

GAHC010019172014



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

Case No. : MACApp./295/2014

UNITED INDIA INSURANCE CO.LTD.
HAVING ITS REGISTERED OFFICE AT G.S .ROAD, GUWAHATI 781005

VERSUS

PUSPALATA BARIWAR and 3 ORS
W/O LATE SURESH BASLWAR, P.O. PARISHIE, DIST. CHINDWARA MADHYA
PRADESH

2:MD. BAHARUL ISLAM KHAN

S/O PRATAP KHAN
VILL. KUJAR PITH
P.S. and DIST. BARPETA
ASSAM.

3:MD. AMIN HAMJA

S/O MD. ABDUL KUDDUS
VILL. JAMARKUR
P.S. SORBHOG
DIST. BARPETA
ASSAM.

4:THE CHIEF SECRETARY

GOVT. OF ASSAM

Advocate for the Petitioner : MRS A MAZUMDAR

Advocate for the Respondent : MR. G SHARMAR-4

Linked Case : I.A.(Civil)/2764/2019

UNITED INDIA INSURANCE CO. LTD.
HAVING ITS REGISTERED OFFICE AT 24 WHITES ROAD
CHENNAI 600014 AND REGIONAL OFFICE AT ABC
BHANGAGARH
GUWAHATI 781005
ASSAM
REPRESENTED BY ITS REGIONAL MANAGER

VERSUS

PUSPALATA BARIWAR and 3 ORS
W/O LATE SURESH BASIWAR
P.O. PARISHIE
DIST. CHINDWARA
MADHYA PRADESH 321005

2:BAHARUL ISLAM KHAN
S/O PRATAP KHAN
VILL. KUJAR PITH
P.S. AND DIST. BARPETA
ASSAM 783101
3:AMIN HAMJA
S/O MD. ABDUL KUDDUS
R/O VILL. JAMARKUR
P.S. SORBHOG
DIST. BARPETA
ASSAM 783101
4:THE CHIEF SECY.

GOVT. OF ASSAM
STATE OF ASSAM-06
REPRESENTED BY CHIEF SECY.

Advocate for : MR S DUTTA
Advocate for : appearing for PUSPALATA BARIWAR and 3 ORS

Linked Case : I.A.(Civil)/2766/2019

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HAVING ITS REGISTERED OFFICE AT 24 WHITES ROAD
CHENNAI 600014 AND REGIONAL OFFICE AT ABC
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GOVT. OF ASSAM
STATE OF ASSAM-06
REPRESENTED BY CHIEF SECY.

Advocate for : MR S DUTTA
Advocate for : appearing for PUSPALATA BARIWAR and 3 ORS

BEFORE
HONOURABLE MR. JUSTICE BUDI HABUNG

ORDER

Date : 13-03-2024

Heard Mr. S. Dutta, learned senior counsel assisted by Ms. S. Mushahary, learned counsel for the appellant. I have also

heard Mr. P. Chakraborty, learned counsel representing the respondent no. 1; Mr. W. A. Sheikh, learned counsel for the respondent no. 3 and Mr. T. R. Gogoi, learned counsel for the respondent nos. 4 and 5.

2. This appeal under Section 173 of the Motor Vehicle Act,1988 has been filed assailing the impugned judgment and award dated 30.11.2007,passed by the learned Member, Motor Accident Claims Tribunal (FTC), Barpeta, Assam in MAC CaseNo.780 of 2005 by which the appellant has been directed to pay a compensation amount of Rs.7,40,252/(Seven lakhs forty thousand two hundred fifty two)only to the claimant/respondentNo.1, and to deposit the said amount within 90 days from the date of the judgment and award failing which to pay an interest at the rate of 6% per annum from the date of filing the claim petition till realization.

3. The facts of the case is that, on 29.03.2005, the deceased, Suresh Bariwar, husband of the claimant, at about 5:30 pm along with some other B.S.F. personnel were returning from operational duty from Barpeta Road and proceeding towards their camp at Gunakuchi, Barpeta in a vehicle bearing registration No. AS-15A/2137 (TATA-407), which was requisitioned by the District Administration and provided to the BSF personnel, unfortunately, met with an accident at No. 31 NH way near B.H. College, Hatapara and as a result he sustained grievous injuries on his person and he was immediately shifted to GMC Hospital. But despite of such long treatment, the deceased did not recover and

ultimately, he died on 16.04.2005 at GMCH,Guwahati.

4. The respondent No.1/claimant, Pushpalata Bariwar then filed an application under Section 166 of Motor Vehicle Act,1988 claiming a compensation of Rs.10,000,00/- (Ten lakhs) only for the death of her husband due to the accident caused by the vehicle bearing registration No.AS-15A/2137(TATA-407) which was registered as MAC case No.780 of 2005 before the learned Member,Motor Accident Claims Tribunal (FTC), Barpeta. The learned Member, Motor Accident Claims Tribunal (FTC), Barpeta vide judgment and award dated 30.11.2007 decreed on contest and awarded an amount of Rs.7,40,252/- (Seven lakhs forty thousand two hundred fifty-two)only to be paid to the claimant by the appellant i.e., M/S United India Insurance Co. Ltd. and directed the appellant to pay the awarded amount to the claimant within a period of 90 days from the date of the judgment and award failing which to pay an interest at the rate of 6%per annum from the date of filing the claim application.

5. The learned Senior counsel for the appellant submits that the vehicle in question was used for carrying goods which was requisitioned by the District Administration at the time of the accident under the provision of section 3 of the Assam Requisition and Control of Vehicles Act,1968. The deceased, husband of the claimant was a gratuitous passenger travelling in a goods carrying vehicle. The learned Member, Motor Accident Claims Tribunal, while

assessing the claim for compensation has failed to appreciate the evidences on record and as such, the appellant is not at all liable for payment of compensation to the claimant. He further submits that the learned Member, Motor Accident Claims Tribunal, has not been able to discuss the basis of entitlement of compensation as the offending vehicle in question at the time of accident was requisitioned by the District Administration and provided to the BSF personnel and the deceased unauthorizedly travelled along with the goods. Therefore, the liability to pay compensation is on the State/District Administration.

6. In support of the above submission, Mr. S. Dutta, the learned Senior Counsel for the appellant relied on the judgment in the case of ***Oriental Insurance Co. Ltd vs. Dalin Mawlieh and Ors*** reported in **2008 (3) GLT 194** of the Hon'ble Gauhati High Court and in the case of ***National Insurance Company Ltd vs. Deepa Devi and Ors*** reported in **(2008) 1 SCC 414**. The learned Senior Counsel further submits that the analogous matter involving with the same facts having arisen out of the same incident being MAC App No.296/2014 has been disposed of by the coordinate Bench of this court and prays for similar direction.

7. Mr. P. Chakraborty, the learned counsel for the claimant/respondent No.1 submits that the accident took place on 29.03.2005. The claim petition was filed on 20.08.2005 and the judgment and award was passed on 30.11.2007 and by now nearly 16 years has passed for which the claimant is suffering untold miseries which defeats the very purpose of beneficial legislation. Mr.

P. Chakraborty, learned counsel further submits that the learned Member, Motor Accident Claims Tribunal, relied on the judgment and order of this Hon'ble court in the case of ***Purnya Kala Devi Vs. State of Assam and Ors*** reported in **(2007) 53 AIC 559 (GAU)** wherein it was held that if the requisitioned vehicle met with an accident, the State Government cannot be fastened with the liability to pay compensation. When the matter was taken to appeal before the Hon'ble Supreme Court in ***Purnya Kala Devi Vs. State of Assam and Ors*** reported in **(2014) 14 SCC 142** the Hon'ble Supreme Court reversed the judgment of the Hon'ble High Court interpreting the "owner" under the Motor Vehicle Act, 1988 and held that the High Court failed to appreciate the provision of the Act. Therefore, he submits that the claimant has been placed in a miserable situation and she should be paid the compensation either by the State/District Administration or the appellant Company on expediency.

8. Mr. T.R. Gogoi, learned Government Advocate for the State of Assam representing respondent No.4 & 5 submits that though the offending vehicle was requisitioned by the District Administration during the relevant period, but the same was used by the BSF, hence, the Central Government should be made liable to pay the compensation.

9. I have considered the rival submissions of the learned counsel for the parties and also examined the materials available on record. I have also perused the judgment and order dated 04.04.2023 passed in MAC App./296/2014. Since the fact and circumstances involved in this case are similar to the above-mentioned MAC

App./296/2014 having arisen out of the same incident, it is thus, proposed to disposed of this matter also in the same line.

10. The issue which calls for consideration in the present appeal is whether the appellant company is liable to pay the compensation award to the claimant when the insured vehicle was under requisition by the State Government.

11. On examination of the materials available on record it is seen that the deceased Lt. Suresh Bariwar, husband of the claimant, who was serving as BSF personnel, along with other BSF personnel were travelling from an operational duty in the vehicle bearing registration No. AS-15A/2137 (TATA-407) which was requisitioned by the District Administration and provided to the BSF personnel. Unfortunately, the said vehicle met with an accident where the deceased husband sustained grievous injuries on his person and succumbed to the injuries.

12. The offending vehicle was duly insured with the Appellant company, i.e., United India Insurance Company Ltd. at the time of accident by policy No. 130204/31/04/00092 valid up to 31.03.2005 and the Driver had a valid Driving license bearing No 3725/NB/2004 with a validity up to 28.10.2007.

13. There is no dispute regarding the validity of the insurance which is valid up to 31.03.2005. It is also an admitted fact that the vehicle was requisitioned under section 3 of the Assam Requisition and Control of Vehicles Act, 1968 and was requisitioned for the law-and-order duty which was under the control of the State Government at the time of the accident.

14. On examination of the claim application, written statement and evidences on record, it establishes that the deceased husband died on 16.04.2005, due to the accident caused by the said vehicle and the offending vehicle was requisitioned by the District Administration for conducting law and order operation. It was provided to the BSF personnel, whereby the deceased along with other BSF personnel were travelling and met with an accident and the deceased succumbed to the injuries. At the same time, it reveals that when the offending vehicle was requisitioned by the District Administration, the same was duly insured with the Appellant company with valid insurance as per the policy.

15. The learned Member, Motor Accident Claims Tribunal, Barpeta on examination and consideration of the facts and circumstances of the case, held that the vehicle involved in the accident was under requisition by the District Administration on behalf of the State Government and the vehicle was under the control and possession of the State government. But the State government is neither the owner nor the insurer of the offending vehicle as per the provisions of section 3 of the Assam Requisition and Control of Vehicles Act, 1968. The learned Member, Motor Accident Claims Tribunal relied on the case of ***Purnya Bala Devi vs. State of Assam*** reported in **(2007) 53 AIC 559 (GAU)** and held that if the requisitioned vehicle met with an accident, the State Government cannot be fastened with the liability to make any compensation and the same is squarely applicable in the facts and circumstances of the present case. Therefore, the Appellant company is solely liable to pay

compensation to the claimant for the death of her deceased husband.

16. The **Purnya Kala Devi** (Supra) was taken to appeal before the Hon'ble Supreme Court wherein the Hon'ble Supreme Court has held which is reproduced herein under:

“16. Though the above point was pressed into service, the High Court, without advertizing to Section 5 of the Assam Act, merely on the basis of the definition of “owner” as contained in Section 2(30) of the 1988 Act, mulcted the award payable by the owner of the vehicle. The High Court failed to appreciate that at the relevant time the offending vehicle was under the requisition of Respondent No. 1 – State of Assam under the provisions of the Assam Act. Therefore, Respondent No. 1 was squarely covered under the definition of “owner” as contained in Section 2(30) of the 1988 Act. The High Court failed to appreciate the underlying legislative intention in including in the definition of “owner” a person in possession of a vehicle either under an agreement of lease or agreement of hypothecation or under a hire-purchase agreement to the effect that a person in control and possession of the vehicle should be construed as the “owner” and not alone the registered owner. The High Court further failed to appreciate the legislative intention that the registered owner of the vehicle should not be held liable if the vehicle was not in his possession and control. The High Court also failed to appreciate that Section 146 of the 1988 Act requires that no person shall use or cause or allow any other person to use a motor vehicle in a public place without an insurance policy meeting the requirements of Chapter XI of the 1988 Act and the State Government has violated the statutory provisions of the 1988 Act. The Tribunal also erred in accepting the allegation of Respondent No. 2 that the vehicle was released on the date of the accident at 10.30 a.m. and the accident occurred at 10.30 a.m. without any evidence even though in the claim petition, it was stated that the accident had occurred at 10.15 a.m.

17. In the light of what is stated above, we accept the stand taken by the appellant and hold that the appellant/claimant is entitled to receive a sum of Rs. 1,94,400/- as fixed by the High Court with interest at the rate of 9% per annum from the date of claim petition till the date of deposit and the same is payable by the State of Assam. The amount shall be deposited before the Tribunal within a period of eight weeks from the date of receipt of copy of this order and on such deposit being made, the appellant – Purnya Kala Devi is permitted to withdraw the same. The appeal is allowed on

the above terms'

17. In the case of **National Insurance Co. Ltd. vs. Deepa Devi and Ors**(supra) the Hon'ble Apex Court held as under:

"10. Parliament either under the 1939 Act or the 1988 Act did not take into consideration a situation of this nature. No doubt, Respondent Nos. 3 and 4 continued to be the registered owner of the vehicle despite the fact that the same was requisitioned by the District Magistrate in exercise of its power conferred upon it under the Representation of People Act. A vehicle is requisitioned by a statutory authority, pursuant to the provisions contained in a statute. The owner of the vehicle cannot refuse to abide by the order of requisition of the vehicle by the Deputy Commissioner. While the vehicle remains under requisition, the owner does not exercise any control thereover. The driver may still be the employee of the owner of the vehicle but he has to drive it as per the direction of the officer of the State, who is put in charge thereof. Save and except for legal ownership, for all intent and purport, the registered owner of the vehicle loses entire control thereover. He has no say as to whether the vehicle should be driven at a given point of time or not. He cannot ask the driver not to drive a vehicle on a bad road. He or the driver could not possibly say that the vehicle would not be driven in the night. The purpose of requisition is to use the vehicle. For the period the vehicle remains under the control of the State and/or its officers, the owner is only entitled to payment of compensation therefor in terms of the Act but he cannot not exercise any control thereupon. In a situation of this nature, this Court must proceed on the presumption that the Parliament while enacting the 1988 Act did not envisage such a situation. If in a given situation, the statutory definitions contained in the 1988 Act cannot be given effect to in letter and spirit, the same should be understood from the common-sense point of view.

19. We, therefore, are of the opinion that the State shall be liable

to pay the amount of compensation to the claimants and not the registered owner of the vehicle and consequently the appellant herein."

18. In the case of ***Naveen Kumar*** (supra) as relied upon by the learned State Counsel it is noted that the Hon'ble Supreme Court has referred and considered the decision in ***Purnya Kala Devi*** (supra) and held as under:

"11. The above observations would indicate that a combination of circumstances cumulatively weighed with this Court. Significantly, for the purposes of the present discussion, what emerges from the above judgment is the circumstance that the motor vehicle was on the date of the accident requisitioned by the state government. Requisitioning by its very nature is involuntary insofar as the person whose property is requisitioned is concerned. This Court observed that it is the person in control and possession of a vehicle which is under an agreement of lease, hypothecation or hire purchase who is construed as the 'owner' and not the registered owner. The same analogy was drawn to hold that where the vehicle had been requisitioned, it was the state and not the registered owner who had possession and control and would hence be held liable to compensate. Purnya Kala Devi does not hold that a person who transfers the vehicle to another but continues to be the registered owner under Section 2(30) in the records of the registering authority is absolved of liability. The situation which arose before the court in that case must be borne in mind because it was in the context of a compulsory act of requisitioning by the state that this Court held, by analogy of reasoning, that the registered owner was not liable"

The Hon'ble Supreme Court further held as under:

"13. The consistent thread of reasoning which emerges from the above decisions is that in view of the definition of the expression 'owner' in Section 2(30), it is the person in whose name the motor vehicle stands registered who for the purposes of the Act, would be treated as the 'owner'. However, where a person is a minor, the guardian of the minor would be treated as the owner. Where a motor vehicle is subject to an agreement of hire purchase, lease or hypothecation, the person in possession of the vehicle under that agreement is treated as the owner. In a situation such as the present where the registered owner has purported to transfer the vehicle but continues to be reflected in the records of the registering authority as the owner of the vehicle, he would not

stand absolved of liability. Parliament has consciously introduced the definition of the expression 'owner' in Section 2(30), making a departure from the provisions of Section 2(19) in the earlier Act of 1939. The principle underlying the provisions of Section 2(30) is that the victim of a motor accident or, in the case of a death, the legal heirs of the deceased victim should not be left in a state of uncertainty. A claimant for compensation ought not to be burdened with following a trail of successive transfers, which are not registered with the registering authority. To hold otherwise would be to defeat the salutary object and purpose of the Act. Hence, the interpretation to be placed must facilitate the fulfilment of the object of the law. In the present case, the First respondent was the 'owner' of the vehicle involved in the accident within the meaning of Section 2(30). The liability to pay compensation stands fastened upon him. Admittedly, the vehicle was uninsured. The High Court has proceeded upon a misconstruction of the judgments of this Court in Reshma and Purnya Kala Devi."

- 19.** On careful reading of the aforesaid cases, i.e., **Naveen Kumar** (supra) it was the case where the registered owner purported to transfer the vehicle to another but continues to be the registered owner under Section 2(30) in the records of the registering authority is absolved of liability. The Hon'ble Supreme Court clearly held the provisions of Section 2(30) in which the victim of a motor accident or, in the case of a death, the legal heirs of the deceased victim should not be left in a state of uncertainty. A claimant for compensation ought not to be burdened with following a trail of successive transfers, which are not registered with the registering authority and to hold otherwise would be to defeat the salutary object and purpose of the Act. Therefore, reliance placed on the above case of **Naveen Kumar** (supra) by the learned State counsel does not support his case, rather it supports the case of the appellant.
- 20.** On careful consideration of the materials available on

record and in view of the above decisions of the Hon'ble Apex Court, this Court is of the opinion that since the offending vehicle was requisitioned by the State Government at the time of accident, though validly insured with the Appellant company, it is the State respondent who is liable to pay compensation to the claimant as the offending vehicle was under requisitioned by the State Government for law and order duty which was provided to the BSF personnel. Thus, the judgment and award dated 30.11.2007 fastening liability to pay compensation upon the appellant's company is not sustainable in law.

21. Therefore, the appeal succeeds and the judgment and award fastening liability to pay compensation upon the Appellant company is hereby set aside so far as it relates to fastening the liability to Appellant company.

22. Accordingly, the appeal is allowed and the State respondent is directed to deposit the compensation amount of Rs. 7,40,252/- (Rupees Seven lakhs forty thousand two hundred and fifty two) only with an interest at the rate of 6% per annum from the date of filing of the claim petition till its deposit by cheque or draft before the learned Member, Motor Accident Claims Tribunal, Barpeta for payment to the claimant/respondent No.1 within a period of six weeks from the date of receipt of this judgment. On receipt of the cheque/draft, the learned Member, Motor Accident Claims Tribunal, Barpeta shall release the compensation amount of Rs. 7,40,252/- (Seven lakhs forty thousand two hundred and fifty-two) only with interest as directed herein above to the claimant/respondent No.1 after proper identification. The Registry

shall also refund Rs. 25,000/- (Twenty-five thousand only) as statutory deposit to the insurer.

23. Accordingly, the judgment and award dated 30.11.2007 shall stand modified to the extent as indicated above. With the observation made above, the appeal is disposed of.

JUDGE

Comparing Assistant