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

Case No. : MACApp./856/2018

ORIENTAL INSURANCE COMPANY LTD
A CENTRAL GOVT. UNDERTAKING, HAVING ITS REGIONAL OFFICE AT GUWAHATI, ULUBARI, GUWAHATI 781007 REPRESENTED BY THE ASSTT. MANAGER, GAUHATI REGIONAL OFFICE, ULUBARI, GUWAHATI 781007

VERSUS

SRI AMAL BORAH AND 2 ORS
S/O B.C. BORAH, R/O ASHRAM ROAD, SANTIPUR, GUWAHATI, DIST. KAMRUP (M), ASSAM, PIN 781009

2:SRI TAPAN GHOSH
S/O SRI AJIT GHOSH 532
WARD NO. 16
JYOTIKUCHI LOKHRA ROAD
P.S. FATASIL AMBARI
GUWAHATI
DIST. KAMRUP (M)
ASSAM
PIN 78103

Advocate for the Petitioner : MS. R D MOZUMDAR

Advocate for the Respondent :

MAC App./860/2018

SRI AMAL BORAH
S/O LATE BHABANI CHARAN BORAH
R/O HOUSE NO. 2
ASHRAM ROAD
SANTIPUR
GUWAHATI 781009
DIST. KAMRUP (M)
ASSAM.

VERSUS

THE ORIENTAL INSURANCE CO. LTD
3RD FLOOR
AMARAWATI PATH
G.S. ROAD
CDO-II
CHRISTIAN BASTI
GUWAHATI 781005

Advocate for : MRS. R BORAH
Advocate for : MR. R C PAUL appearing for THE ORIENTAL INSURANCE CO. LTD

B E F O R E

HON'BLE MR.JUSTICE SANJAY KUMAR MEDHI

Advocates for the appellant(s) : Ms. R.D. Mozumdar (MAC App./856/2018)
Shri D. Borah (MAC App./860/2018)

Advocates for respondent(s) : Shri D. Borah (MAC App./856/2018)
Shri R.C. Paul (MAC App./860/2018)

Date of hearing : 04.06.2024

Date of judgment : 25.06.2024

JUDGMENT & ORDER

Both these two appeals being connected and arising out of a common judgment and award passed by the Motor Accidents Claims Tribunal, Kamrup are analogously heard and disposed of by this common judgment and order.

2. While MAC App No. 856/2018 is preferred by the Insurance Company, MAC App No. 860/2018 is preferred by the claimant.

3. The impugned judgment and order dated 11.06.2018 is passed by the MACT No. 1, Kamrup in MAC Case No.524/2016. By the aforesaid judgment, an amount of Rs.4,00,000/- with interest @ 7% pa has been awarded. While the Insurance Company has challenged the Award in the appeal preferred by it, the claimant has prayed for enhancement of the amount in the appeal preferred by him.

4. Before coming to the issues which have arisen for determination, it would be convenient if the basic facts of the case are narrated in brief.

5. The projected case of the claimant is that on 20.12.2014, his son was driving a vehicle (Ford Eco Sport), bearing Reg. No. AS-01/BF-8788 and near Palashbari, a truck carrying sand (Tata), bearing no. AS-21/C/0779 had hit the claimant's vehicle on the front left side. It is contented that the claimant's vehicle was completely damaged in the accident which was because of the rash and negligent driving of the truck. The amount claimed was of Rs.12,00,000/- in respect of the damage of the vehicle.

6. The claimant had arrayed the Insurance Company of the truck as opposite party no. 1 and the Owner and Driver of the truck as opposite party nos. 2 and 3, respectively in the claim petition. The Insurance Company had contested the

claim by filing written statement. A joint written statement was also filed by the opposite party nos. 1 and 2. The claim of the claimant was disputed and denied by the opposite parties.

7. The claimant had adduced evidence by 3 nos. of CWs. The claimant, as CW-1, had deposed that his vehicle was completely damaged which was assessed by the Motor Vehicle Inspector (MVI) and the estimate given by the workshop was Rs. 8,75,000/- (approx.). It was also deposed that the vehicle was sold as scrap for Rs. 20,000/-. It, however, reveals from the cross-examination that the vehicle of the claimant was insured with the TATA AIG Insurance Company and the claimant had received the own damage compensation from the said Insurance Company. It has also been admitted that the claim was lodged for property damage only and the claim petition was filed after disposing the scrap of the vehicle. The CW-2 is the son of the claimant. In his cross-examination, he had stated that no separate case was filed by him claiming compensation for any injuries suffered by him and that one of the occupants, namely, Mir Hussain had, however, filed a case for compensation for injuries sustained by him. The CW-3 was one Mohammad Ali, who supported the claimant's case.

8. The leaned Motor Accident Claims Tribunal had framed two issues for determination, namely, the issue of complete damage of the claimant's vehicle due to the rash and negligent driving of the offending vehicle and whether the claimant is entitled to any compensation. After consideration, the learned Motor Accident Claims Tribunal vide the impugned judgment and order dated 11.06.2018 had passed the Award as mentioned above, which is the subject matter of challenge in these two appeals.

9. I have Ms. R.D. Mozumdar, learned counsel appearing for the appellant in

MAC App./856/2018 and Shri D. Borah, learned counsel appearing for the respondent in MAC App./856/2018 and for the appellant in MAC App./860/2018. I have also heard Shri R.C. Paul, learned counsel appearing for the respondent in MAC App./860/2018.

10. Ms. Mozumdar, learned counsel for the appellant-Insurance Company has submitted that admittedly, the claim was only for the damage sustained by the claimant's vehicle in the accident. She submits that without making a candid disclosure of all the relevant facts, the claim was made whereby only the Insurance Company of the truck in question was made one of the opposite parties along with the Owner and Driver. It is submitted that such suppression was continued till the filing of the evidence-in-affidavit. However, only during the cross-examination, it was revealed that the compensation for the damage of the claimant's vehicle was already paid by the Insurance Company of the said vehicle, namely, TATA AIG Insurance Company. It was also revealed that the damaged vehicle was disposed off as scrap for Rs. 20,000/-. The observation made in the impugned judgment on the aspect of not being able to assess the damage by the Motor Accident Claims Tribunal in absence of the surveyor report has also been highlighted. It has been strenuously urged that the claim itself before the learned Tribunal was not maintainable. It is submitted that when admittedly, the claim was for damage sustained by the claimant's vehicle and such claim was already successfully made by the claimant with his Insurance Company, namely, TATA AIG Insurance Company, the present claim made was for double benefit which is against the very essence of the law of insurance.

11. In support of her contention, the learned counsel of the Insurance Company has relied upon a recent decision dated 05.02.2024 in the case of

Krishna & Ors. Vs. Tek Chand & Ors. **[SLP(C) No. 5044/2019].** In the said case, the Hon'ble supreme Court, after considering the earlier cases holding the field, it has been laid down that in a claim for motor accident, there cannot be duplication in payments or a windfall owing to a misfortune. In that case, a government servant had died-in-harness and there existed a scheme of the Haryana Government for payment of compassionate assistance and the Hon'ble Supreme Court had held that a separate claim could not be made before a MACT.

12. *Per contra*, Shri Borah, learned counsel for the claimant has submitted that while the claim before the learned Tribunal was a claim on account of a tort, the amount received from the Insurance Company for the claimant's vehicle was on account of a contract. He submits that the report of the MVI was duly proved as well as the estimate of the amount issued by the concerned garage for the repair of the vehicle which was Rs.8.75 Lakhs (approx.). It is submitted that the claim was fully justified and he has prayed for enhancement of the Award as claimed in the claim petition. He accordingly prays for dismissal of the appeal of the Insurance Company and to allow the appeal of the claimant for enhancement. In support of his contention, the learned counsel for the claimant has relied upon the following case laws:

i ***Helen C. Rebello and Ors. Vs. Maharashtra State Road Transport Corpn. And Ors.*** **[(1999) 1 SCC 90]**;

ii. ***United India Insurance Co. Ltd. and Ors. Vs. Patricia Jean Mahajan and Ors.*** **[C.A. No. 3655-58/2002 decided on 08.07.2002];**

iii. ***Sebastiani Lakra and Ors. Vs. National Insurance Company Ltd. and Ors.*** **[C.A. No. 10558-89/2018 decided on 12.10.2018]**;

iv. ***Sri Hemanth Raju Vs. Sri Punitha H.J.*** **[Misc. First Appeal No. 6841/2013,**

decided by the Karnataka High Court on 18.12.2023]; and

v. ***Reliance General Insurance Co. Ltd. Vs. Aman Sanjay Tak*** **[First Appeal No. 1051/2022 decided by the Bombay High Court on 12.04.2023]**.

13. In the case of ***Helen C. Rebello*** (supra), the Hon'ble Supreme Court had interfered when there was a deduction in the amount under the Life Insurance while assessing the compensation in the claim for motor accidents. Similarly, in the case of ***Patricia Jean Mahajan*** (supra), the interference was for the deduction on account of social security/LIC.

14. In the case of ***Sebastiani Lakra*** (supra), the Hon'ble Supreme Court after considering the aforesaid two cases had interfered with deductions on account of pensionary benefits or gratuity or grant of compensatory employment and it was held that a tortfeasor cannot take advantage of the foresight and wise financial investments made by a deceased.

15. In the case of ***Sri Hemanth Raju*** (supra), the Hon'ble Karnataka High Court gave directions for payment of the balance of the total loss sustained for vehicle damage. In the case of ***Aman Sanjay Tak*** (supra), the Hon'ble Bombay High Court had held that the amount received under Medical claim cannot be deducted from a claim of motor vehicle accident compensation.

16. Shri R.C. Paul, learned Counsel has also appeared for the Insurance Company in the appeal preferred by the claimant. While endorsing the submissions of Ms. Mazumdar, the learned counsel has submitted that no case for interference has been made out by the claimant and in fact, the claim itself was not maintainable and was liable to be rejected. He has also placed reliance upon a recent judgment of the Hon'ble Karnataka High Court dated 22.04.2024 in MFA/5788/2013 **(*Sri Kumarvel Janakiram Vs. National Insurance Company Ltd.*)**. In

the said case, the claimant had received the claim amount towards damage of the vehicle from his Insurance Company and therefore, it was held that the claim against the other Insurance Company was rightly rejected.

17. The rival contentions have been duly considered and the materials placed before this Court, including the records of the learned Motor Accident Claims Tribunal have been carefully examined.

18. A perusal of the claim petition would reveal that the claim was against the appellant Insurance Company only and there was no claim made against the Insurance Company of the claimant's vehicle. In fact, the said Insurance Company, namely, TATA AIG was not even made a party in the claim petition. Admittedly, the claim was not for any injuries sustained but for damage of the vehicle (Ford Eco Sport). The projected case of the claimant was that the estimate given by the garage was Rs. 8.75 lakhs/- (approx.) and therefore, a claim of Rs. 12,00,000/- was made. As observed above, the claimant as CW-1 had deposed that his vehicle was completely damaged and the estimate given by the workshop was Rs. 8.75 lakhs (approx.). It was also deposed that the vehicle was sold as scrap for Rs. 20,000/-. It was only revealed in the cross-examination that the vehicle of the claimant was insured with the TATA AIG Insurance Company and the Claimant had received the own damage lodged from the said Insurance Company.

19. The CW-2 in his chief examination also did not disclose about the payment of the damage compensation by TATA AIG. In his cross-examination, he had admitted that no case was filed claiming compensation for any injuries sustained by him and one Mir Hussain, who was an occupant, had filed a claim for sustaining injuries.

20. So far as the evidence of CW3-Mohammed Ali is concerned, a perusal of his evidence-on-affidavit would reveal that he has stated himself to be the claimant in paragraph 1. Nowhere in the affidavit, CW-3 had stated that he was an occupant of the claimant's vehicle. The claim petition, while narrating the facts under Sl. No. 19, had also stated that the son of the claimant was accompanied by one Lipak Das and Mir Hussain on the concerned day in the claimant's vehicle. However, the CW-3 in his cross-examination has deposed that he was present as an occupant of the claimant's vehicle.

21. A claim for insurance is a claim out of utmost good faith. There is a legal obligation on the part of a claimant making a claim *qua* a contract of insurance to disclose all the relevant facts and not to suppress any material facts. A contract of insurance is a contract to indemnify an insured by the insurer with regard to any claim made during the validity of such policy. Any claim arising out of such contract mandatorily requires that such claim is made *bona fide* and with utmost good faith.

22. The Hon'ble Supreme Court in a recent judgment of ***M/S Isnar Aqua Farms Vs. United India Insurance Co. Ltd.***, reported in **AIR 2023 SC 3973**, after discussing the earlier case laws on the aspect of utmost good faith as a mandatory concomitant with a claim for insurance the case has laid down as follows:

> "*12. Be it noted, in General Assurance Society Limited Vs. Chandumull Jain and another [AIR 1966 SC 1644], a Constitution Bench had observed, in the context of the insured, that uberrima fides, i.e., good faith, is the requirement in a contract of insurance. More recently, in Jacob Punnen and another Vs. United India Insurance Company Limited [(2022) 3 SCC 655], this Court affirmed and reiterated the edict laid down earlier in Modern Insulators Limited Vs. Oriental Insurance Company*

Limited [(2000) 2 SCC 734], that it is the fundamental principle of insurance law that utmost good faith must be observed by the contracting parties; that good faith forbids either party from non-disclosure of the facts which the party knows; and that the insured has a duty to disclose and similarly it is the duty of the insurance company to disclose all material facts within their knowledge since the obligation of good faith applies to both equally. This obligation and duty would rest on both parties not only at the inception of the contract of insurance but throughout its existence and even thereafter."

23. In the instant case, the claim was admittedly made for damage of the vehicle and not for any injuries sustained by any person. The estimate was given for repair of the vehicle (Ford Eco Sport) in question, which was taken into consideration by the learned Motor Accident Claims Tribunal. It has, however, emerged from the records of the proceeding that the vehicle (Ford Eco Sport) was purchased back by the Insurance Company, namely, TATA AIG as scrap by paying a price. It was not disclosed either in the claim petition or the chief examination that the claimant had already successfully made a claim from his insurance company-TATA AIG and yet had made the present claim against the Insurance Company of the other vehicle.

24. This Court is of the considered opinion that the estimate by the garage-T.I. Ford (Exhibit 6) which was taken into account by the learned Motor Accident Claims Tribunal was not relevant at all as admittedly, the vehicle was sold as scrap and the Insurance Company of the said vehicle (Ford Eco Sport), namely, TATA AIG had already indemnified the said loss. The said Insurance Company, namely, TATA AIG was not even made a party respondent in the proceeding. Furthermore, there exists nothing on record to show that if the amount paid to

the claimant by his Insurance Company (TATA AIG) was considered to be inadequate, why there was no action taken by the claimant in any appropriate legal forum.

25. The impugned judgment dated 11.06.2018 clearly reveals that the amount granted was based purely on conjecture and speculation, with no substantial evidence to justify the Award. Moreover, the payment received by the claimant from his Insurance company (TATA AIG), which was revealed during cross-examination, was not contested in any forum concerning its adequacy.

26. The case laws cited on behalf of the claimant would not come to the aid of the claimant. As observed above, in the cases of ***Helen C. Rebello*** (*supra*) and ***Patricia Jean Mahajan*** (*supra*), the deductions were on account of Life Insurance/social security which were interfered with. Similarly, in the case of ***Sebastiani Lakra*** (*supra*), the deductions were for pensionary benefits and gratuity which were interfered with. The facts of the cases of the Karnataka and Bombay High Courts are distinguishable and in any way, those only have a persuasive value and cannot be binding precedents.

27. Under the aforesaid facts and circumstances and the discussions made above, this Court is of the considered opinion that the learned Motor Accident Claims Tribunal fell into grave error in entertaining the claim itself and subsequently granting the Award. Accordingly, the impugned Award dated 11.06.2018 passed by the MACT No. 1, Kamrup in MAC Case No. 524/2016 is set aside.

28. The MAC Appeal No. 856/2018 accordingly stands allowed and MAC Appeal No. 860/2018 is dismissed.

29. This Court must also note that the claimant's approach in making the

present claim appears to be without any *bona fide* intent. The impugned Award was passed without considering the crucial aspect. In light of these circumstances, this Court views the claimant's attempt to seek an enhancement of the Award as audacious. A Motor Accident Claims Tribunal should not be approached for a windfall or undue gain. Frivolous litigations, apart from being a gross misuse of the process of the Court, is also adding to the pendency. This menace must be nipped in the bud to ensure that precious judicial time is preserved and utilized for the effective dispensation of justice. Consequently, while dismissing the claimant's appeal (MAC Appeal 860/2018), this Court imposes a token cost of Rs.5,000/- (Rupees Five Thousand) only upon the claimant/appellant to be paid to the Gauhati High Court Bar Association Welfare Fund.

30. The statutory deposit of Rs. 25,000/- in connection with MAC Appeal 856/2018 is to be refunded to the Insurance Company (Oriental Insurance Company Limited).

31. Send back the LCR.

JUDGE

Comparing Assistant