



GAHC010106802018

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THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)
PRINCIPAL SEAT AT GUWAHATI

MAC Appeal No. 557/2018

NEW INDIA ASSURANCE COMPANY LIMITED

HAVING ITS REGISTERED OFFICE AT NEW INDIA ASSURANCE BUILDING 87,
MAHATMA GANDHI ROAD ,MUMBAI AND ONE OF THE REGIONAL OFFICE AT G.S .
ROAD BHANGAGARH, GUWAHATI -781005

.....APPELLANT.

-VERSUS-

SRI TARAK RAO

S/O LATE MALLESWAR RAO ,

S.B.I. BUILDING ,RESIDENT OF ADABARI ,PANDU PORT ROAD P.S. AND P.O.
JALUKBARI ,DIST. KAMRUP, ASSAM -781012.

.....RESPONDENT/CLAIMANT



2:MRS RATNA GOSWAMI

W/O DR. NANI GOPAL GOSWAMI ,

RESIDENT OF MIBUN X RAY CLINIC BARIPARA P.S. AND P.O. JALUKBARI, DIST.
KAMRUP ASSAM 781012.

(OWNER OF THE VEHICLE BEARING NO. AS01-AD/9145, ESTEEM VXI)

3:SRI NANI GOPAL GOSWAMI

S/O D GOSWAMI

RESIDENT OF MIBUN X RAY CLINIC BARIPARA

P.S.AND P.O. JALUKBARI

DIST. KAMRUP

ASSAM 781012

(DRIVER OF THE VEHICLE BEARING NO. AS01-AD/9145, ESTEEM VXI)

.....Respondents.

Advocates for the appellant : Mr K K Bhatta.

Advocate for the respondents : Mr K R Patgiri (R1)
Mr J Payeng (R-2,3)

BEFORE

HON'BLE MRS. JUSTICE MALASRI NANDI

Date of Hearing : 30.03.2023

Date of Judgment : 24.05.2023



JUDGEMENT AND ORDER (CAV)

Heard Mr K K Bhatta, learned counsel appearing for the appellant/Insurance Company and Mr K R Patgiri, learned counsel appearing on behalf of the respondent Nos. 1/claimant. Also heard Mr J Payeng, learned counsel appearing on behalf of the respondent Nos. 2 and 3.

2. The Insurance Company has filed this appeal challenging the Judgment and Order dated 03.02.2018, passed by the learned Member, MACT No. 1, Kamrup, Guwahati, in MAC Case No. 1066/2011, awarding compensation amounting to Rs. 1,94,000/- (Rupees One Lakh Ninety Four Thousand) Only, in favour of the respondent No. 1/claimant.

3. The case of the claimant is that on 10.12.2010, at about 07:15 pm, while the claimant was travelling in a motor vehicle bearing Registration No. AS-01/AD-9145, which was proceeding from New Bongaigaon towards Guwahati and when reached near Dudhnoi, Goalpara, it dashed against a standing vehicle, as a result of which, he sustained grievous injuries on his person. The accident occurred due to rash and negligent driving of the said vehicle, bearing Registration No. AS-01/AD-9145.

4. The Insurance Company in this case has challenged the factum of accident. According to the learned counsel for the appellant, no such accident took place on 10.02.2010, as alleged. It is submitted that the learned Member, MACT, has committed wrong for not taking into account of evidence adduced by the appellant as DW-1, who categorically stated that the accident in question was false and fabricated one and no such accident took place with the aforesaid vehicle bearing Registration No. AS-01/AD-9145 (Esteem VXI), on the aforesaid date and as such, the learned Tribunal was not justified in awarding compensation in favour of the claimant/respondent No. 1.



5. It is also submitted by the learned counsel for the appellant/Insurance Company that DW-1, the witness of the appellant exhibited one document, vide Exhibit-D (which is an information furnished under RTI Act, by the SP, Goalpara), in respect of Dudhnoi PS Case No. 298 of 2010 and from the report, it reveals that no such record has been available in the Police Station in the General Diary dated 10.12.2010, as reported by the OC, Dudhnoi Police Station.

6. Learned counsel for the appellant/Insurance Company also submitted that the vehicle bearing Registration No. AS-01/AD-9145 (Esteem VXI) was not involved in the accident causing injuries to the claimant/respondent No. 1, Tarak Rao, as such, the Investigating Officer had not registered any Police Case against the driver of the said vehicle and hence, fastening of liability upon the Insurance Company, ignoring the defence taken by the appellant/Insurance Company is bad in law and the award of compensation allowed by the learned Tribunal is liable to be set aside.

7. Learned counsel for the appellant has also pointed out that there was no reliable evidence to show that the claimant had in fact, sustained injuries in the alleged accident or that he was an occupant of the said private car bearing Registration No. AS-01/AD-9145 (Esteem VXI) and sustained injuries in the said accident, which occurred on 10.12.2021 and in absence of any evidence along with the documents, the Judgment and Award passed by the learned Tribunal cannot be sustainable in law.

8. It is also submitted by the learned counsel for the appellant that from the evidence on record, it appears that the husband of the owner of the vehicle drove the vehicle at the relevant time of accident, who did not have a valid and effective driving licence. Hence, the



owner, i.e. the insured was guilty for allowing her husband to drive her vehicle without having a driving licence and in that view of the matter also, the Award requires modification.

9. In support of his submission, the learned counsel for the appellant has relied upon the following decisions:-

1) 2013 ACJ 1944; (*S.Iyyapan vs- United India Insurance Co. Ltd. & Another.*)

2) 2018 ACJ 690; (*Pappu & Ors. Vs. Vinod Kumar Lamba & Anr.*)

10. On the other hand, learned counsel for the respondent No. 1/claimant, Mr K R Patgiri, has vehemently opposed to the submission of the learned counsel for the appellant. He submits that the accident occurred on 10.12.2010 and due to the alleged accident, the claimant sustained injuries on his person. The claimant has submitted the accident information report before the learned Tribunal, which was issued by OC, Dudhnoi Police Station, vide Exhibit-1 and from Exhibit-1, it reveals that the accident occurred on 10.12.2010 and in the said accident, Tarak Rao had sustained injuries and the vehicle bearing No. Registration No. AS-01/AD-9145 was shown to be the offending vehicle. There is no fraud made by the claimant by filing a petition before the Tribunal claiming compensation, regarding his injuries due to the alleged accident. Learned Tribunal has rightly delivered the Judgment awarding compensation as aforesaid, in favour of the claimant No. 1/ respondent.

11. Learned counsel for the claimant/respondent No. 1 has relied upon the following decision:-

(2019) 7 SCC 217 (*Parminder Singh vs- New India Insurance Co. Ltd*)

12. In this case, the claimant was examined as PW-1, who deposed in his evidence that on 10.12.2010, he was travelling in a vehicle bearing Registration No. AS-01/AD-9145 (Esteem



VXI) from New Bongaigaon towards Guwahati. The vehicle was driven by the driver in a rash and negligent manner and when the vehicle reached Dudhnoi, near Goalpara, at about 07:15 pm, it dashed against a standing vehicle. The driver could not see the parked vehicle as it was dark at that time. The claimant also could not see the registration number of the parked vehicle due to his serious injuries. He (PW-1) sustained injuries on his face and head. After the accident, he was brought to the GNRC Hospital, Dispur, Guwahati, on the same day. He was treated in the said hospital as an indoor patient. Operation was done on 13.12.2010. He was discharged from GNRC on 16.12.2010. Thereafter, he went to Miot Hospital, Chennai, for better treatment and admitted there on 21.01.2011 and undergone plastic surgery in that hospital. He was discharged from Miot Hospital on 25.01.2011, with advice to revisit the hospital after 1 month. PW-1 alleged that the accident had occurred due to rash and negligent driving of the offending vehicle bearing Registration No. AS-01/AD-9145 (Esteem VXI) and a Police case has been registered vide Dudhnoi PS Case No. 298/2010, under Sections 279/338/427 IPC.

13. In his cross-examination, PW-1 replied that the driver with whom he was travelling in the vehicle bearing Registration No. AS-01/AD-9145 (Esteem VXI) was his friend. The vehicle was a private vehicle. The vehicle in which he was travelling had dashed against a stationery vehicle. He could not say the number of the said vehicle. No parking light was on. He sustained injury on his face. An FIR was lodged.

14. One witness was examined from the appellant's side, as DW-1. DW-1, Jayanta Mahanta, was appointed by the appellant Insurance Company to investigate the alleged MAC case. He deposed in his evidence that on 23.02.2016, he wrote a letter under the RTI Act, 2005 to the SP, Goalpara seeking the extract copies of all the GD Entries in connection with



Dudhnoi PS Case No. 298/2010. It is reported that no record has been found at Dudhnoi Police Station in General Diary dated 10.12.2010.

15. In his cross-examination, DW-1 replied that the issuing signatory of Exhibit – D is not present to prove the same. He has not visited Dudhnoi PS for investigating Dudhnoi PS Case No. 298 of 2010.

16. I have perused the record of MAC Case and the documents available in record.

17. It is seen that except Exhibit- 1, i.e., the accident information report, no any document has been submitted by the claimant to prove the accident. It appears from the evidence on record that the claimant was travelling along with the driver who was his friend, but he was not examined in the case to prove the accident. Though the claimant stated in his deposition that he lodged the FIR, but the copy of the FIR is not available in the record and which was also not exhibited before the Tribunal. According to DW-1, he received a letter from SP, Goalpara who is also the Public Information Officer, as per the RTI reply, as sought for by him regarding Dudhnoi PS Case No. 298 of 2010. As per letter of SP, Goalpara, vide Exhibit – D, no record has been found in the Dudhnoi police station in General Diary dated 10.12.2010 as reported by the OC, Dudhnoi PS. As the copy of the FIR is not available in the record, it cannot be ascertained, whether any case was registered on the basis of the FIR, lodged by the claimant, in connection with the accident. The claimant only mentioned in the copy of claim petition that the accident occurred in connection with Dudhnoi PS Case No. 298 of 2010, under Sections 279/338/427 IPC. In accident information report, vide Exhibit- 1 only PS case is mentioned as Dudhnoi PS Case No. 298 of 2010. As it appears from the evidence of DW-1 that no any GD Entry was recorded on 10.12.2010 at Dudhnoi PS, the claimant is



duty bound to prove its case by exhibiting document that an accident occurred by involving a vehicle, bearing No. AS-01-AD-9145 (Esteem VXI). As the claimant has not exhibited the FIR before the Tribunal, it is a million dollar question whether an accident took place on the alleged date of accident i.e., 10.12.2010, involving the vehicle bearing Registration No. AS-01/AD-9145 (Esteem VXI). It was not explained by the claimant how the case was registered without filing of FIR or recording of GD Entry in connection with the accident which occurred on 10.12.2010. The Police Officer, who investigated the accident case was also not examined to prove the fact that one such accident took place on 10.12.2010, by involving the vehicle bearing Registration No. AS-01/AD-9145 (Esteem VXI), in which the claimant sustained injuries on his person. The Police Officer, i.e., OC, Dudhnoi Police Station who issued accident information report was also not examined to prove the factum of accident.

18. No doubt lodging of FIR is not a pre-requisite for claiming compensation, but the facts of each case have to be examined to find out whether there is any truth. The statement of the claimant cannot be accepted on the face of it and there had to be some material to support the statement

19. In view of the above discussions, I am of the opinion that the claimant has not come with clean hands. In the result, the appeal is allowed. The Judgment and Order dated 03.02.2018, passed by the learned Member, MACT No. 1, Kamrup, Guwahati, in MAC Case No. 1066 of 2011, is set aside. The Insurance Company is at liberty to recover the amount of compensation, if paid earlier before the Tribunal, by following the existing process of recovery, as per the provisions of law.

20. Statutory amount in deposit, if any, be refunded to the appellant/Insurance Company.



21. With the aforesaid directions, this appeal stands disposed of.
22. Send down the LCR.

JUDGE

Comparing Assistant