GAHC020002442020 2025:GAU-NL:82

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

Case No. : MACApp./6/2020

TATA AIG GENERAL INSURANCE COMPANY LTD.
HAVING ITS REGISTERED OFFICE AT PENINSULA BUSINESS PARK, TOWER A, 15TH FLOOR, G.K.MARG, LOWER PAREL, MUMBAI - 400013, WEST BENGAL AND DIVISIONAL OFFICES IN SEVERAL PLACES INCLUDING AT NORTH EASTERN STATES

VERSUS

TIANARO AND 3 ORS
R/O TULI TOWN, MOKOKCHUNG, NAGALAND

2:TAKOKABA
R/O TULI TOWN
POLICE STATION - TULI
MOKOKCHUNG
NAGALAND

3:OPANGNEKEN

S/O SUNGJEMKABA
R/O TULIKONG WARD
TULI TOWN
POLICE STATION - TULI
MOKOKCHUNG
NAGALAND (OWNER OF THE VEHICLE)

4:SENTIWATI

S/O SHRI JUNGSHILEMBA

R/O TULIKONG WARD

TULI TOWN
MOKOKCHUNG
NAGALAND (DRIVER OF THE VEHICLE

Advocate for the Petitioner : B. DEVNATH, M WABANG,V. DEVNATH,V. SIRIE,XEPE,M WABANG

Advocate for the Respondent : I. APOK PONGENER, ANUNGLA LKR,RENBONI,ATU IMCHEN

BEFORE
HON'BLE MRS. JUSTICE YARENJUNGLA LONGKUMER

Date of Hearing : 05.03.2025

Date of Judgment : 10.03.2025

JUDGMENT & ORDER
(CAV)

Heard Mr. V. Devnath, learned counsel for the appellant as well as Mr. I. Apok Pongner, learned counsel for the respondent Nos. 1 and 2 and Mr. N. Longkumer, learned counsel for respondent No. 3.

1. This is an appeal under Sections 173 of the Motor Vehicle Act, 1988, against the judgment and award dated 27.08.2019 passed by the learned MAC Tribunal, Mokokchung, Nagaland, in MAC case No. 12/2018 wherein the respondent/claimants were awarded a sum of Rs. 9,15,600/- (One lakh fifteen thousand six hundred). The appellant is the Tata AIE General Insurance Company, represented by learned counsel Shri. V. Devnath.

2. The main ground taken by the present appeal amongst others is that,

the owner of the vehicle did not effectively contest the case on merits and as such, the learned tribunal should have granted permission to the appellant/Insurer under Sections 170 of the Motor Vehicle Act, to contest the case of merits, but the same benefit was denied.

3. Another ground taken by the appellant is that the insurance policy exhibited by the claimant in the instant claim case as exhibit P3 is false and fabricated, as it was not issued by the appellant, and the learned tribunal had over-looked this legal aspect of the matter. It is stated by the appellant that they have filed an FIR against the false and fake Insurance Policy relied upon by the claimant. The appellant filed the FIR against the said fake Insurance Policy and also issued an intimation letter to the owner of the vehicle about the said false fabricated Insurances Policy and exhibited the said FIR as exhibit D2, but the learned tribunal below did not deal with this important aspect seriously, and passed the Impugned Judgment award dated 27.08.2019. Learned counsel Mr. V. Devnath also submits that the impugned Judgment and award has been passed erroneously, and therefore, the same is to be set aside and quashed.

4. The learned counsel for the appellant, Shri. V. Devnath has referred to the written statement filed by the appellant before the learned tribunal at paragraph 11, wherein, the insurer/appellant has asked for permission under Sections 170 of the Motor Vehicles Act. However, the learned tribunal had not allowed the said permission. Learned counsel has drawn the attention of this Court to the additional affidavit filed by the insurer/appellant on 03.11.2023 in the present Appeal and while referring to Annexure-I and Annexure-II, has shown certain discrepancies in the

insurances certificate produced by the claimant before the learned tribunal to show that the insurance policy was fake and forged document. He has also contended that the insurer/appellant in the present case was not added as a noticee but he was the respondent No. 3 and 4 in the claim petition before the learned tribunal and therefore, it was not necessary for the insurer/appellant to obtain permission under Sections 170 of the Motor Vehicles Act, Learned counsel relies on the cases of *United India Insurance Company Limited Vrs Shila Datta & others(2011) 10 SCC 509; Lachhman Singh & others Vrs Hazara Singh & ors (2008) 5 SCC 444; Malluru Mallappa (D) THR.LRs Vrs Kuruvathappa; Pappu & others Vrs Vinod Kumar Lamba & Anr Civil Appeal 1485 of 2020 (2018) 3 SCC 208; and Darillian Passah Vrs Batriti Lyndoh (2010) 3 GLT 717* to support his contentions. Learned counsel also relies on the case of *Sanjay Kumar Singh Vs The State of Jharkhand in Civil Appeal No. 1760 of 2022,* wherein, the Hon'ble Apex Court at paragraph 4 and 6 had laid down that:

> "*However, at the same time, where the additional evidence sought to be adduced removes the cloud of doubt over the case and the evidence has a direct and important bearing on the main issue in the suit and interest of justice clearly renders it imperative that it may be allowed to be permitted on record, such application may be allowed. Even, one of the circumstances in which the production of additional evidence under Order 41 Rule 27 CPC by the appellate court is to be considered is, whether or not the appellate court requires the additional evidence so as to enable it to pronouncement judgment or for any other substantial cause of like nature.*"

5. Learned counsel also contends that the present appeal being a continuation of the proceedings of the original court the appellant can agitate on all questions of facts as well as law. On this point he relies on the case of *M/S RAMNATH EXPORTS PVT. LTD Vs VINITA MEHTA & ANR* reported in *CIVIL APPEAL NO. 4639 of 2022 [ARISING Out of SLP (C) No.*

30216 of 2018] wherein, the Hon'ble Apex Court at para 8 stated that :

> *" 8. After having heard learned counsel for parties and on perusal of the material available, we have read the provision of Section 96 of CPC, which provides for filing of an appeal from the decree by any Court exercising original jurisdiction to the Court authorized to hear appeals from the decisions of such Courts. It is also settled that an appeal is a continuation of the proceedings of the original court. Ordinarily, in the first appeal, the appellate jurisdiction involves a re-hearing on law as well as on fact as invoked by an aggrieved person. The first appeal is a valuable right of the appellant and therein all questions of fact and law are open for consideration by re-appreciating the material and evidence. Therefore, the first appellate court is required to address on all the issues and decide the appeal assigning valid reasons either in support or against by re-appraisal. The court of first appeal must record its findings dealing all the issues. Considering oral as well as documentary evidence led by the parties."*

6. The learned counsel for the appellant/insurer relying on the case of Shilla Dutta (Supra) has argued that the insurer if impleaded as a party respondent by the claimants themselves or under Section 170 by the M.A.C Tribunal can contest the claim petition by raising all grounds without being restricted to grounds available under Sections 149 (2). Therefore, learned counsel has stated that since the claimant had impleaded the insurer/appellant as a party respondent he is entitled to urge all contentions and grounds which may be available to it.

7. Relying on the above cited judgments learned counsel for the appellant/insurer states that he need not seek the permission of the Tribunal under Sections 170 of the Motor Vehicles Act to raise grounds other than those mentioned in Sections 149 (2) of the Act. And that appellant can raise additional evidence at the appellate stage.

8. At the outset the learned counsel for the respondent Nos. 1 and

2/claimants, Shri. I. Apok Pongener has raised preliminary objections on two points regarding the maintainability of the present appeal. He has stated that the Appeal is not maintainable as no steps were taken by the Appellant under Section 170 of the MV Act before the Tribunal in order to enable the Insurer to assail the impugned judgment of the MACT on all grounds. In the absence of an Order under Section 170 of the MV Act, the Appeal is to be confined only to the statutory defences as provided in Section 149 (2) of the MV Act. Learned counsel has relied on *Josphine James versus United India Insurance Co. Ltd. and Another of 2013 (4) T.A.C 22(S.C.) ,* where the Hon'ble Apex Court at paragraph 17 and 18 had laid down that in the absence of permission obtained by the Insurance Company from the tribunal to avail the defense of the insured, under Sections 170 of the Motor Vehicles Act, it is not permitted to contest the case on merits, and the Hon'ble Apex Court went on to state that in the absence of the permission, the Insurance Company had only limited defense to contest in the proceedings as provided under Sections 149(2) of the Motor Vehicles Act. he also submits that the issue about the fake insurance certificate is a new plea which was never taken before the learned tribunal and therefore, the appellant cannot filed this present appeal on the new ground, which was not raised before the learned tribunal.

9. The second objection on maintainability is that nowhere in the pleadings or the written statement before the learned tribunal or in the impugned judgment the fake policy is mentioned. This question was never raised before the learned tribunal and hence, no issue was framed by the learned tribunal regarding the fake certificate. Therefore, no foundation

has been laid in the pleadings before the learned tribunal, and therefore appellant cannot be allowed to raise this new plea at this stage. That it is settled law that new grounds cannot be urged in appeal. In support of his contention the learned counsel for the respondent/claimant, Shri. I. Apok Pongener has relied on the case of ***ORIENTAL INSURANCE CO. LTD vrs SILINA DHAN, 2024 (4) GLT 574*** at paragraph 9, wherein, the appellant had raised the issue of lack of permit before the Appellate Court. However, in the said case the lack of permit in respect of the vehicle was not taken as a ground in the written statement filed by the insurer before the learned tribunal, the Hon'ble Gauhati High Court in the case relied upon had stated in paragraph 9, that :

> "*It was urged on behalf of the appellant-insurer before the learned Tribunal that the subject-vehicle had route permit only for Nagaland and did not have route permit to ply in the State of Assam. The learned Tribunal discarded such contention on the ground that the insurer did into prove the same by producing the route permit. It is not open for the appellant-insurer to raise a ground for which foundation has not been laid in the proceedings before the learned Tribunal. Had the issue of lack of permit been taken by the insurer by laying proper foundation before the learned Tribunal by taking such a ground in the pleadings and thereafter, by adducing evidence and the point was decided against it, then it might have been possible for the appellant-insurance to take such point in appeal. With nothing such done, it is not open for the appellant-insurer to agitate the issue of lack of permit at the stage of appeal. With no tangible material available in support of such claim, this court does not find it acceptable.*"

10. Another Judgment which the learned counsel for the respondent/claimant has relied upon is the case of *ORIENTAL INSURANCE CO. Vs LALAWMPUII & ANR, reported in 2021 (1) GLT 809.* Paragraph 8 of the aforementioned Judgment of the Hon'ble Gauhati High Court, states that :

> "*8. A perusal of the above provisions of law, read with the Judgment of the Apex Court quoted above, would go to show that the In-surance Company's right to challenge the quantum of compensation is limited to the grounds set forth in Section 149 (2) of the Motor Vehicles Act, 1988. If the Insurance Company wanted to contest the claim on all grounds, including the income of the deceased or quantum payable to the claimant, the Insurance Company should have filed an application for permission to do the same under Section 170 (b) of the Motor Vehicles Act, 1988. The Insurance Company not having taken the permission of the learned Tribunal under Section 170 (b) of the Motor Vehicles Act, 1988, the Insurance Company cannot be allowed to make a challenge to the compensation amount awarded to the claimant by way of this appeal."*

11. Learned counsel for the respondent/claimant has also stated that Order 41 Rule 47 Rule 27 CPC, would not apply in the present case as Order 41 Rule 27 CPC allows for production of additional evidence before the Appellate Court only in cases where the Court from whose Judgment the appeal is preferred has reduced to admit evidence, which ought to have been admitted or when the party seeking to produce the additional evidence can establish that even after exercise of due diligence such evidence was not within his knowledge, or could not be produced by him when the Judgment was passed or when the Appellate Court requires any documents to be produced or any witness to be examined in order to enable it to pronounced Judgment, or for any other substantial cause. And this provision does not apply to Accident claim cases.

12. In view of the law laid down in the aforementioned Judgments, the learned counsel for the respondent/claimant states that the present appeal is not maintainable and needs to be dismissed.

13. Learned counsel also prays that the interest percentage on the

awarded amount may be increased to 9% instead of the 6% as awarded by the learned tribunal basing on the observation of the Hon'ble Apex Court in the case of *Municipal Council of Delhi, v. Association of Victims of Uphaar Tragedy, (2011) 4 S.C.C. 481 : 2012 (1) T.A.C. 31.*

14. Respondent No. 3 is represented by Shri. N. Longkumer who also relies on the submissions of the counsel for the respondent Nos. 1 and 2 and has placed reliance on the case of *State of Maharashtra Vs Hindustan Construction Limited reported in 2010 4 SCC 518.* The learned counsel for the respondent No. 3 states that in the cited case the Hon'ble Supreme Court clearly stated that when there is no foundation in the application before the original Court, the new grounds cannot be raised for the first time, in the appeal. He also, therefore submits that the instant appeal may be dismissed as not maintainable.

15. This court has considered the opposing submissions of the learned counsels for the parties and perused the judgments relied upon as well as the LCR of MAC 12/2018. The issues that need to be decided by this Court are:

(i) Whether a new ground can be raised in Appeal when the same was not raised before the Tribunal?

(ii) Whether the present appeal is maintainable without an order under Section 170 of the MV Act?

16. Regarding the first issue upon perusal of the records of MAC case No. 12/2018 from the court of Motor Accident Claims Tribunal, Mokokchung,

Nagaland, it is seen that the only objections preferred by the insurer/appellant before the learned tribunal was that the driver of the offending vehicle was plying in contravention of the Insurance Policy at the time of the accident and did not satisfy the requirement of Rule 3 of the Central Motor Vehicles Rule of 1988, in as much as the driver was not possessing any valid and effective driving license.

17. Another objection which the insurer/appellant has taken before the Tribunal is that the accident did not occur due to the rash and negligent driving of the vehicle. The only issues framed by the Tribunal were: *(i) whether on 03.10.2016 the vehicle bearing registration No.NL-02-C-2334 met with accident due to rash and negligent driving? If so whether deceased Sanenlong was involved? (ii) Whether vehicle in accident possessed valid vehicular documents? (iii) What is the age, occupation and monthly income of deceased? And (iv) Whether claimants are entitled for compensation? If so to what extent? And payable by whom?*

Only on these issues evidence was adduced and the learned tribunal arrived at the finding that the claimant is entitled to receive the compensation. As the issue of forged Insurance Policy was never raised by the insurer/appellant before the learned tribunal, no issue was framed by the tribunal with regard to this subject.

18. In view of the settled position of law as laid down by the Gauhati High Court in the case of ***ORIENTAL INSURANCE CO. LTD vrs SILINA DHAN (supra);*** *ORIENTAL INSURANCE CO. Vs LALAWMPUII & ANR (supra)* and the Hon'ble Supreme Court in *State of Maharashtra Vs*

Hindustan Construction Limited (supra), it is decided that a new ground cannot be urged in Appeal when it was not raised before the Tribunal. The argument pertaining to forged Insurance Policy is therefore not sustainable in law. The first issue is decided against the Appellant/Insurer.

19. With regard to the second issue for consideration while examining the matter of whether the Insurer can prefer an appeal against the award of the Tribunal questioning the quantum of compensation as well as finding as regards the negligence of the offending vehicle, the Hon'ble Supreme Court in the case of ***National Insurance Company Ltd Chandigarh Vrs Nicolletta Rohtagi & others, (2002) 7 SCC 456,*** laid down as follows:

> "*25. We have earlier noticed that motor vehicle accident claim is a tortious claim directed against tortfeasors who are the insured and the driver of the vehicle and the insurer comes to the scene as a result of statutory liability created under the Motor Vehicles Act. The legislature has ensured by enacting Section 149 of the Act that the victims of motor vehicle are fully compensated and protected. It is for that reason the insurer cannot escape from its liability to pay compensation on any exclusionary clause in the insurance policy except those specified in Section 149(2) of the Act or where the condition precedent specified in Section 170 is satisfied.*
>
> *26. For the aforesaid reasons, an insurer if aggrieved against an award, may file an appeal only on those grounds and no other. However, by virtue of Section 170 of the 1988 Act, where in course of an enquiry the Claims Tribunal is satisfied that (a) there is a collusion between the person making a claim and the person against whom the claim has been made, or (b) the person against whom the claim has been made has failed to contest the claim, the Tribunal may, for reasons to be recorded in writing, implead the insurer and in that case it is permissible for the insurer to contest the claim also on the grounds which are available to the insured or to the person against whom the claim has been made. Thus, unless an order is passed by the Tribunal permitting the insurer to avail the grounds available to an*

insured or any other person against whom a claim has been made on being satisfied of the two conditions specified in Section 170 of the Act, it is not permissible to the insurer to contest the claim on the grounds which are available to the insured or to a person against whom a claim has been made. Thus where conditions precedent embodied in Section 170 are satisfied and award is adverse to the interest of the insurer, the insurer has a right to file an appeal challenging the quantum of compensation or negligence or contributory negligence of the offending vehicle even if the insured has not filed any appeal against the quantum of compensation. Sections 149. 170 and 173 are part of one scheme and if we give any different interpretation to Section 173 of the 1988 Act, the same would go contrary to the scheme and object of the Act."

20. Thus it is no longer res integra that without a specific order of the Tribunal under Section 170 of the MV Act, the grounds of appeal can be only confined to the parameters of Section 149 (2) of the MV Act. A perusal of the MAC Tribunal records shows that no separate application under Sections 170 of the Motor Vehicles Act was filed.

21. Accordingly, the second issue for consideration is also decided against the appellant/Insurer. The impugned judgment and award dated 27.08.2019 are upheld. And the appeal is dismissed.

22. The appellant/insurer has already deposited 50% of the awarded amount, which has been admittedly withdrawn by the claimant. The insurer/appellant shall deposit the remaining 50% within a period of 30(thirty) days, from the date of receipt of this Order. This court does not wish to interfere in the rate of interest awarded by the learned tribunal.

The appeal stands disposed.

Registry is directed to send back the lower court records.

JUDGE

Comparing Assistant