2007 whereby the learned Tribunal was pleased to direct the appellant/Insurance Company to pay Rs.5,20,000/- with interest @ 6 % *per annum* from the date of filing of the claim petition till the date of its realization within a month.

3. The facts, in brief, are that the claimant's son, Santosh Kumar Singh (deceased) aged about 29 years was unmarried and was working as a private driver of a truck bearing its Registration No. NL01-A 7299. On 27.07.2007 at about 05:30 P.M near Phuntsoling, Bhutan, in order to avoid collision with a Tata Sumo, which was coming from the opposite direction, dashed the mountain and caused injuries to which he succumbed and died. In this regard, a case was lodged on 27.07.2007 under Crime Information Report No. 95 of 2007 for Motor Vehicle Accident. Post-mortem examination of the body was not conducted as there was no arrangement for it. The deceased was a valid licensed driver and the said truck was covered with a valid insurance at the time of the accident. The deceased truck driver was working at a monthly salary of Rs. 5,000/- at the time of the accident. As such the claimant/father of deceased filed the claim petition claiming compensation of Rs. 18,60,000/-.

4. Appellant/O.P. No. 1 is the insurance company, O.P.



No. 2 is the operator-possessor/custodian of the accidental truck under whom the deceased was working and O.P. No.3 is the registered owner of the accidental truck. O.P Nos. 1 and 3 have appeared on notice and submitted their written statement. O.P. No. 1 has admitted in its written statement that the alleged accident is true and deceased died due to accident while driving the accidental truck. It was further admitted that vehicle was covered by valid insurance at the time of accident. Similarly, O.P. No. 3 has admitted in his written statement that the accidental truck involved in the accident was under insurance issued by OP. No. 1 New India Assurance Company Limited at the time of accident.

5. O.P. No. 2 did not appear in spite of service of notice before the learned Tribunal and the learned Tribunal proceeded *ex-parte*. He did not appear in this appeal also.

6. The claimant in support of his claim filed total five oral and seven documentary evidence (Exhibit 1 to 7) including copy of crime information report no. 95 of 2007, receipt application dated 28.07.2007 regarding the information of removal of the dead body after accident, traffic branch Phuentsholing, Toyal Bhutan Police, issued a certificate no. 107 dated 28.07.2007 containing brief description of accident, certificate dated



25.02.2008 by Dr. Tashi Gyeltshen, Medical Superintendent declaring death, certificate of handing over the body of deceased to his brother and operator/possessor/custodian of vehicle Dinesh Goyal, a death certificate by General Hospital, Phuentsholing, note on date 04.03.2009 by Medical Superintendent, General Hospital that post-mortem was not conducted due to lack of competent expert and driving licence of deceased. Furthermore, oral evidence presented on behalf of CW-1 Hari Ballabh Singh (father of the deceased), CW-2 Shambhu Prasad Singh (elder brother of deceased), CW-3 Durga Prasad Singh, CW-4 Lal Bahadur Singh and CW-5 Saroj Kumar Singh. However, neither oral nor documentary evidence was adduced on behalf of the opposite parties including the appellant/Insurance Company to controvert the claim of claimant.

7. It appears from the record that vide order dated 27.09.2010, the learned Tribunal directed the appellant/Insurance Company to pay ad-interim compensation of Rs.50,000/- alongwith 6 % interest under Section 140 of the Act. The appellant/Insurance Company paid Rs.50,000/- to the claimant on 04.06.2013.

8. After hearing the parties and after going through the



material on record, vide the impugned judgment dated 06.11.2017, the learned Tribunal hold that claimant is entitled to get compensation under various heads, which is stated herein-
below:-

S.N.	Particular	Net Amount
1.	Monthly income of the deceased.	Rs.5,000/-
2.	Annual Income	Rs.60,000/-
3.	50% deduction towards personal and living expenses.	Rs.30,000/-
4.	Net annual income	Rs.30,000/-
5.	Multiplier of 17	Rs.5,10,000/-
6.	Loss of Estate	Rs.5,000/-
7.	Funeral Expenses	Rs.5,000/-
8.	Total compensation amount	Rs.5,20,000/-

9. Learned counsel for the appellant/ Insurance Company submits that the learned Tribunal failed to consider that insurance is a contract between parties who are bound to obey the terms and conditions of the contract and the learned Tribunal has exceeded its jurisdiction by maintaining claim case as the cause of action arose out of India thus, the impugned judgment suffers from jurisdictional error. The liability of Insurance created in India will not extend its applicability outside Indian Jurisdiction.

10. Learned counsel for the appellant further submits that even though cover note issued by the Insurance Company also covers the territorial area of Bhutan but a claim could not be



lodged in India for an accident which happened in Bhutan. Insurance company had a liability but that liability would be dealt with in accordance with the municipal law of that country or any special law which may be applicable in that place but it cannot be stretched to mean that the Indian Motor Vehicle Act will be also apply to an accident which happened in Bhutan. He further submits that the cause of action in the present case arose within the territorial jurisdiction of Bhutan and if that be so, any claim against the insurance company could be brought only in Bhutan and not in any Court/Tribunal in India merely because the claimant resides in India and that the truck is registered in India. He has referred and relied upon the judgment dated 05.10.2012 passed by the Co-ordinate Bench of this Court in M.A. No.782 of 2009 (**Oriental Insurance Company Ltd. Vs. Anarwa Devi & Ors**) reported in **2013 ACC 469**.

11. On the other hand, learned counsel appearing for the claimant submits that claimant has proved his case by examining witnesses as well as the documentary evidence got exhibited on his behalf in support of his claim. Learned counsel has submitted that the deceased was working as a private driver of a truck and admittedly the accident took place in Bhutan but Section 166(2) of the Act provides an option for the claimant to



approach the M.A.C.T. within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides. Since the claimant who resides in India and also defendant who resides in India, the claim case of claimant is maintainable. He has referred a judgment dated 06.02.2023 of the Hon'ble Supreme Court in the case of **Pramod Sinha v. Suresh Singh Chauhan & Ors** reported in **2023 LiveLaw (SC) 596** wherein in paragraph no.4 it has been observed as under:-

“4. The provisions of the Act do not make it mandatory for the claimants to lodge an application for compensation under Section 166 thereof before the MACT having jurisdiction over the area where the accident occurred. On the contrary, sub-section (2) of Section 166 provides an option for the claimants to approach the MACT, Farrukhabad at Fatehgarh, U.P., a forum that law permits them to choose, no grievance can be raised by the petitioner. The contention is misconceived and, hence stand overruled.”

12. Learned counsel for the claimant further submits that it appears from the perusal of an endorsement of India Motor Tariff (IMT) wherein it has been stated that on consideration of payment of an additional premium, the cover of damage will deem to be included geographical extension (Nepal, Sri Lanka, Maldives, Bhutan, Pakistan and Bangladesh) in respect to vehicle insured/injury to its occupants/third party liability. He



further submits that the learned Tribunal has rightly awarded the compensation which requires no interference by this Court. The stand of the insurer in this case is not fair and just. Learned counsel for the claimant/respondent no.1 further submits that it appears from M.A. No.782 of 2009, the liability of compensation was fixed by the Nepal Authorities and the payment was made by the Insurance Company and since the said amount did not satisfy the claimants, a second claim was lodged at Sitamarhi and the facts are distinguishable from this case.

13. Having heard learned counsel for the parties and considering the submissions made and the materials on record, it appears that there is no dispute as to the occurrence and quantum of compensation awarded by the learned Tribunal. The only question that remains to be decided is that “*whether the claim is maintainable or not against the Insurance Company in India, as the cause of action arose outside the territorial jurisdiction of India*”?

14. To determine the question, it would be appropriate to refer Section 166 of the Act.

(1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made--



(a) by the person who has sustained the injury; or

(b) by the owner of the property; or

(c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

(d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be:

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.

Provided further that where a person accepts compensation under section 164 in accordance with the procedure provided under section 149, his claims petition before the Claims Tribunal shall lapse.

*(2) Every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred or **to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides**, and shall be in such form and contain such particulars as may be prescribed:*

(3) No application for compensation shall be entertained unless it is made within six months of the occurrence of the accident.



(4) The Claims Tribunal shall treat any report of accidents forwarded to it under [section 159] as an application for compensation under this Act.

(5) Notwithstanding anything in this Act or any other law for the time being in force, the right of a person to claim compensation for injury in an accident shall, upon the death of the person injured, survive to his legal representatives, irrespective of whether the cause of death is relatable to or had any nexus with the injury or not.

From a bare reading of Section 166 (2) of the Act, it is clear that the application for compensation arising out of an accident shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed.

15. The Division Bench of Allahabad High Court in judgment dated 13.09.2007 in **National Insurance Company vs. Bankey Bihari Lal** reported in **2008 (1) AWC 201** on the similar fact where the occurrence took place in Nepal but the claim petition was filed at Gorakhpur under Section 166 of the Act taking consideration upon Section 166(2) of the Act, on the question of jurisdiction observed as follows:



“On the basis of said sub-Section either of the places as aforesaid i.e. appropriate place of accident at Nepal, appropriate place of residence/carrying on business of the claimants at Agra, Uttar Pradesh or appropriate place of residence/carrying on business of the respondents i.e. owner of the truck and/or Insurance Company at Gorakhpur, Uttar Pradesh, the respondents under the claim petition, are the appropriate places of hearing of the claim petition. Since claim petition has been filed in the jurisdiction of Gorakhpur, we hold that the Tribunal at Gorakhpur had the jurisdiction to entertain, try and determine the claim petition of the claimants.”

16. Section 1 of the Act declares that it shall extend to the whole of India. However, Section 139 of the Act permits the Central Government to make rules for the purpose of grant and authentication of travel pass/certificate or authorization to persons temporarily taking motor vehicles outside India and may for this purpose frame rules in respect of the matters contained therein. Section 139(2) does not mandate that a person taking his motor vehicle outside India should also obtain appropriate insurance coverage to operate the vehicle outside India. It is relevant to note that the owner of the offending vehicle had obtained the required permissions to take the vehicle outside India and taken insurance cover to Bhutan also by extending geographical area, the insurer cannot escape its liability to pay compensation. The accidental truck was registered in India and both the claimant and the owner of



vehicle in question are citizens of India and are thus bound by the provisions of the Act.

17. The Division Bench of Karnataka High Court in **The Claim Manager, Royal Sundaram Alliance Insurance Company Ltd. Vs. Mahadevi** vide judgment dated 12.01.2021, in M.F.A. No.5355 of 2016 observed that the extra territorial jurisdiction of a sovereign State *qua* its citizen, is a well entrenched jurisprudential concept. Yet another provision which palpably runs counter to the contention of the insurer in this case in Section 149(3) of the Act which warrants that a judgment of a foreign court or by a court in a reciprocating country shall be honoured by the insurer, notwithstanding the fact that insurer is either registered or not in such reciprocating country. Thus, if the insurer is bound to honour a foreign award, it would be preposterous to contend that the insurer is not liable to honour a judgment and award passed in India, on the ground that accident occurred not in India. In view of that matter, the insurer cannot escape its liability on the ground that owner had not paid an additional premium. On the point of the maintainability of claim petition before the learned Tribunal, considering Section 166(2) of the Act observed that since, the claimant was a resident of Mysuru, she has opted to file the



claim petition at Mysuru and, the Tribunal had the jurisdiction to adjudicate the petition filed before it by the claimant.

18. The Hon'ble Supreme Court vide judgment dated 25.07.2003 in the case of **Hem Raj Vs. The New India Assurance Co. Ltd.** reported in **2023 SCC OnLine SC 874** where the insurance policy covers the territory of India and also got extended the insurance policy within the territory of Nepal and the vehicle met with an accident in Nepal in which one person died and another person was injured, whose compensation amount, which includes medical bills also, was allowed by the Hon'ble Supreme Court and Insurance Company was directed to make the payment with interest @ 7 % *per annum* and also imposed cost of Rs.30,000/- payable to claimant.

19. The learned Tribunal held that the vehicle in question i.e., truck bearing Registration No. NL01-A 7299 was validly insured with the appellant at the time of accident. The O.P. Nos. 1 and 3 in their written statement admitted that at the material point of time, the accidental truck bearing Registration No. NL01-A 7299 was covered under valid and effective policy of insurance issued by the appellant/ Insurance Company. The copy of certificate of Insurance bearing policy no.



512304/31/07/01/00000383 is on record. It is also observed that there is no evidence on behalf of Insurance Company to show that there was any violation of the rules or terms of policy. On perusal of Insurance Policy, it is explicit that geographical area includes India and extended geographical area i.e., Bhutan, Nepal and Bangladesh.

20. When the owner of a vehicle pay additional premium and same is accepted by the Insurance Company, liability of the Insurance Company gets extended under the Act. Section 147 of the Act clearly prescribes for statutory liability to cover risk of paid driver under the insurance policy, which is a matter of contract. On payment of such additional premium by the owner, the liability of the owner shifts upon the insurance company. Since the claimant is resident of Saharsa, he has opted to file the claim petition at Saharsa and, therefore, the Tribunal had the jurisdiction to adjudicate the claim petition filed before it by the claimant.

21. For the aforesaid reasons, I find that the appeal is devoid of merit and liable to be dismissed with nominal cost of Rs.10,000/- to be paid by the Insurance Company to the claimant. Accordingly, this appeal stands **dismissed**. The judgment dated 06.11.2017 and award dated 02.02.2018 passed



by learned Tribunal in M.V. Case No. 14 of 2007 stands confirmed.

22. The appellant/ Insurance company is directed to deposit the awarded amount with accrued interest as per the award of learned Tribunal in this case after making deduction of any amount paid in this case to claimant by the appellant/Insurance Company before the concerned Tribunal within eight weeks from today and the learned Tribunal is directed to pay the said amount to the claimant after following due procedure.

23. Statutory deposit, if any, made by the appellant/Insurance company shall be transmitted to the concerned Tribunal for the purpose of adjustment with the compensation amount.

24. Let the Trial Court Record be returned to the concerned Tribunal, forthwith.

(Sunil Dutta Mishra, J)

Harish/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	01.10.2024
Transmission Date	NA

