

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

ITANAGAR PERMANENT BENCH
(NAHARLAGUN)

MAC. APPEAL NO. 02(AP)2016

Oriental Insurance Company Ltd.
Represented by its Senior Divisional Manager
Takar Complex, Naharlagun
P.O. & P.S. Naharlagun
District Papum Pare, PIN 791110, Arunachal Pradesh
Mobile No. 9864326457.

.... Appellant

-Versus-

Sri Dinanath Bagat, Son of Lt. Kishan Bagat, Resident of Salempur village,
PO & PS - Bikuntahpur, District - Gopalganj, State - Bihar.

..... Respondent

By Advocates:

For the appellant: Mr. Uttam Deka
Mr. Chorpok Modi
Mr. T. Char

For the respondent:

:::BEFORE:::
HON'BLE MR. JUSTICE AJIT BORTHAKUR

Date of hearing : **29.01.2018**
Date of Judgment : **29.01.2018**

JUDGMENT & ORDER (ORAL)

Heard Mr. Uttam Deka, learned counsel for the appellant.

2. This is an appeal under Section 173 of the Motor Vehicles Act, 1988 preferred against the judgement and award, dated 12.11.2015, passed by the learned Member,

Motor Accident Claims Tribunal, Basar, West Siang District, Arunachal Pradesh in MAC case No. 13 /2010 whereby, the appellant / opposite party No. 1- Oriental India Insurance Co. Ltd is directed to pay a sum of Rs. 4, 50,000/- (Four Lakh Fifty Thousand) only inclusive of No Fault Liability amount with interest @ 6% per annum from the date of filing of the claim petition, i.e 12.11.2010, till payment within a period of 2 (two) months from the date of the aforesaid judgement and order.

3. The claimant / respondent's case, in a nutshell, is that on 03.11.2010, his father Kishan Bagat met with a road traffic accident, near M/S Tana Nguki shop, Forest tinali , Daporijo, where he was working as a labour in a truck bearing registration No. AS 07 B 51282, belonged to the opposite party No. 2 and driven by the opposite party No. 3. The said vehicle was duly insured with the appellant /opposite party No. 1 . The claimant stated that at the relevant time, the deceased was aged about 40 years and was a labourer by profession having monthly earning of Rs. 3500/- (Three Thousand Five Hundred) only. Hence a claim was made by the deceased's son – the claimant praying for compensation of an amount of Rs. 4,50,000/-(Rupees Four Lac Fifty Thousand) only.

4. The appellant / opposite party No. 1 – the insurance company contested the proceeding by filing a written statement denying the case of the claimant. By an order, dated 24.01.2011, the Tribunal struck off the appellant / opposite party No. 1 – the insurance company on the ground that the insurance policy of the owner had expired and as such, the insurance company cannot be held liable for payment of any compensation. Subsequently, an order was passed, on 16.11.2011, that since the counsel for the insurance company remained absent continuously, so the insurance company was barred from cross examining the two witnesses of the claimant and it was fixed for delivery of judgement and award. However, by order, dated 12.01.2015, the learned Tribunal upon hearing both the sides recalled the said order, dated 24.01.2011. The learned Tribunal, thereafter, based on the pleadings, framed the issues in the proceeding. In course of the proceeding, the claimant examined 2 (two) witnesses including himself. None of the opposite parties inclusive the appellant / opposite party No. 1 – the insurance company cross examined the said two witnesses of the claimant. The claimant exhibited 6 (Six) documents. After scrutiny of the evidence, oral and

documentary, and after hearing the learned counsel for the claimant only, the learned Tribunal passed the impugned judgement and award as stated above.

5. By preferring the instant appeal, the appellant / opposite party No. 1- insurance company has assailed the above judgement and award of the learned Tribunal, on the grounds, inter-alia , that the insurance company is not liable to pay the compensation to the legal heirs of the deceased as the deceased died in course of his employment and as such the provisions of Workmen's Compensation Act, 1923 are applicable, instead of the provisions of the Motor Vehicles Act, 1988 .

Notice was issued to the claimant / respondent by registered A/D post which returned after service, but none appeared on his behalf.

6. Mr. Uttam Deka, learned counsel appearing on behalf of the appellant / opposite party No. 1 – the insurance company submits that the claim involves substantial questions of law and facts and as the witnesses of the claimant were not cross examined and further, vital documents also could not be exhibited to substantiate the company's grounds of contest cited in the written statement, an opportunity may be granted to the insurance company to establish the same by way of cross examining the witnesses and leading some oral evidence, if any.

7. Having regard to the grounds of appeal and hearing the learned counsel for the appellant, this court is of the considered opinion that for ends of justice, it is desirable that an opportunity may be granted to the appellant / opposite party No. 1-The insurance company to cross examine the witnesses examined by the claimant / respondent and to adduce evidence, oral and documentary.

Accordingly, the impugned judgment and award, dated 12.11.2015, passed by the learned Member, Motor Accident Claims Tribunal, Basar in MAC(BSR) Case No. 13/2010 is hereby set aside .

8. Consequently, **the appeal is allowed** with a direction to the learned Tribunal to give an opportunity of cross-examination of the claimant's witnesses and to lead evidence, if any to the appellant /opposite party No.1- The insurance company. The entire exercise shall be completed within a period of 60 (sixty) days from the date of

receipt of copy of this judgment and award by the learned Tribunal and deliver a fresh judgement, thereafter, in accordance with law . No cost.

9. Send back the LCRs to the learned Tribunal immediately.

JUDGE

Victoria