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

Case No. : MACApp./43/2016

NEW INDIA ASSURANCE CO. LTD
HAVING ITS REGISTERED AND HEAD OFFICE AT NEW INDIA ASSURANCE BUILDING 87 MAHATMA GANDHI ROAD, FORT, MUMBAI 400001 AND REGIONAL OFFICE AT GUWAHATI-5

VERSUS

SRI HITENDRA NATH SARMA
S/O SRI GAJENDRA NATH SARMA, R/O SANKARNAGAR, WARD NO.8, P.O. MANGALDAI, P.S. MANGALDAI, DIST. DARRANG, ASSAM

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

For the Appellant(s) : Ms. M. Choudhury, Advocate

For the Respondent(s) : None appears

- Date on which Judgment was reserved : NA
- Date of Pronouncement of Judgment : **03.11.2026**
- Whether the pronouncement is of the Operative Part of the Judgment : NA
- Whether the full Judgment has been Pronounced : Yes

JUDGMENT AND ORDER (ORAL)

Heard Ms. M. Choudhury, the learned counsel for the Appellant.

2. None appears on behalf of the Respondent when the matter is called, in spite of service having been duly effected.

3. This Appeal is directed against the Award dated 06.10.2015 passed in MAC No.(i) 242/2013 whereby the learned Court of the Additional District Judge (FTC), Darrang, Mangaldai (hereinafter referred to as, "the learned Tribunal") awarded compensation of Rs. 1,10,000/- along with interest at the rate of 6% per annum from the date of filing of the claim petition till realization.

4. The Appellant, being aggrieved by the impugned Award dated 06.10.2015 has approached this Court by filing the present Appeal solely on the ground that the claim proceedings was not maintainable, as Section 147 of the Motor Vehicles Act, 1988 (for short, "the Act of 1988") does not require the insurance company to assume the risk of death or bodily injury to the owner of the vehicle and the liability of the insurance company is only for the purpose of indemnifying the insured against liabilities incurred towards a third person or in respect of damage to property.

5. Taking into account the sole contention on which the present Appeal is premised, let this Court now take into consideration the

relevant facts which led to the filing of the present Appeal.

6. The Respondent herein, as the claimant is the owner of a Maruti Alto (LXi) bearing Registration No. AS-13-B-3903. The claimant was travelling in the said vehicle. The vehicle met with an accident on 05.05.2013 at 7:15 P.M. thereby causing bodily injuries to the claimant/respondent herein.

7. Pursuant thereto, the claim proceedings was initiated which was registered and numbered as MAC No. (i) 242/2013. The Appellant Insurance Company, which was the opposite party in the said claim proceedings filed a written statement challenging the maintainability of the claim proceedings on the ground that the claimant himself was the owner of the vehicle and had no third-party liability, as the claimant himself was the first party under the terms of the policy.

8. On the basis of the pleadings, three issues were framed, which being relevant, are reproduced hereinbelow:

> "*(1) Whether the injured sustained grievous injury in road traffic accident due to rash and negligent driving involving vehicle No. AS-13-B-3903?*
>
> *(2) Whether the offending vehicle was duly covered with the insurance policy at the relevant time of the accident?*

(3) To what relief/reliefs, the parties are entitled to?"

9. The claimant, i.e., the respondent herein adduced evidence by examining himself and exhibited some documents including the Accident Information Report and medical documents. The Appellant Insurance Company did not adduce any evidence.

10. The learned Tribunal passed the impugned Award on 06.10.2015 holding *inter alia* that the paid driver of the claimant had driven the car in a rash and negligent manner, resulting in injuries to the claimant and accordingly determined Rs. 1,10,000/- as just compensation payable to the claimant. Being aggrieved, the present Appeal has been filed.

11. I have heard the learned counsel appearing on behalf of the Appellant who submitted that the claim proceedings was not maintainable, taking into account that the claimant was the owner of the vehicle. The learned counsel further submitted that the claimant was a first party and not a third party and, therefore, compensation could not have been awarded by the learned Tribunal as has been done vide the impugned Award.

12. This Court has given an anxious consideration to the submissions made by the learned counsel for the Appellant and has

also perused the materials on record.

13. From the materials on record, it is seen that the policy in question was a comprehensive policy issued to the claimant. Under such circumstances, the question that arises is whether a comprehensive policy would also cover the risk of injury to the owner of the vehicle.

14. Section 147 of the Act of 1988 makes it clear that an insurance policy covers the liability incurred by the insured in respect of the death of or bodily injury to any person (including an owner of the goods or his authorized representative) carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle. Section 147 of the Act of 1988 does not require an insurance company to assume the risk of death or bodily injury to the owner of the vehicle.

15. This aspect is no longer *res integra* in view of the judgment of the Supreme Court in the case of ***Oriental Insurance Co. Ltd. Vs. Sunita Rathi & Others*** reported in ***(1998) 1 SCC 365*** wherein the Supreme Court observed that the liability of an insurance company is only for the purpose of indemnifying the insured against liabilities incurred towards a third person or in respect of damage

to property. In other words, where the insured, i.e., the owner of the vehicle has no liability towards a third party, the insurance company has no liability either.

16. This Court also finds it relevant to take note of another judgment of the Supreme Court in the case of ***Oriental Insurance Co. Ltd. Vs. Jhuma Saha (Smt.) & Others*** reported in ***(2007) 9 SCC 263*** wherein the Supreme Court categorically observed that the liability of an insurance company is to the extent of indemnifying the insured against the respondent or an injured person, a third person or in respect of damage to property. It was further observed that if the insured cannot be fastened with any liability under the provisions of the Act of 1988, the question of the insurer being liable to indemnify the insured, therefore does not arise.

17. This Court also, in the case of ***National Insurance Co. Ltd. Vs. Nirada Devi & Another*** reported in ***2021 SCC OnLine Gau 2686,*** and more particularly at paragraph Nos. 8 and 9 held as hereinunder:

> "***8.*** *From a reading of Section 147 which is quoted hereinabove as well as on a perusal of the insurance policy it would reveal that an insurance policy covers the liability incurred by the insured in respect to the death of or bodily injury to any person (including an owner of the goods or his authorized representative) carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle. Section 147 does not require insurance*

company to assume risk for death or body injury to the owner of the vehicle. It has been held in the case of Oriental Insurance Co. Ltd. Vs Sunita Rathi reported in (1998) 1 SCC 365 that the liability of an insurance company is only for the purpose of indemnifying the insured against liabilities incurred towards a third person or in respect of damages to the property. Thus, where the insured i.e. an owner of the vehicle has no liability to a third party the insurance company has no liability also. As already stated hereinabove a perusal of Exhibit-A which is an insurance policy would go to show that the premium was paid in respect of OD-Basic as well as for TP-Basic. Further to that premium was also paid in respect to liability to passengers and workmen compensation to employees. No evidence have been laid by the claimant to that effect that OD-Basic shall also include the personal accident insurance of the son of the claimant. OD-Basic normally refers to own damage which is a premium being paid towards damage of the vehicle and not for the injury for to the person of the owner. An owner of a vehicle can only claim compensation provided a personal accident insurance has been taken out. In the instant case there is no evidence to that effect . In this regard, the judgment of the Supreme Court rendered in the case of Dhanraj (supra) at paragraph 8, 9 and 10 is quoted hereinbelow :

> "*8. Thus, an insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an owner of the goods or his authorized representative) carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle. Section 147 does not require an insurance company to assume risk for death or body injury to the owner of the vehicle.*
>
> *9. In the case of Oriental Insurance Co. Ltd. Vs Sunita Rathi it has been held that the liability of an insurance company is only for the purpose of indemnifying the insured against liabilities incurred towards a third person*

or in respect of damages to the property. Thus, where the insured i.e. an owner of the vehicle has no liability to a third party the insurance company has no liability also.

10. In the case, it has not been shown that the policy covered any risk for injury to the owner himself. We are unable to accept the contention that the premium of Rs.4989 paid under the heading "Own damage" is for covering liability towards personal injury. Under the heading "Own damage", the words "premium on vehicle and non-electrical accessories" appear. It is thus clear that this premium is towards damage to the vehicle and not for injury to the person of the owner. An owner of a vehicle can only claim provided a personal accident insurance has been taken out. In this case there is no such insurance."

9. *The said judgment of Dhanraj (supra) was subsequently followed by the Supreme Court in the case of Prabha Devi (supra) and the relevant paragraph of the said judgment is paragraph 8 & 9 which is quoted hereinbelow:*

"*8. We have perused the judgment of this Court in Dhanraj. In that case, the appellant who was the insurer was travelling in the insured vehicle, which met with an accident. In the accident, the appellant as well as the other passengers received injuries. A number of claim petitions came to be filed. The appellant who was the insurer also filed a claim petition. The MACT held the driver of the jeep responsible for the accident. In all the claim petitions filed by the other passengers, MACT directed that the appellant (the owner) as well as the driver and the insurance company were liable to pay compensation. Furthermore, in the claim petition filed by the appellant, the MACT directed the driver and the insurance company to pay compensation to the appellant. The aforesaid finding of the MACT was upheld by the High Court in the appeal filed by the Insurance Company.*

The Insurance Company was, in appeal before this Court challenging the judgment of the High Court awarding compensation to the owner of the insured vehicle. Taking into consideration the provision contained in Section 147 of the Act, this Court observed as follows :

"*8. Thus, an insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an owner of the goods or his authorized representative) carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle. Section 147 does not require an insurance company to assume risk for death or body injury to the owner of the vehicle.*

9. In the case of Oriental Insurance Co. Ltd. Vs Sunita Rathi it has been held that the liability of an insurance company is only for the purpose of indemnifying the insured against liabilities incurred towards a third person or in respect of damages to the property. Thus, where the insured i.e. an owner of the vehicle has no liability to a third party the insurance company has no liability also.

10. In the case, it has not been shown that the policy covered any risk for injury to the owner himself. We are unable to accept the contention that the premium of Rs.4989 paid under the head "Own damage" is for covering liability towards personal injury. Under the heading "Own damage", the words "premium on vehicle and nonelectrical accessories" appear. It is thus clear that this premium is towards damage to the vehicle and not for injury to the person of the owner. An owner of a vehicle can only claim provided a personal accident insurance has been taken out. In this case there is no such insurance."

9. In view of the aforesaid ratio of law, the claim made by the

respondents could not have been allowed. Consequently, Civil Appeal No.479 of 2007 is allowed. The impugned award as well as the impugned judgment of the High Court are set aside."

18. Taking into account the aforesaid settled propositions of law, this Court is of the opinion that the learned Tribunal erred in law in exercising its jurisdiction to entertain a claim for bodily injuries to the claimant, who was the owner of the vehicle in question. Under such circumstances, the impugned Award dated 06.10.2015 cannot be sustained in law.

19. Accordingly, the impugned Award dated 06.10.2015 passed in MAC No. (i) 242/2013 by the learned Tribunal is set aside and quashed.

20. The Appellant Company shall be entitled to the refund of the statutory deposit of Rs. 25,000/- upon filing an application before the Registry of this Court.

21. Return the TCR.

JUDGE

Digitally signed by Satyam Sharma
Date: 2026.11.03 06:50:11 +05'30'
Comparing Assistant