

GAHC010003232015



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

Case No. : MACApp./93/2024

ORIENTAL INSURANCE COMPANY LTD
HAVING ITS REGISTERED OFFICE AT ORIENTAL HOUSE A 25/27 ASAF ALI
ROAD, NEW DELHI 110002 AND REGIONAL OFFICE AT GUWAHATI-7,
REPRESENTED BY THE REGIONAL MANAGER

VERSUS

MD HUSSAIN ALI and ANR
S/O AKTAR ALI, VILL. TARABARI BORPAKA, P.S. RUPAHI, DIST. NAGAON,
ASSAM.

Advocate for the Petitioner : MR. C SHARMA

Advocate for the Respondent :

:: BEFORE ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

O R D E R

13.05.2024

Heard the learned senior counsel Mr. S. Dutta assisted by Mrs. M. Choudhury,
learned counsel representing the appellant.

2. At the time of filing of this MAC Appeal, the appellant filed an application under Section 5 of the Limitation Act praying for condonation of 507 days of delay in preferring the appeal. In that petition, notices upon the respondents were published in a newspaper and in spite of that the respondents did not contest that petition. Ultimately, the petition under Section 5 of the Limitation Act was allowed.

3. Today, Mr. Dutta submits that in this case, no fresh notices are required to be issued to the respondents because it can be presumed that the respondents have knowledge about this case.

4. After hearing Mr. Dutta and after considering the aforesaid facts, I have decided to agree with Mr. Dutta. No fresh notices are required to be issued to the respondents.

5. On 17.04.2003 at about 8.30 A.M. while Md. Hussain Ali was standing on the left side of the road, he was hit by a vehicle bearing Registration No.AS-01/J-4477. Because of the said incident, Md. Hussain Ali became permanently disabled. Therefore, he filed an application seeking compensation.

6. In order to prove his case, Md. Hussain Ali relied upon a Cover Note No.100741 to saddle the Oriental Insurance Company Limited with the liability to indemnify the owner.

7. In *Oriental Insurance Co. Ltd. v. Musst. Hazira Bibi*, 2008 SCC OnLine Gau 182, this Court has clarified the liability of the Insurance Company, which reads as under:

“**7.** It is trite that an insurer merely indemnifies the owner of a vehicle, who may be liable to pay compensation. The primary liability for paying compensation is, thus, on the owner of the offending vehicle and the insurer is merely an indemnifier. Without proof of the fact as whether a person is or is not an insurer, such a person cannot be saddled with the liability to indemnify the owner.”

8. In a case before the Motor Accident Claims Tribunal, the Tribunal has to determine the question as to whether the offending vehicle stood insured under an Insurance Company. In the case in hand, Md. Hussain Ali did not file any Insurance

Policy. He only relied upon a Cover Note of Oriental Insurance Company Limited. Such a Cover Note does not prove that a particular vehicle was insured under an Insurance Company.

9. Here, in this case, the Tribunal did not frame an issue as to whether the offending vehicle bearing Registration No.AS-01/J-4477 was insured under the Oriental Insurance Company Limited?.

10. This Court is of the opinion that the impugned judgment dated 09.10.2013 passed by the MACT, Nagaon, Assam is a defective one and therefore, not sustainable in law. The impugned judgment of the Tribunal is set aside.

11. The appeal is allowed. The case is remanded to the MACT, Nagaon for framing an issue as to “whether the offending vehicle bearing Registration No.AS-01/J-4477 was insured under the Oriental Insurance Company Limited”? The Tribunal shall provide opportunity to both sides to prove or disprove this issue. Thereafter, the Tribunal shall pass a fresh judgment on all the issues including the issues which were already framed in this case.

The MAC Appeal is disposed of accordingly.

JUDGE

Comparing Assistant