

J U D G M E N T :

1. Mrs. Mamoni Khound, Wife of Sri Barun Khound, resident of Khoundpara of Dergaon town, P.O. & P.S. Dergaon, district Golaghat (hereinafter called as claimant) filed an application u/s 163-A of the M.V. Act against the O.P. No.1 Continental Transport Agency, O.P. No.2 Sri Kameswar Singh, the driver of the Truck No. NL-02-D/4064, O.P. No.3 the Branch, New India Assurance Co. Ltd., the insurer of the aforesaid Truck No. NL-02-D/4064, O.P. No.4 Sri Barun Khound, the owner-cum-driver of Maruti Car No. AS-05 /7727 and O.P. No.5 the National Insurance Co. Ltd. Golaghat Branch, the insurer of the aforesaid Maruti Car No. AS-05/7727 claiming compensation of an amount of Rs.5,60,000/- in total on account of grievous injury sustained by her in a Motor vehicle accident.

2. The facts of the case, in brief, is that on 8.2.2005, at about 7 P.M., the claimant was travelling in a Maruti car bearing registration No. AS-05/7727 from Dergaon side towards Jorhat and at the same time, one Truck bearing registration No. NL-02-D/4064 came from Jorhat side driven rashly and negligently in a high speed and dashed against the said Maruti car and due to the impact of the accident, the front side of the Maruti car was completely damaged. All the occupants of the car received serious and grievous injuries and the claimant sustained facial injury, head injury and serious eye injury. The claimant had been immediately admitted at Jorhat Civil hospital for her medical treatment . Thereafter, she was shifted to A.G. Nursing Home, Jorhat and treated there from 9.2.2005 to 11.2.2005. She also suffered lower eyelid retraction (right) due to scar perforation for which she was admitted in the Cataract and IOL Hospital, Jorhat for reconstruction on 23.2.2005 due to her injury.

3. The case against O.P. No. 1, O.P. No.2 and O.P. No.4 was heard ex parte as they failed to appear before the court to contest the case. The O.P. No.3, the New India Assurance co. Ltd. contested the case by submitting the written statement stating inter-alia that the answering O.P. No.3 is always protected u/s 147 and 149 of the M.V. Act and liability to pay the compensation is limited by statute and condition of insurance policy. The answering O.P. No.3 was the insurer of the offending Truck No. NL-02-D/4064. The O.P. No.3 has further stated that in regard to para No.13 of the claim petition, the claimant has stated that the alleged vehicle was insured with this answering opposite party. The answering O.P. No.3 being the Insurance Company, is not in a position to admit the liability due to non-submission of the insurance policy copy.

4. The O.P. No.5, the National Insurance Co. Ltd. contested the case by submitting the written statement stating inter-alia that the answering O.P. No.5 is the insurer of the Maruti Car bearing No. AS-05/7727. The accident was caused by the heavy goods carrying vehicle. Therefore, the responsibility of the heavier vehicle is more than the light motor vehicle, like Maruti car. The answering O.P. No.5 is unable to admit the validity of insurance policy for want of specific policy number and office code. Therefore, the answering O.P. No.5 is not liable to pay any compensation to the claimant.

5. For the purpose of determination of this claim case, the following issues are framed .

ISSUES :

(1) Whether the claim application is maintainable in law ?

(2) Whether the accident took place due to rash and negligent driving on the part of the driver of vehicle No. NL-02-D/4064 (Heavy goods vehicle) ?

(3) Whether the claimant is entitled to get compensation, if so, what would be the amount and from whom ?

6. The claimant in order to prove her case, adduced the evidence of two witnesses including herself, whereas the answering O.Ps. Nos. 3 and 5 did not adduce any evidence to prove their defence plea.

7. Heard argument of both the sides.

DISCUSSIONS, DECISION AND REASON

THEREOF :

ISSUES NOS. 1 & 2 :

8. Both the Issues Nos. 1 and 2 are taken up together for discussions as both the issues are interrelated to each other.

9. As the case was filed u/s 163-A of the M.V. Act, therefore, the claimant is not required to prove the rash and negligent driving of the offending vehicles. The claimant as C.W.1 submitted the affidavit evidence U/O 18 Rule 4 of CPC and exhibited 15 Nos. of documents, viz. - Accident report, Discharged slip of A.G. Nursing Home, dated 11.3.2005, Diagnosis, Treatment, Prescription, Advice, X-Ray report of A.G. Nursing Home, dated 9.2.05, Pathological report, Prescription, Prescription of Cataract and IOL hospital, dated 22.2.05, Cash memo & receipt, Disability certificate, X-Ray plate and report right Hydro Pneumothorax, X-Ray plate and report right side Hydro Pneumothorax and X-Ray of chest as Ext-1 to Ext-15 respectively.

10. From the Ext-1, the accident report submitted by the O/C of Pulibor police station, it is found that the motor accident occurred on 8.2.2005 at 7 P.M. at Saruhooj gaon on NH-37. The Truck bearing registration No. NL-02-D/4064 was shown to be involved in the said accident. The O.P. No.1, the Continental Transport Agency was the owner of the said vehicle, whereas, the O.P. No.2 Sri Kameswar Singh was the driver of the said offending vehicle at the time of accident. The said Truck was insured with the O.P. No.3, the New India Assurance Co. Ltd. vide policy No. 530706/31/04/03338, valid up-to 8.12.2005. The contents of Ext-1 are not challenged by the defence. The accident report (Ext-1) does not state anything regarding the involvement of the aforesaid Maruti Car bearing No. AS-05/7727. After the accident, Pulibor police station registered the case vide Pulibor P.S. Case No. 15/05. As the Ext-1 has not been challenged by the defence, therefore, the contents of Ext-1 have been accepted as true. From the said exhibit, it appears to be that the aforesaid offending Truck was involved in the accident causing injury to the claimant.

In cross examination of C.W.1, it is found that during the relevant period, the husband of the claimant, who was the owner of the Maruti Car No. AS-05/7727, drove the said vehicle. The claimant was the passenger of the said Maruti car during the relevant period. The offending Truck bearing Registration No. NL-02-D/4064 in the instant case, dashed against the said Maruti Car on the date of accident.

In cross examination by the O.P. No.5, C.W.1 has stated that the accident took place due to rash and negligent driving on the part of the driver of the offending Truck No. NL-02-D/4064 .

11. From the aforesaid evidence of the claimant, we find that the accident occurred due to rash and negligent driving of the vehicle No. NL-02-D/

4064 (Truck). Therefore, we find that there is cause of action of the claimant against the O.P. Nos. 1, 2 and 3 and the claim application is maintainable in law.

Hence, both the Issues Nos. 1 & 2 are decided in affirmative.

ISSUE NO. 3 :

12. C.W.2 Dr. Sayed Sajadur Rahman has deposed in evidence that he was one of the Member of the Medical Board constituted by the Joint Director of Health Services, Golaghat. But the date was not mentioned by him. He has further deposed that he is an Eye Specialist and on examination of the injured Smti. Mamoni Khound, he found lower eyelid retraction (right) due to scar formation sustained by the injured/claimant and opined that the claimant has suffered from 70% disability.

In cross examination, C.W.2 has stated that the left eye of the claimant is intact. If one eye is completely damaged, then there is 30% disability. Out of 30% of damage, there is mentioned as 70% of damaged in Ext-8, the physical disability certificate. Further, Ext-8 has no evidentiary value as no date of examination has been mentioned in Ext-8. As per the Schedule of Employee's Compensation Act, 1923, loss of one eye is 40% disability ; loss of vision of one eye is 30% ; and loss of partial vision of one eye is 10%.

13. The case of the claimant is not covered by the aforesaid Schedule. However, for the sake of benefit of the claimant, we assumed that the claimant has sustained 1% disability. As per the expenditure statement as submitted by the claimant, she had spent Rs. 4,490/- only, for the medical treatment due to the injury sustained by her in the motor accident. On perusal of the other medical papers, we find that she had not suffered any serious injury. The claimant is the house wife and a non-earning member. The notional income of the house wife in case of non-earning person is to be assumed as Rs.3,000/- per month. From the Ext-2, the discharged slip, it is found that the date of admission of the claimant in the Nursing Home was 9.2.2005 at 12'30 A.M. and date of discharged was 11.2.2005. From the said Ext-2, we find that the claimant has been remaining as indoor patient only for two days.

14. Considering all the aforesaid evidence on record, we assumed that a lump-sum amount of Rs.10,000/- is sufficient to award as compensation to the claimant on the head of medical expenditure, pain and sufferings etc. which

would be the just and reasonable amount of compensation in the instant case. The said amount of compensation is liable to be paid by the O.P. No.3, the New India Assurance Co. Ltd., the insurer of the offending Truck bearing No. NL-02-D/4064. I find no liability against the O.P. No.5, the National insurance Co. Ltd.

Hence, the Issue Nos. 3 is decided accordingly.

ORDER :

15. In the result, the claim petition is allowed on contest against the O.P. No.3, the New India Assurance Co. Ltd., Beltola Branch, Guwahati for the amount of Rs. 10,000'00 (Rupees ten thousand) only, to be paid to the claimant along with simple interest @ 6% per annum from the date of filing of the claim application, i.e. from 5.8.2006 till realization of the entire amount. The O.P. .3 shall deposit the awarded compensation with interest thereon in the Claim Tribunal within 60 days from the date of judgment and award.

16. Let a copy of the judgment & Order be sent to the O.P. No.3, the New India Assurance Co. Ltd. Beltola Branch, Guwahati for information and necessary action.

Given under my hand and seal of the Tribunal on this the 1st day of November, 2013.

(T. Lohar),
MEMBER,
M.A.C.T., GOLAGHAT.

Dictated & Corrected
by me.

(T. Lohar),
MEMBER,
M.A.C.T., GOLAGHAT.

Dictation taken & Transcribed
by me :- S. Borpatra, Steno