

**IN THE MOTOR ACCIDENT CLAIMS TRIBUNAL
SONITPUR: TEZPUR**

Present :-
Aparna Ajitsaria
Member, MACT
Sonitpur, Tezpur

MAC Case No. 255/2009

Sri Achyutnanda Das ... Claimant

-Versus-

United India Insurance Co Ltd
(Insurer of Two Wheeler
No. AS-12-C-1161) ... Opposite Party

Advocate for the claimant : Mr. Salim Khan, Smt Nazifa
Islam, Smt Shahida Begum,
Smt Nazia Islam

Advocate for Opposite Party : Sri Sudesh Kr. Singh

Date of institution of claim : 20.07.2009

Date of Argument : 26.08.2013

Date of Judgment : 09.09.2013

J U D G M E N T

The instant claim has been instituted by Sri Achyutnanda Das u/s 166 of the M.V. Act, 1988 claiming compensation for the injury sustained by his son, Sri Apurba Das claiming compensation for the injuries sustained by his said son.

The brief case of the claimant is that on 21.10.2008 while his son, Sri Apurba Das who is the registered owner of motor cycle bearing No. AS-12-C-1161 (TVS Victor), was proceeding in his said motor cycle from Balipara to Tezpur, his motor cycle skidded and capsized resulting in grievous injuries to his son. The said accident occurred when his son attempted to save himself from a heavy vehicle which was being driven at a high speed. Thereafter, his son was taken to Kanaklata Civil Hospital by the local people and later shifted to GNRC for better treatment.

The Opposite Party, United India Insurance Co. Ltd, insurer of the vehicle contested the case. The stand taken by the Insurance Company in its written statement is that the instant claim is not maintainable, in as much as, the injured

himself was the owner-cum-driver of the motor cycle bearing No.AS-12-C-1161 (TVS Victor). The Insurance Company has further contended that the claim is not maintainable even on the count that the petition has been filed u/s 166 of the M.V. Act, 1988 and it is the specific contention of the claimant that the accident occurred due to negligence of a heavy vehicle, whose details have nevertheless not been disclosed in the petition. Thus, since no negligence is attributed to the owner of the motor cycle, the insurer of the motor cycle, that is, the United India Insurance Company is not entitled to indemnify the owner/injured in the instant case. Again, even if negligence on the part of the owner himself (that is the injured for whose benefit the claim has been instituted) would have been averred, the instant claim petition would not have been maintainable as the owner cannot file a claim against his own insurer. On all the above counts therefore, the instant petition is not maintainable and liable to be rejected.

On the basis of the pleadings, my Ld predecessor framed the following issues for adjudication:-

1. Whether the accident took place due to rash and negligent driving of the driver of the offending vehicle ?
2. Whether the claimant is entitled to compensation as prayed for ?

During enquiry, the claimant Sri Achyutnanda Das, father of the injured, examined himself as CW-1. The injured, Sri Apurba Das examined himself as CW-2. The insurance company chose not to examine any witness in support of its contention. The claimant has filed written argument and both, the claimant and the insurance company has submitted various citations in support of their respective stand.

I have carefully perused the entire materials brought on record, heard both sides and my decisions on the issues are as follows :-

ISSUE NO. 1 & 2

Both the issues are taken up together for discussion and decision, for the sake of convenience and brevity.

Both the Claimant witnesses, in their examination-in-chief, narrated the details of the accident as stated in the claim petition and already recited hereinabove. In support of his oral evidence the CW-1 exhibited, Police Report (Ex-1), Discharge Certificate (Ex-2), Insurance Policy (Ex-3), Driving License (Ex-4), MVI Report (Ex-5), Medicine Bill (Ex-6), Cash Receipt (Ex-7), Interim Bill with cash paid (Ex-8), Bill for food [Ex-9 (1) to 9(81)], Cash Memo of Medicine [Ex- 10(1) to 10(8)].

Both the witnesses have deposed that the Insurance Policy in question, that is Policy No. 130700/31/07/00000176 (Valid from 20.4.2007 to 19.4.2007), was a Package Policy and additional premium having been paid by the insurer towards compulsory personal accident coverage of the Owner-Driver and there being a contract between the insured and the insurer, the O.P Insurance Company was liable to compensate the insured. More so, in view of the fact that at the relevant time the motor cycle was not being used for any of the prohibited purposes as reflected in clause "*Limits as to use*" of the Policy.

While being cross examined, the CW -2 however admitted that the owner-cum-driver of the motor cycle in question was his son and that the accident occurred when his son, on seeing a heavy vehicle, abruptly took a turn on the road side which was muddy and thus fell down. CW-2 on the other hand, in his cross examination, admitted that he had not lodged an claim for the accident in the office of the Insurance company. He further admitted the fact that *'....there was no coverage of injuries sustained by the owner of a vehicle, under the terms and conditions of his first party insurance except for death, loss of limb and permanent loss of eye sight.'* The suggestion of the OP/Insurance Company to the effect that since the CW-2 was himself the insured, he had no locus standi to claim compensation against the insurance company by arraigning himself as the Opposite Party in the said claim, too was not rebutted by CW-2.

Learned Advocate for the claimant referring to Ex-3, the Insurance Policy, strenuously argued that the Policy in question being a Package policy and extra premium, having been paid by the insured towards personal accident claim, the Insurance Company is liable to compensate the owner-cum-driver.

Learned Advocate appearing for the insurance company, on the other hand, submitted that since the accident took place due to fault of the claimant's son, who

himself was the owner-cum-driver of the Motor Cycle, the claimant is not entitled to any compensation. It has been contended that Sri Apurba Das (Claimant's son and CW-2) was the owner and was driving the motorcycle at the time of the accident. Since the owner of the vehicle is not a third party, within the meaning of Section 147 of the Motor Vehicles Act, 1988, hence the claimant is not entitled to claim compensation and the instant application is not maintainable.

In support of his contentions, Learned Counsel for the claimant has relied on the following decisions of the Hon'ble Supreme Court:

(i) **New India Assurance Co Ltd vs Kendra Devi and Others [reported in 2008 (1) AC 14 (SC)]**. In the said case, the Hon'ble Supreme Court declined to interfere with the concurrent finding of the Tribunal and the High Court in allowing the claim of compensation to the legal heirs of a Taxi Driver who met with an accident while driving his own taxi, inspite of the fact that no additional premium was paid for the coverage of the owner-cum-driver.

The Hon'ble Supreme Court, in paragraph 7 of the said judgment has specifically stated that in view of the fact that the claimants had lost their sole bread earner and "*in the peculiar facts of the said case*", the Hon'ble Supreme Court was not inclined to interfere with the award. Thus the said case is clearly distinguishable from the case at hand and does not assist the claimant in the instant case.

(ii) **Dhanraj –vs- New India Assurance Co Ltd and another [reported in 2005 (1) TAC 1 (SC)]** is relied by the Ld Counsel for the claimant to submit that the Hon'ble Apex Court has, in paragraph 8 of the said judgment, held that "*an owner of a vehicle can only claim provided a personal accident insurance has been taken out*". In the said case since no personal accident insurance was taken out, the claim was rejected. However, in the case at hand, Ld Counsel contends, the claimants have paid additional premium towards personal accident and, as such, the claimant is entitled to be granted compensation by the Insurance company.

On perusal of the judgment it transpires that the Hon'ble Supreme Court in paragraph 6 has held that "*..Section 147 does not require an Insurance Company to assume risk for death or bodily injury to the owner of the vehicle.*" Though in paragraph 8 it has been stated that "*claim for personal accident will lie in cases where there is personal accident coverage* but the forum before which such claim would lie has neither been stated nor discussed. Hence, the Ld Counsels attempt to assert that

the Hon'ble Supreme Court in effect has held that Motor Accidents Claims Tribunal is the forum where personal accident insurance claims can be instituted and extra premium having been paid towards personal accident, the instant claim **before the Tribunal** is maintainable, cannot be accepted.

(iii) **National Insurance Company Ltd –vs- Balakrishnan and another [reported in 2013 (1) TAC 1 (SC)]**. The Hon'ble Supreme Court in the said judgment has, after taking into consideration the earlier judgments rendered on the point and the Circulars issued by the IRDA, held that liability of *occupants in a car* and *pillion riders* are covered under Comprehensive /Package Policy.

The case at hand being that of owner-cum-driver, the same is clearly distinguishable and the said judgment thus, does not come in aid of the claimant.

The Learned Counsel also relied upon the judgment of Hon'ble Sikkim High Court rendered in **Branch Manager, New India Assurance Co. Ltd. –vs- Smt. Jasu Subba and others [reported in 2011 (4) TAC 737 (Sikkim)]** wherein the Hon'ble Sikkim High Court held that in view of the India Motor Tariff (IMT) any person is entitled to drive a vehicle including the insured, provided he holds a valid driving license. In the said case the deceased was the owner- cum-driver of a passenger vehicle and used to professionally drive the Mahindra Diesel taxi owned by him. Referring to the India Motor Tariff which laid down the category of persons who would be included in the term "driver" for stage carrier/contract carriage/private service vehicle, the Hon'ble Sikkim High Court held that in the context of the IMT, the deceased, who at the relevant time was driving his taxi in the *capacity of a professional driver*, would be covered under the Insurance Policy.

The said case is again, clearly distinguishable from the case at hand and the ratio therein has no bearing in the instant case.

Learned Counsel for the Insurance Company submitted that the legal position, with regard to the maintainability of claim by the owner- cum- driver in a case such as the instant one, in fact, is no longer *res integra*, in as much as, the Hon'ble Gauhati High Court in a catena of judgments, including (i) Bajaj Allianz General Insurance Co. Ltd vs Smrita Saikia and anr [reported in 2011 (5) GLT 563] (ii) Padam Bahadur Rana –vs- National Insurance Company [reported in 2013 (1) GLT 792] (iii) Oriental Insurance Co Ltd –vs- Toshiba Pongner reported in 2011 (4) GLT 689] and (iv) Oriental Insurance Co Ltd –vs- Utpalesh Chakraborty reported in [2013

(3) GLT 773] have held that motor accident claims seeking compensation for injury/death of owner-cum-driver is not maintainable before the Motor Accident Claims Tribunal.

In **Bajaj Allianz General Insurance Co. Ltd vs Smrita Saikia and Anr [reported in 2011 (5) GLT 563]** the proposition that the Motor Accidents Claim Tribunal having been constituted for deciding claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising (or both), **the Tribunal, has no jurisdiction to decide any claim for compensation relating to first party risk under the provisions of Section 165 of the M.V Act,1988 was upheld.** The Hon'ble Court held that the legal heirs of the deceased insured have a right to claim insurance coverage and the insurer is liable to discharge the same. However since the same was not in issue in the said case, the Hon'ble Court declined to make any comment with regard to the same, leaving it open for the claimant to prefer such claim before the Insurance Co.

In **Padam Bahadur Rana –vs- National Insurance Company [reported in 2013 (1) GLT 792]** it has been held that *"...it is clear that the claim filed by the appellant u/s 163-A of the Act seeking compensation against his own insurance policy for his own accident caused while he was driving his own scooter is not maintainable in the Learned Tribunal.....However there is no bar for the appellant to approach other authorities or judicial forums which do have jurisdiction to adjudicate upon the matter."*

In **Oriental Insurance Co Ltd –vs- Toshiba Pongner reported in [2011 (4) GLT 689]** it has been held that *".....the owner of the vehicle is not entitled to claim compensation under section 166 of the M.V Act. However, as the owner was covered under the policy, "personal accident cover", he was entitled to seek compensation from the insurer as per law..."*

In **Oriental Insurance Co Ltd –vs- Utpalesh Chakraborty reported in [2013 (3) GLT 773]** it has been held that *".. the risk of the owner can be made covered only by a special arrangement with the insurer paying the premium as per the terms and even in that case also non payment of the damage should not make the claim filed under section 166 and 163-A of the Motor Vehicles Act sustainable in*

law. The remedy in that event has to be availed through the forum as set up under the Consumers Protection Act.'

It is therefore apparent that **a claim such as the instant one**, claiming compensation for injury sustained by the registered owner of a vehicle, while it was being driven by the registered owner himself, is not maintainable before the Motor Accident Claims Tribunal.

Thus in view of the discussions made hereinabove, I am of the considered opinion that the instant claim filed by the claimant, Sri Achuytnanda Das for the injuries sustained by his son, Sri Apurba Das, who was the owner-cum-driver of the Motor Cycle No. AS-12-C-1161 insured with United India Insurance Co. Ltd, is not maintainable and, as such, the claimant is not entitled to any compensation from the insurer. The claim-petition accordingly stands dismissed.

A W A R D

The claimant is not entitled to any compensation from the Opposite Party/ Insurance Company. This petition accordingly stands disposed of.

Given under my hand & seal of this Court on this 9th day of September, 2013.

(Aparna Ajitsaria)
Member
Motor Accident Claims Tribunal
Sonitpur, Tezpur