

GAHC010040902017



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

Case No. : MACApp./476/2017

M/S UNITED INDIA INSURANCE CO. LTD
HAVING ITS REGISTERED OFFICE AT 24 WHITES ROAD, CHENNAI 600014
WITH ONE OF ITS REGIONAL OFFICE AT G.S. ROAD, CHRISTIANBASTI,
GUWAHATI-5, REPRESENTED BY ITS CHIEF REGIONAL MANAGER

VERSUS

SRI TAPAN KARMAKAR and ANR
S/O LATE SATRA GOPAL KARMAKAR, R/O VILL. GORMUR GAON, P.S. and
P.O. BOKAKHAT 785612, DIST. GOLAGHAT, ASSAM.

2:KARTIK SAIKIA

S/O LATE BAPU SAIKIA
R/O HONUMAN MANDIR
GOLAGHAT TOWN
WARD NO. P.S. and P.O. GOLAGHAT 785621
DIST. GOLAGHAT
ASSA

Advocate for the Petitioner : MR.A AHMED

Advocate for the Respondent : MR.A BHATTACHARYYA R-2

PRESENT

THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Appellant : Ms. M. Choudhury,
Advocate.

For the Respondents: Mr. D. Kakati and
Ms. P. Bhattacharya,
Advocates.

Date of Hearing : 16.05.2024.

Date of Judgment: 28.05.2024.

JUDGMENT AND ORDER (CAV)

Heard Ms. M. Choudhury, learned counsel representing the appellant. Also heard Mr. D. Kakati and Ms. P. Bhattacharyya, learned counsel appearing for the respondents.

2. This is an appeal under Section 173 of the Motor Vehicles Act challenging the judgment and order dated 24.07.2017 passed by the Motor Accident Claims Tribunal No.1, Kamrup (M), Guwahati in MAC Case No.1286/2012.

3. On 22.10.2011, when the respondent no.1/claimant was riding a motorcycle, a car bearing Registration No.AS-05/D-1881 knocked the said motorcycle. As a result of which, the claimant sustained grievous injury.

4. A claim application was filed before the Tribunal seeking compensation.

5. The owner-cum-driver of the car bearing Registration No.AS-05/D-1881 contested the claim petition by filing a written statement. He claimed that his vehicle was insured and he had a valid driving licence at the time of the accident.

6. The Insurance Company has contested the case by filing a written statement. The Insurance Company has admitted the fact that the vehicle bearing Registration No.AS-05/D-1881 was insured under this company.

7. The Insurance Company has pleaded that the driver of the vehicle bearing Registration No.AS-05/D-1881 did not have valid driving licence on the day of the accident and it is a breach of conditions of the Insurance Policy. Therefore, The Insurance Company is not liable to pay any compensation.

8. On the basis of the pleadings, the Tribunal framed the following issues:

I. Whether the claimant, Sri Tapan Karmakar sustained grievous injuries in the alleged road accident dated 22.10.2011 involving vehicle No.AS-05/D-1881 and whether the said accident took place due to rash and negligent driving by the driver of the said vehicle?

II. Whether the claimant is entitled to receive any compensation and if yes, to what extent and by whom amongst the opposite parties, the said compensation amount is payable?

9. The claimant examined himself only. The Insurance Company also examined one witness.

10. On the basis of the evidence on record, the Tribunal allowed the claim petition and awarded a compensation of ₹3,22,500/- along with interest at the rate of 7% per annum.

11. The present appeal has been filed only on one ground that on the date of the accident, the owner-cum-driver of the vehicle bearing Registration No.AS-05/D-1881 did not have a valid driving licence and therefore, on account of breach of policy condition, the Insurance Company is not liable to pay any compensation.

12. Ms. Choudhury has submitted that the Insurance Company has taken the plea in the written statement that the driver-cum-owner of the vehicle bearing Registration No.AS-05/D-1881 did not have valid a driving licence on the day of the accident. According to Ms. Choudhury, it was the duty of the owner-cum-driver of the vehicle bearing Registration No.AS-05D-1881 to prove that he had a valid driving licence on the day of the accident.

13. Per contra, Ms. Bhattacharyya has submitted that according to the law

laid down by *National Insurance Company Ltd. vs. Swaran Singh & Ors.*, reported in (2004) 3 SCC 297, the Insurance Company is liable to pay compensation and they have the liberty to recover the money from the owner of the vehicle.

14. I have considered the submissions made by the learned counsel of both sides.
15. I have decided to agree with Ms. Bhattacharyya. Now, it is a settled principle of law that in case of breach of policy condition like- absence of valid driving licence, the Insurance Company is liable to pay the compensation and it can go for recovery of the money from the owner.
16. Therefore, I find that the appeal is devoid of merit. The Insurance Company is liable to pay the compensation to the claimant. The Insurance Company has the liberty to recover the money from the owner of the vehicle in accordance with law.
17. The appeal is dismissed and disposed of accordingly.

Send back the LCR.

JUDGE

Comparing Assistant