

CASE NO.:
Appeal (civil) 5365 of 2001

PETITIONER:
NEW INDIA ASSURANCE CO. LTD.

RESPONDENT:
GIRIBALA KALITA & ORS.

DATE OF JUDGMENT: 28/02/2008

BENCH:
A.K.MATHUR & ALTAMAS KABIR

JUDGMENT:
JUDGMENT

O R D E R

We have heard learned counsel for the parties.

This appeal is directed against the order passed by the Gauhati High Court dated 28th March, 2000 in M.A. (F) No.4 of 1994 whereby the learned Single Judge has held that the Claims Tribunal has gone wrong in not holding the insurance company liable for the full amount of compensation claimed by claimant and it has confined the liability to the extent of Rs.50,000/- only.

Aggrieved against this order the present appeal was filed by the insurance company. It is alleged that on 20th November, 1987 Dambarudhar Kalita was driving his autorickshaw when he was hit by Omni bus bearing registration No. NLV-12. He sustained serious injuries and was removed to the hospital where he succumbed to his injuries. Therefore, the claimants i.e. mother and brother of the deceased Kalita filed a claim petition

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before the MACT, Gauhati as legal heirs of the deceased, claiming a sum of Rs.1,80,000/-. The objection of the appellant insurance company was that their liability is to the extent of Rs.50,000/- only.

Aggrieved against the order dated 25th June, 1993 an appeal was preferred by the claimants before the High Court and the High Court held that it is wrong to say that the insurance company's liability is to the extent of Rs.50,000/- only but insurance company is liable for the entire amount. Accordingly, the entire liability was fastened on the insurance company.

Aggrieved against the order passed by the learned Single Judge dated 28th March, 2000 the present appeal was filed. It is alleged that the vehicle was owned by one Ramchandran. A notice was issued by this Court to Ramchandran who alleged to be the owner of the vehicle but he was not represented despite service. Therefore, again a notice was issued to Ramchandran. In pursuance of that notice the learned counsel for Ramchandran appeared and filed his counter affidavit. He pointed out in his counter affidavit that he was never granted any permit in North East States of the vehicle which is said to be met with an accident. He also submits that he was never served by the claims tribunal nor by the High Court but

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somehow, somebody else was representing on his behalf by filing power of attorney. He has produced the specimen signatures on the income tax clearance certificate and on two bank accounts. He has also produced the copy of the power filed before the claims tribunal wherein it is said to have been owned by Ramchandran but his signatures on the power of attorney and that of signatures which appears on the income tax return and on the bank account does not tally. Therefore, he submitted that he was never served with notice by the Tribunal or High Court and somebody else is alleged to have been appearing on behalf of

Respondent No.3 herein.

We have gone through the papers and we find that there is some doubt about the signatures of Respondent No.3 on the so called power of attorney and also on the written statement. The original record was brought before this Court and the certified copies of that record has been filed by the respondent which shows that the signatures of Ramchandran appears to have been forged one as they are not similar to the signatures of Ramchandran on the basis of the documents produced before us.

Since it is a very serious matter that somebody else is appearing by proxy on behalf of Ramchandran and matter has been disposed of by the Court on the so called

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representation by Respondent No.3 whereas Respondent No.3 submits that he never appeared before the Courts below nor appointed any power of attorney. Therefore, it is a very serious matter which has to be investigated as to who is the proxy on behalf of Respondent No.3. However, looking to the facts and circumstances we think it proper that the investigation should be done to find out whether Respondent No.3 was the same person and whether he was being duly represented before the Lower Court or not. Prima facie on the basis of the record which is made available before us, it appears that Respondent No.3 was never served either before the claims tribunal or before the High Court.

Consequently, we set aside the order and remit this case back to the Claims Tribunal to investigate into the matter and find out that whether Respondent No.3 was really served or not. In case the Tribunal comes to the conclusion that Ramchandran was rightly being represented then the order passed by the Claims Tribunal need not be interfered. However, the question of law which has been raised by the appellant shall remain open and should be decided in accordance with law.

Therefore, we allow this appeal, set aside the order of the Claims Tribunal as well as the order of the

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High Court and remit this case back to the Claims Tribunal to decide first that whether Respondent No.3 was properly served or not or whether the vehicle which met with an accident belong to him and it was registered and insured by the appellant or not.

It has been pointed out that an amount of Rs.50,000/- which is the statutory liability along with the interest was deposited. If that has not been released to the respondents-claimants then it may be released. However, in pursuance of the order passed by this Court on 4th August, 2000 the entire amount was directed to be deposited by the appellant. If the appellant has deposited the entire amount then out of that amount Rs.50,000/- with interest accrued on that which is the statutory liability may be released to the claimants forthwith if not released so far. Rest of the amount, if deposited, shall be kept in the fixed deposit till the matter is disposed of by the Court. If the amount, as ordered by this Court on 4th August, 2000 has not been deposited by the appellant so far, then the appeal shall stand dismissed without reference to this Court. The Tribunal shall first ensure that if the amount as directed by this Court vide order dated 4th August, 2000 has been deposited by them or not. If the amount has not

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been deposited then the Tribunal need not proceed with the matter and then the appeal shall stand dismissed. It will be open for the claimants to proceed and make a recovery of the amount from the insurance company.

For the convenience of the Claims Tribunal we reproduce the order passed by this Court on 4th August, 2000 :-

\023Issue notice.

In the meanwhile, the order under challenge shall remain stayed provided the petitioner deposits the entire compensation within four weeks from today. In case the amount is deposited, it will be open to the claimant to withdraw the said amount without furnishing any security.\024

The appeal is accordingly, allowed. The order of the High Court and Claims Tribunal is set aside. The case is remitted back to the Claims Tribunal.
No order as to costs.

JUDIS