

GAHC010106252011



THE GAUHATI HIGH COURT

(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

Case No: **MACApp. 15/2011**

National Insurance Co. Ltd.....Appellant/Petitioner

-Versus-

Md. Atikul Islam And Anr.,.....Respondents

:: BEFORE ::

HON'BLE MRS. JUSTICE MALASRI NANDI

For the Appellant/Petitioner : Mr. R. Goswami

For the Respondents : Mr. N. Debnath

Date of Hearing : **20.12.2021**

Date of delivery of
Judgment and Order : **28.01.2022**

JUDGMENT & ORDER (CAV)

1. This appeal has been directed against the Judgment and order dated 25.10.2010 awarding compensation of Rs. 1,61,000/- passed by the learned Member, MACT, Kamrup, Guwahati in MAC Case No. 1542/2005.
2. The brief facts of the case is that on 17.12.2003, the claimant was riding a motorcycle bearing registration No. AS-01/L-8432 from Guwahati to Changsari and when he reached Silemahekhaity, all of a sudden, he lost control over the vehicle and the said vehicle fell by the side of the road. As a result of the said accident, the claimant sustained grievous injuries on his person and he was admitted to the hospital. After the accident, the Kamalpur P.S. recorded G.D.E vide No. 261 dated 17.12.2003. At the relevant time of the accident, the alleged vehicle was duly insured with the National Insurance Company Limited.
3. During the trial, the National Insurance Company Limited has submitted their written statement wherein the Insurance Company has stated that the claim petition is not maintainable under Section 163A of the Motor Vehicles Act, as the injured driver who is the claimant was himself driving the vehicle and the accident occurred as he lost control over the vehicle and there was no negligence on the part of the owner of the vehicle. As such, the claimant who is not a third party as envisaged under Section 147 of the M.V. Act of 1988 cannot maintain an application even under Section 163A of the M.V. Act, 1988, because a person cannot be legally liable to himself for his own actions and seek compensation from himself. The person who himself caused the accident and out of whose own act the loss/injury occurred to him is not a person under the purview of Section 163A because the Section 163A was introduced by the Legislature into the M.V. Act of 1988 to provide any relief

to the person who is the victim of a rash and negligent driving by another person and not for the benefit of the person who is himself responsible for causing the accident.

4. The claimant side has examined two witnesses including himself and the Insurance Company also adduced one witness to prove the policy of the vehicle.

5. After hearing both sides, learned Tribunal has delivered the judgment as aforesaid.

6. Being highly aggrieved and dissatisfied with the judgment and order, the Insurance Company has preferred this appeal challenging the impugned award dated 25.10.2010 passed by the learned Member, MACT Kamrup (M), as aforesaid.

7. Learned counsel for the appellant/Insurance Company contended that the award is against the provisions of Motor Vehicles Act. In MACT cases there are three necessary parties i.e. claimant, insured and the insurer. In the instant case, the injured/claimant has stepped into the shoes of the owner. Thus, the claimant/injured cannot be termed as a third party for the purpose of awarding the compensation under the Act.

8. Learned counsel further contended that the findings given by the learned Tribunal are on incorrect appreciation of the law enunciated by the Hon'ble Supreme Court in ***Ningamma & Another Vs. United India Insurance Co. Ltd.*** reported in ***AIR 2009 SC 3056*** and ***New India Assurance Company Ltd. Vs. Sadanand Mukhi and Others*** reported in ***2009 2 SCC 417***. Thus, the learned counsel argued that as the claim petition was filed under Section 163-A of the Act, it is primarily the liability of the owner to indemnify the claimant.

9. On the other hand, the learned counsel for the respondent/claimant did not appear to argue the case. The case is pending in the Court since 2011 and several adjournments were

taken and as such, the matter is reserved for judgment without giving further time to the respondent side to argue the matter.

10. I have heard the learned counsel for the Insurance company and perused the record carefully. It is not disputed that the claimant was the rider of the motorcycle bearing registration No. AS-01/L-8432. From the record of MAC Case No. 1542/2005, it reveals that the claimant/respondent No. 1 was examined as witness No. 1 and he deposed before the Tribunal that on the date of accident i.e. on 17.12.2003, he was riding LML Scooter bearing registration No. AS-01/L-8432 and was proceeding from Guwahati towards Changsari side. When he reached Silemahekhaity, he lost control over the vehicle and fell by the side of the road and as a result, he sustained injuries on his person.

11. In his cross examination, PW-1 replied that he was driving the vehicle at a speed of 50-60 K.M. per hours and he could not say the said accident occurred due to his rash and negligent driving. It transpires that the accident might be occurred due to his own negligence. It also appears that the claimant is not the owner of the vehicle. One Azharul Islam was the owner of the vehicle and the claimant borrowed the vehicle from the registered owner. It is seen that the claim petition is preferred by the injured/claimant against the owner and the insurer of the offending motorcycle. As the injured/claimant borrowed the vehicle from the owner, he has stepped into the shoes of the owner and therefore, he cannot be the recipient of the compensation. The Insurance Policy is a contract of Insurance only provides for indemnity to the insurer company as the liability of the owner towards third party and not the user/rider, who steps into the shoes of the insured himself.

12. One witness was examined by the Insurance Company to prove the policy of the

offending motorcycle Phintso Dorjee Bhutia was examined as DW-1 before the Tribunal. He deposed in his evidence that he was holding the post of Assistant Manager in Guwahati Divisional Office-II of the National Insurance Co. Ltd. and he was fully aware of the facts and circumstances of the instant case. The claimant was claiming compensation for the injuries sustained by him in a motor vehicle accident on 17.12.2003 and he was himself riding the vehicle bearing registration No. AS-01/L-8432 on the date of the accident. The said vehicle was insured by the National Insurance Company Limited vide Policy No. 200106/31/03/6201702 for the period from 21.11.2003 to 20.11.2004. The said policy was issued in accordance with the provisions of Section 147 of the M.V. Act and the said provisions do not cover the injury of the person who was driving the vehicle. Moreover, there is no rash and negligence on the part of the owner of the vehicle and no such allegation has also been made in the claim petition.

13. The policy of the vehicle bearing registration No. AS-01/L-8432 was exhibited vide Exhibit-A. On perusal of Exhibit-A, it is clear that the premium was paid towards personal accident. Therefore, the Insurance Company cannot be burdened with the liability of compensation of the injured claimant who borrowed the vehicle from the registered owner.

14. The Hon'ble Supreme Court in *Ningamma and Another Vs. United India Insurance Co. Ltd. (supra)* held as under:-

“ In the light of the aforesaid submissions, the question that falls for our consideration is whether the legal representatives of a person, who was driving a motor vehicle, after borrowing it from the real owner meets with an accident without involving any other vehicle, would be entitled to compensation under Section 163-A of MV Act or under any other

provisions of law and whether the insurer who issued the insurance policy would be bound to indemnify the deceased or his legal representative.”

15. Before dwelling further, it would be useful to discuss the relevant paras of Section 163-A and 166 of the M.V. Act applicable in the present case.

16. Section 163-A special provisions as to payment of compensation on structured formula basis-

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle of the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

(2) In any claim for compensation under sub-Section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.”

17. Section 166- Application for compensation :- (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.

18. In the case of ***Oriental Insurance Company Ltd. Vs. Rajni Devi and others, (2008) 5 SCC 736***, it was held that “ *Wherein one of us, namely, Hon’ble Justice S.B. Sinha is a party, it has been categorically held that in a case where third party is involved, the liability of the insurance company would be unlimited. It was also held in the said decision that where, however, compensation is claimed for the death of the owner or another passenger of the vehicle, the contract of insurance being governed by the contract qua contract, the claim of the claimant against the insurance company would depend upon the terms thereof. It was held in the said decision that Section 163-A of the MV Act cannot be said to have any application in respect of an accident wherein the owner of the motor vehicle himself is involved. The decision further held that the question is no longer res-integra. The liability under Section 163-A of the MVA is on the owner of the vehicle. So a person cannot be both, a claimant as also a recipient, with respect to claim. Therefore, the heirs of the deceased could not have maintained a claim in terms of Section 163-A of the M.V. Act.*”

19. In my considered opinion, the ratio of the aforesaid decision is clearly applicable to the facts of the present case. In the present case, the injured was not the owner of the motorbike in question. He borrowed the said motorbike from its real owner. The injured cannot be held to be employee of the owner of the motorbike although he was authorised to

drive the said vehicle by its owner, and therefore, he would step into the shoes of the owner of the motorbike.

20. I have already extracted Section 163A of the M.V. Act hereinbefore. *A Bare perusal of the said provision would make it explicitly clear that persons like the injured in the present case would step into the shoes of the owner of the vehicle. In a case wherein the victim died or where he was permanently disabled due to an accident arising out of the aforesaid motor vehicle in that event the liability to make payment of the compensation is on the insurance company or the owner, as the case may be as provided under Section 163-A. But if it is proved that the driver is the borrower of the motor vehicle, the owner could not himself be a recipient of compensation as the liability to pay the same is on him. This proposition is absolutely clear on a reading of Section 163-A of the M.V. Act. Accordingly, the injured/claimant who has stepped into the shoes of the owner of the motor vehicle could not have claimed compensation under Section 163-A of the M.V. Act.*

21. When we apply the said principle into the facts of the present case I am of the view that the claimant is not entitled to claim compensation under Section 163-A of the M.V. Act. However, the question remains as to whether an application for demand of compensation could have been made by the injured as provided in Section-166 of the M.V. Act. The said provision specifically provides that an application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made by the person who has sustained the injury or by the owner of the property or where death has resulted from the accident, by all or any of the legal representatives of the deceased, or 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. When an application of the aforesaid nature claiming compensation under

the provisions of Section 166 is received, the Tribunal is required to hold an enquiry into the claim and then proceed to make an award which, however, would be subject to the provisions of Section 162, by determining the amount of compensation, which is found to be just. Person or persons who made claim for compensation would thereafter be paid such amount. When such a claim is made by the legal representatives of the deceased, it has to be proved that the deceased was not himself responsible for the accident by his rash and negligent driving. It would also be necessary to prove that the deceased would be covered under the policy so as to make the insurance company liable to make the payment to the heirs.

22. Reverting back to the present case, the respondent/claimant is not covered under the M.V. Act as the injured/claimant stepped into the shoes of the owner of the vehicle in question. Thus, he cannot be stated to be third party for the purpose of awarding the compensation under the Act.

23. The benefits of the Insurance policy is restricted to the personal insurance cover to the owner and the personal accident cover is a contract between the insured and the insurer and only designed to give the benefit to the insured and not to the borrower.

24. In the result, the present appeal is allowed. The judgment and award dated 25.10.2010 passed by the learned Member, MACT Kamrup (M) is set aside.

25. Statutory amount in deposit be returned accordingly.

26. LCR be returned back.

JUDGE

Comparing Assistant