

GAHC010014882014



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

**Case No. : MACApp./232/2014**

NATIONAL INSURANCE CO. LTD.

A GOVT. OF INDIA UNDERTAKING CO. HAVING ITS REGISTERED OFFICE  
AT NO. 3 MIDDLETON STREET, KOLKATA AND ONE OF THE REGIONAL  
OFFICE SITUATED AT G.S ROAD, BHANGAGARH, GUWAHATI-781005

VERSUS

KAJOL MALAKAR and ANR.

S/O LT. KALA CHAND MALAKAR, R/O CHOWKITUP, NAGAON, P.O.  
CHAUTAHAI BAR UNDER NAGAON SADAR , P.S. DIST. NAGAON, ASSAM.

2: PONARAM KEOT

S/O NALIA KEOT  
R/O BARPATHORI  
PANIGAON UNDER NAGAON  
P.S. DIST. NAGAON  
ASSAM OWNE

**Advocate for the Petitioner : MR.B K PURKAYASTHA**

**Advocate for the Respondent : MS.C DAS**

Linked Case : MC/3470/2014

NATIONAL INSURANCE CO. LTD.

VERSUS

KAJOL MALAKAR and ANR.

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Advocate for : MR.B K PURKAYASTHA  
Advocate for : MRK K DAS appearing for KAJOL MALAKAR and ANR.

**BEFORE  
HONOURABLE MRS. JUSTICE MARLI VANKUNG**

**JUDGMENT**

**Date : 30-05-2024**

Heard Mr. A.J. Saikia, learned counsel for the appellant/Insurance Company along with Mr. A. Dhar, learned counsel for the respondent No.1/claimant.

**2.** The instant appeal is against the judgment and award dated 02.04.2014 passed by the learned Member, Motor Accident Claim Tribunal, Nagaon (Assam) in MAC Case No. 195/06, wherein the appellant was made jointly liable with the owner of the vehicle, to make payment of Rs.1,01,401/- within a period of 3 (three)months from the date of Judgment, failing which with an interest @ 7% per annum from the date of filing of the claim petition. The learned Tribunal also held that the claimant was also entitled to Rs.1,000/- as cost of proceeding.

**3.** The facts of the case in brief is that on 13.05.2005 while the claimant was

standing in front of Pandit Hotel, rail road a vehicle bearing New Tata Spacio ST coming at a high speed from GNB road dashed the claimant. As a result of the accident, the claimant sustained multiple injuries and was immediately taken to the B.P Civil Hospital, Nagaon and on the same day he was transferred to GMCH, Guwahati. The claimant then filed the claim application under 166 of the M.V. Act for the injury sustained by him in the accident to meet the expense for medical treatment cause due to rash and negligence driving by the driver of the New Tata Spacio ST own by Mr. Ponaram Keot.

**4.** The Insurance Company contested the claim by filing the written statement by denying the facts of the case and that the driver of the vehicle had no valid driving license and no cover note for the offending was issued by the company and thus was not liable to indemnify the claimant. The owner of the vehicle was arrayed as O.P. No.1 in the MAC Case while the Insurance Company was arrayed as O.P. No.2, none had appeared on behalf of the O.P No.1 and the case had proceeded ex-parte against O.P. No.1.

The following issues were framed by the learned tribunal:

1. *Whether the claim petition is maintainable ?*
2. *Whether the accident occurred due to rash and negligent driving of the driver of vehicle New Tata Spacio ST ?*
3. *Whether the claimant is entitled to receive compensation and if so*

*to what extent and who is liable to pay the same?*

**5.** The claimant produced 3 (three) witness before the learned tribunal while the O.P. No. 2/Insurance Company examine one defence witness.

**6.** Having consider the evidence adduce by both the parties, the learned tribunal decided all the issues in favour of the claimant and held that the offending vehicle New Tata Spacio ST was driven in a rash and negligent manner resulting in the accident, which injured the claimant and caused him to suffer 45% permanent disability due to Chronic Osteo-arthritis right ankle and knee. The learned Tribunal perused the medical documents and vouches and accepted Rs.12,401/- as expenses for his treatment. The learned Tribunal also found the age of the claimant to be 42 years at the time of the accident. The compensation amount was calculated by applying multiplier 15 to his monthly income, which was taken to be Rs.3,000/-and 15% for loss of income because of his 45% permanent disability, Rs.7,000/- was added for pain and suffering caused due to the accident. Thus the learned Tribunal calculated a total amount of Rs. 1,01,401/-, wherein, both the Opposite parties were found jointly liable to make the payment within a period of 3 (three) months, failing which an interest @ 7% per annum from the date of the filing of the claim petition was imposed.

Aggrieved, the appellant Insurance Company has filed the instant appeal.

**7.** Mr. A.J. Saikia, the learned counsel for the appellant submits that the impugned Judgment & Award dated 02.04.2014 is liable to be set aside since the vehicle New TATA Spacio ST, involved in the accident, was not insured with the National Insurance Company/appellant. He submits that the alleged cover note No.091560 dated 01.04.05, shown in favour of the said vehicle TATA Spacio ST, was not issued by the Insurance Company. Therefore, the policy mentioned in the claim application was not issued by the appellant Insurance company and thus, the company was not liable to pay compensation. The learned counsel for the appellant further submits that, DW-1, Senior Assistant of the Insurance had exhibited the E-mail received from the Branch Manager, Guwahati Branch- Exbt-A, wherein it was stated that the said Cover note No.091560 dated 01.04.05 in the name of Mr. Ponaram Keot was not found in the register of the company, which clearly proves that the alleged cover note was not issued by the appellant Insurance Company and hence the insurance policy was not valid. That the learned Tribunal had erred in making the appellant jointly liable in the instant case

**8.** Mr. A. Dhar, learned counsel for the respondent No.1, on the other hand

submits that the accident vehicle, TATA Spacio ST was validly insured with the Insurance Company and that a cover note No.091560 dated 01.04.05 was issued in favour of the accident vehicle, which is clearly mentioned in the Accident information report made by the in-charge Investigation Officer, Traffic Branch, Nagaon P.S. dated 24.08.05, wherein at Sl.10 of the accident information report, it is clearly stated that the cover note 091560 dated 01.04.05 is valid upto 31.03.2006 which shows that the vehicle was covered by the Insurance Company since the accident took place on 13.05.2005.

**9.** The learned counsel submits that the appellant had relied on the Email which was exhibited as Exhibit-A by DW-1, the said Email exhibited as Exhibit-A stated that, on checking their records no policy issued in the name of Mr. Ponaram Keot in the month of April, 2005 was found, nor could be traced out cover note numbering issue to any development officer in their register. The dealing Assistant was asked to collect the cover note copy or the certificate of insurance, otherwise they could do nothing but deny having issued cover note from their office. However, no steps was taken by the dealing of the advocate and the learned Tribunal court had rightly observed that no attempt is seen to be made by the insurance company to produce any official register of the relevant period to show that the cover note No.091560 dated 01.04.05 was not

issued in favour of New TATA Spacio ST owned by Mr. Ponaram Keot.

**10.** The learned counsel submits that it is for the Insurance Company to prove that the cover note No.091560 dated 01.04.05 was not issued by the Insurance Company, but no steps was taken by the dealing advocate of the company, and the correctness of the E-mail, exhibited - as Exhibit A, is not proved.

In support of his submission, the learned counsel for the respondent cited the decision of the High Court of Himachal Pradesh in **National Insurance Company Vs. Kamal Kishore and Others** reported in **2019 SCC OnLine HP 932.**

**11.** I have heard and considered the submissions made by the learned counsels for both the parties. This court finds that it is an admitted fact that the claimant sustained 45% permanent disability due to the accident which occurred on due to the rash and negligent driving of the vehicle TATA Spacio ST. The appellant has also not disputed the quantum of the award calculated by the learned trial court. The only point to be decided in the instant appeal is whether or not, the appellant insurance Co.Ltd, issued the Cover note - No.091560 dated 01.04.05 in favour of New TATA Spacio ST owned by Mr. Ponaram Keot.

The appellant has relied on the Email dated 18<sup>th</sup> Sept. 2013, exhibited as Exhibit A., by DW-1, sent by Smita Chakraborty, the Senior Branch Manager, National Insurance Company Ltd., Guwahati Branch addressed to a Siddhartha Biswas who DW1 stated is the Adm. Officer. The contents of the E mail is reproduced hereunder ;

*“We have checked our record and found no Policies issued in the name of Panoram Keot in the month of April 2005. Nor could we trace out the Cover note number being issued to any Development Officer in our Register Query through the vehicle No. also was fruitless.*

*Please ask the dealing Advocate to collect the Cover Note copy or the Certificate of Insurance otherwise we can do nothing but deny having issued the cover note from our Office.”*

**12.** The learned trial court having considered the submissions of both the parties had made the following observations.

*“A careful perusal of Ext. A shows that Guwahati Branch of the company directed the dealing Assistant of the Nagaon Branch to collect the cover note through the dealing advocate. Regarding compliance of this direction no attempt is seen to be made by the Nagaon Branch to collect the same through the advocate. No attempt is seen to be made by the Insurance company to produce any official register of the relevant period to show that the cover note no.091560 dated 01.04.05 was not issued in favour of New Tata*

*Spacio SR on by Ponaram Keot.*

*As per the claim petition and the accident information report the vehicle no. New Tata Spacio ST is insured with National Ins. Co. Ltd., vide cover note no.091560 dated 01.04.05 which is valid upto 31.03.06. To rebut the evidence official record of the Guwahati Branch is not produced by the company. The accident took place on 13.05.05. Hence, as per Accident information report at the time of accident the vehicle had valid insurance policy. Hence, both the owner and the National Ins. Co. Ltd. are jointly and severally liable to pay compensation to the claimant."*

**13.** This court finds no sufficient reasons to interfere with the above observations made by the learned trial court. It is seen that the appellant had not made the afford to produce the register from the main Branch to prove that the said Cover note No.091560 dated 01.04.05 in favour of New TATA Spacio ST was not registered in their register . Further the person who had authored the E-mail also not produced in the court. The Cover note no. No.091560 was duly entered in the Accident information report its validity was not question by the counsel for the Insurance company before the learned tribunal.

**14.** It is noted also that the learned counsel for the respondent in relying on the decision of the High Court of Himachal Pradesh in **National Insurance Company Vs. Kamal Kishore and Others (supra)** refered to para 22 wherein, it was held that :

*"In the present case the claim is by the legal heirs of the deceased-third party. It is also to be noticed that when the vehicle was insured towards third party liability, it was done so on the basis of engine number and chassis number. These numbers were duly mentioned in the insurance policy. The insurance is a contract between the insured and the insurer. It was not insured on the basis of temporary registration number or the permanent registration number. No such condition was stipulated in the contract. Therefore, the insurance company cannot escape its liability, towards third party, merely on account of vehicle being not registered on the day of accident. The contract of insurance is based upon good faith applicable to both the parties. It can also be safely said that there was no connection between the cause of the accident and the registration/non-registration of the vehicle. It is not the case of appellant in the present appeal that driving licence was not valid. Therefore, merely because vehicle was not registered under the provisions of Chapter-IV of the Motor Vehicles Act, Insurance company cannot escape its liability towards third party."*

**15.** Thus for the reasons discussed in the above paras, this court is of the considered view that there are no sufficient grounds made out to interfere with the Judgment & Order dated 02.04.2014 passed by the learned Member, Motor Accident Claim Tribunal, Nagaon (Assam) in MAC Case No. 195/06 wherein it was ordered that the Insurance Company and the owner of the vehicle New TATA Spacio ST jointly liable, to make payment of Rs.1,01,401/- within a period

of 3 (three)months from the date of Judgment, failing which with an interest @ 7% per annum from the date of filing of the claim petition. The learned Tribunal also held that the claimant was also entitled to Rs.1,000/- as cost of proceeding.

**16.** The 50% of the awarded amount deposited in the Registry is to be released to the claimants after due verification by the Registry. The remaining 50% with interest is to be deposited before the Learned Motor Accident Claim Tribunal, Nagaon (Assam) in MAC Case No. 195/06. Statutory deposit amount is also to be released to the appellant Insurance Company with interest if any.

**17.** Accordingly, the instant appeal stands dismissed and disposed of.

**JUDGE**

**Comparing Assistant**