Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

MAC App. No. 1 of 2022 with
MAC App. No. 2 of 2022
MAC App. No. 3 of 2022

Date of Decision: 31.05.2023

New India Assurance Co. Ltd. Vs. Smti Dresilla Mawroh & 2 Ors.
New India Assurance Co. Ltd. Vs. Smti Meris Kharmalki & 2 Ors.
New India Assurance Co. Ltd. Vs. Smti Shmir Mylliemngap & 2 Ors.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. S. Jindal, Adv.

For the Respondent(s) : Mr. Th. Rakesh Singh, Adv. (R-1)
Mr. A. Khan, Adv. (R-3)

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

C O M M O N J U D G M E N T

1. Not being satisfied by the common judgment and order dated 30.07.2021 passed by the learned Member, Motor Accident Claim Tribunal, East Khasi Hills District, Shillong in MAC Case Nos. 95, 96

and 97 of 2006 respectively, the appellant/New India Assurance Co. Ltd. has now approached this Court with this appeal, inter alia, with a prayer that the said impugned judgment be set aside or be modified.

2. Since a common judgment and award was passed by the learned MACT, though three separate appeals were filed by the appellant, it would be prudent and convenient for this Court to consider the pleadings and argument of the parties and to pass a common judgment accordingly.

3. Facts admitted by the parties herein is that on 20.04.2006 a motor vehicle accident occurred at about 7.00 pm or so, at a place called Ur–Masi–U–Joh, Smit in the East Khasi Hills District involving a Bus bearing registration No. ML-05-2775.

4. The cause of the said accident was due to rash and negligent driving of the driver of the said bus who, in spite of warnings of the passengers drove the same at a very high speed and on reaching the place of occurrence, the bus overturned and in the process a number of passengers sustained injuries and death also occurred.

5. The husband of Claimant No. 1 in MAC No. 97 of 2006 died as a result of the said accident, while the Claimant in MAC No. 95 of 2006 as well as the Claimant No. 1 in MAC No. 96 of 2006 sustained injuries

on their person. These three along with other claimants have accordingly approached the learned MACT seeking award of just compensation for the loss incurred etc.

6. The learned MACT while adjudicating on the claims of the parties herein, having recorded the evidence and on appreciation of the same along with all relevant materials on record, passed the impugned judgment and order awarding compensation of ₹ 9,28,000/- to the Claimants in MAC No. 97, ₹ 62,123/- to the claimants in MAC No. 95 and ₹ 42,806/- to the claimants in MAC No. 96. The said award also carried an interest of 9% p.a. from the date of filing of the application till 31.01.2020 when the cases were first posted for judgment.

7. Mr. S. Jindal, learned counsel for the appellant/New India Assurance Co. Ltd. has assailed the said impugned judgment and order by raising a preliminary issue of non-adherence to the principle of natural justice by the learned Tribunal inasmuch as in the impugned judgment, at para 17 it is noticed that the learned Tribunal has recorded that the counsels have relied on the written argument filed by them and accordingly, the matter was posted for judgment. However, as far as the appellant is concerned, no written argument was ever filed since it was prayed before the Tribunal for oral submission to be made which fact was

ignored in the impugned judgment. It is the submission of the learned counsel that the appellant was not heard before the impugned judgment was passed.

8. It is also submitted that at para 56 of the impugned judgment the learned Tribunal had noticed the earlier order dated 25.04.2008 passed in the case wherein on an application for grant of interim relief, the Tribunal has allowed the prayer and has accordingly granted interim relief of ₹ 50,000/- to the respondent No. 1/claimant in MAC No. 97. However, on an application for review of the same, has accordingly, vide order dated 02.09.2008 reviewed the order dated 25.04.2008 and has held that the appellant/Insurance Company is not liable to pay interim relief. If the appellant is not liable for interim relief, it stands to reason that even the award granted is also not liable to be satisfied by the appellant, which fact was ignored by the passing of the impugned judgment.

9. The learned counsel has again submitted that from the records it was revealed that the owner of the bus involved in the accident was one Trowell Wahlang, who was originally impleaded as Opposite Party No. 1 in the claim application. In course of the proceedings, it was found out that Trowell Wahlang was since deceased and was eventually substituted by his wife who is the respondent No. 2 in all three cases herein. In the

written statement filed by the wife/respondent No. 2, she has clearly stated that her husband had expired on 04.07.1997 whereas the accident took place on 20.04.2006.

10. The learned counsel has then referred to the insurance policy for the said bus as on the date of the accident, the policy stood in the name of the deceased Trowell Wahlang, when actually by then, he has since expired. Therefore, fraud was perpetrated upon the appellant/Insurance Company. In the language of the Tribunal's order dated 02.09.2008 wherein it was held that "…*the New India Assurance Co. Ltd is not liable for compensation until proved otherwise*…" the same would mean that the said policy being invalid, the onus would be upon the claimants to prove otherwise which was not done so in their evidence and as such, the Insurance Company/appellant is not liable for payment of compensation as directed.

11. It is further submitted that the learned Tribunal, particularly at para 65 of the impugned judgment has observed that the appellant/Insurance Company has not produced any more evidence to prove the allegation of fraud and that an FIR was also not lodged by the appellant/Insurance Company in this connection and further that the wife of (L) Trowell Wahlang was also not summoned by the

appellant/Insurance Company to prove this fact. This is an erroneous finding since the fact that the policy proposal was under the alleged signature of the deceased who has since expired and the subsequent issuance of the said policy was on the basis of the said proposal, on the face of the acknowledgment by the respondent No. 2/wife of the deceased owner that he has since expired on 04.07.1997, therefore there is no requirement for further evidence in this regard.

12. On reliance of the learned Tribunal on the case of United India Insurance Company Limited v. Santro Devi & Ors.: (2009) 1 SCC 558, the learned counsel has submitted that there is a stark difference between the ratio laid down in the said case and the facts of the case before the Tribunal inasmuch as at para 14 of the Santro Devi case, the Apex Court has observed that "*Indisputably, from raising a general and vague plea of fraud, no particulars thereof had been disclosed…no witness has been examined on behalf of the appellant alleging that they were not aware thereabout*". At para 21 it was again observed that "*We have noticed hereinbefore that no witness was examined on behalf of the appellant. Only a competent officer informed in the matter could have disclosed as to whether the widow of late Atma Ram Sharma had signed any document or whether the fact that Atma Ram Sharma had expired in the year 1991*

came to be known to the officers of the appellant only after the accident had taken place…". In conclusion, at para 26 it was observed "…*it cannot be said that the contract itself is void unless it was shown that in obtaining the said contract a fraud had been practiced. Not only the particulars of fraud had not been pleaded, but even no witness was examined on behalf of the appellant. It cannot, thus, be said that a case of fraud in the matter of entering into the contract of insurance had been made out by the appellant*."

13. The learned counsel has submitted that in the case of Santro Devi (supra) the exact nature of fraud had not been elaborated by the insurance company and no witness had been examined by it to establish the fraud. In the present case, however the appellant/Insurance Company had pleaded and tendered evidence of OPW No. 1 as to in what manner the fraud had been played on the appellant/Insurance Company. This is clearly distinguishable as regard the two situations set out above and as such, the learned Tribunal by relying on the Santro Devi case has come to a wrong conclusion which can only be corrected by this Court in this appeal.

14. It is, therefore, prayed that the impugned judgment and order for payment of compensation by the appellant herein may be set aside or

suitably modified to exonerate the appellant of the liability casts upon it by virtue of the said judgment and order.

15. Per contra, Mr. Th. Rakesh Singh, learned counsel for the respondent No. 1/claimants in all the related appeals in his defence of the impugned award, has submitted that the argument advanced by the learned counsel for the appellant does not merit consideration by this Court since no substantial ground has been made out to dislodge the findings and the reasoning of the learned Tribunal while passing the impugned award.

16. The contention of the appellant that the liability to pay compensation and to indemnify the owner of the vehicle involved in the accident does not arise since the same has been settled by the order dated 02.09.2008 passed by the Tribunal in Review Application No. 2(T) of 2008 wherein, the Tribunal has held that the appellant/Insurance Company is not liable to pay compensation, cannot be accepted since the said order dated 02.09.2008 was passed in an application seeking grant of interim relief under Section 140 of the Motor Vehicles Act, 1988, (MV Act) which is distinguished from the strict liability rule as could be found in the case of Kaushnuma Begum (SMT) & Ors. Vs. New India Assurance Co. Ltd. & Ors.: (2001) 2 SCC 9, para 20 which reads as

follows:

> *"20. "No Fault Liability" envisaged in Section 140 of the MV Act is distinguishable from the rule of strict liability. In the former, the compensation amount is fixed and is payable even if any one of the exceptions to the rule can be applied. It is a statutory liability created without which the claimant should not get any amount under that count. Compensation on account of accident arising from the use of motor vehicles can be claimed under the common law even without the aid of a statute. The provisions of the MV Act permit that compensation paid under "no fault liability" can be deducted from the final amount awarded by the Tribunal. Therefore, these two are resting on two different premises. We are, therefore, of the opinion that even apart from Section 140 of the MV Act, a victim in an accident which occurred while using a motor vehicle, is entitled to get compensation from a Tribunal unless any one of the exceptions would apply. The Tribunal and the High Court have, therefore, gone into error in divesting the claimants of the compensation payable to them."*

17. As far as the claim made by the respondent No.1/claimants, the same was preferred under Section 166 of the MV Act and accordingly, the learned Tribunal have examined the same and after appreciation of the evidence and the materials on record, has passed the award as provided under Section 168 of the said Act.

18. Going further on this point, the learned counsel for the respondent No. 1 has submitted that the appellant relying on the order dated 02.09.2008 (supra) has filed a petition before the Tribunal with a prayer to be dropped from the ongoing proceedings, however, the Tribunal vide order dated 06.10.2010 after duly noting the import and impact of the order dated 02.09.2008 has rejected the said application and has directed that the proceedings continue with all the parties who are arrayed therein. In the said order, it is however noticed that the prayer for grant of interim relief has been kept in abeyance to allow the appellant herein to prove its contention as regard the policy in question.

19. Another contention raised by the learned counsel for the respondent No. 1 is that the fact that the owner of the vehicle involved in the accident has since expired prior to the accident, but the policy as regard the said vehicle was still in his name on the date of the accident, for which the appellant/Insurance Company has contended that the same amounts to fraud being perpetrated on the Insurance Company, the same cannot be substantiated in evidence inasmuch as, the opposite party No. 1 /respondent No. 2 herein who is said to be the wife of (Late) Trowell Wahlang has simply filed her written statement before the Tribunal, wherein, in such written statement, it was stated that Trowell Wahlang

has since expired in the year 1997, but the same including the alleged death certificate was never produced in evidence. Therefore, placing reliance on the contents of the said written statement and bringing a witness to testify to the same, will not help the case of the appellant/Insurance Company to prove the factum of fraud.

20. The learned counsel has maintained that the fact that the Insurance Policy in question was valid on the date of the accident has not been disproved by the appellant and as such, the appellant/Insurance Company cannot be absolved of its liability to indemnify the owner of the said offending vehicle. The award granted by the Tribunal in favour of respondent No. 1 is therefore based on cogent evidence and the same cannot be faulted.

21. The final limb of argument advanced by the learned counsel for the respondent No. 1 is that, the factum of a motor vehicle accident having been confirmed, that death and injuries have resulted as a consequence of the same, that the claimants/respondent No. 1 being victims of such accident not being in dispute and finally that the policy at the relevant point of time being found valid, it is, therefore, incumbent upon the appellant/Insurer to satisfy the award qua the claimants/respondent No. 1 in the first instance and even if the contention

of the appellant on the issue of fraud is assumed to be true but not admitted herein, this is a matter between the insured and the insurer for which the claimant(s) cannot be made to suffer.

22. On this issue, the learned counsel has referred to the following:

i) Section 147(3) and 149(1) of the Motor Vehicle Act, 1988;

ii) V. Ravi v. New India Assurance Co. Ltd. & Ors., AIR 1997 Calcutta 242, para 5;

iii) National Insurance Co. Ltd. v. Swaran Singh & Ors. JT: 2004 (1) SC 109, para 102. Related citation: (2004) 3 SCC 297.

23. This Court on consideration of the contention and submission raised by the parties in support of their respective case would now examine and analyze the same by looking into the contents in the memo of appeal as well as the impugned judgment and order and the orders passed by the learned Tribunal in course of proceedings in the matter leading to the passing of the said impugned judgment and order.

24. At the outset, it may be mentioned that in course of hearing, the appellant speaking through its counsel at the bar has maintained that the

main challenge in this appeal would only be on the findings of the learned Tribunal that the appellant/New India Assurance Co. Ltd. is liable to indemnify the owner of the vehicle No. ML-05-2775 all the other findings of the learned Tribunal has not been challenged, since according to the said learned counsel, if the appellant is not found to be liable for satisfaction of the award so made by the impugned judgment and order, then all the other issues will pale into insignificance.

25. This Court will therefore confine its observations and findings mostly on the issue of fraud alleged to have been perpetrated on the Insurance Company as far as proposal and eventual acceptance of the same by the appellant/Insurance Company is concerned, thereby rendering the policy to be invalid on the date of the said incident and as a result of such fraud, the appellant/Insurance Company is thereby not liable to satisfy the award, made by the Tribunal in this respect.

26. The appellant has heavily relied on the order dated 02.09.2008 passed by the Tribunal, wherein on an application for review of the order directing payment of interim relief, the Tribunal had observed that since the insurance policy was obtained in the name of a deceased person, the same is not valid. The Tribunal went on to hold that the appellant/Insurance Company is not liable for compensation until proved

otherwise.

27. What the appellant failed to observe is that in the said order dated 02.09.2008, the Tribunal has not passed a definite and final order inasmuch as the observation made at para 21 of the said order the Tribunal has only come to a prima facie finding that the said policy is not a valid one. Similarly, at para 22 the Tribunal has again held that the insurance company is not liable for compensation until proved otherwise. This would only mean that the insurance company has yet to prove that the said policy is not a valid one and the liability or non-liability for payment of compensation has also to be proved, meaning that evidence has to be led in this regard.

28. That the proceedings before the Tribunal have travelled from the stage of presentation of pleadings till the stage of recording of evidence and eventually on the Tribunal having appreciated the evidence and coming to a finding that the policy is a valid one, holding that the Insurance Company has not been able to prove otherwise, it cannot be said that the order dated 02.09.2008 has been misconstrued or totally ignored in the impugned judgment and order. In fact, with the leading of evidence and proof of validity of the said policy in question being found to be in the positive, the order dated 02.09.2008 has merged with the final

order.

29. It cannot be denied that at the time of the said accident, the said policy was valid, which fact was also proved by the OPW No. 4 who is an official of the appellant/Insurance Company, when in her deposition before the Tribunal, she has clearly stated that the said policy at the time of the accident was a renewal policy which stood in the name of Trowell Wahlang.

30. Again, from the records it would appear that the appellant/Insurance Company came to know of the alleged fraud only from the written statement filed by the OP No. 2/wife of the deceased owner who has stated that her deceased husband was the owner of the said offending vehicle but that he has since expired in the year 1997 which was many years prior to the date when the said accident occurred. At the relevant point of time, it would have been incumbent upon the Insurer to safeguard its interest by taking necessary action and steps such as filing of FIR, etc. but the same was not done so. To contend that the observations of the learned Tribunal in the impugned judgment to this effect was not warranted cannot be fathom by this Court since the main challenge of the appellant is on the issue of invalidity of the said policy on account of fraud, which should have been addressed accordingly at the

first instance and for which the claimants/respondent No. 1 should not be made to suffer.

31. If the policy is a valid one, then the relevant provision, that is, Section 147(6) of the MV Act, 1988 would be applicable to the case of the claimants/respondent No. 1. It would not be out of place to reproduce Section 147(6) for a clearer picture on this aspect.

> "*147(6).* ***Requirement of policies and limits of liability.***–
> *(6) Notwithstanding anything contained in any other law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons."*

32. It is also to be noted that in a case under consideration before a court, the court is not bound to grant declaration as prayed for on mere admission of a certain fact or on production of a particular document. The court can still insist for clear proof even by way of evidence. In the case between the parties herein, the admission of the death certificate of the owner of the said vehicle involved in the accident as documentary proof based on whatever had been stated in the written statement, cannot be the final proof without evidence being led to verify the authenticity of the

same. The learned Tribunal in observing that the appellant/Insurance company require to produce more evidence is therefore not off the mark on this account.

33. On reliance of the learned Tribunal in the impugned judgment in the case of Santro Devi (supra) the learned counsel for the appellant has made his submission as noticed at para 12 and 13 above and has contended that the Tribunal has committed an irregularity in this regard, this argument can be accepted to a certain extent inasmuch as the similarity in the case of Santro Devi and this case is that the issue of fraud was brought to the fore by the relevant parties. That the Hon'ble Supreme Court has held that fraud could not be established apparently on the Insurance Company's failure to produce evidence in this regard, in this case however, the appellant has argued that the issue of fraud has been successfully answered through the evidence of the OPW No. 4 who has incidentally relied on the pleadings of the OP No. 2/wife of the deceased owner of the vehicle. Again, it can be seen that the issue of fraud has not been finally settled or decided since the appellant/Insurance Company is yet to take necessary steps in this regard and the OP No. 2 not having been brought to the stand to prove or disprove her pleadings, the appellant/Insurance Company cannot be allowed to prove its case firing

from someone else's shoulders.

34. In view of the observations and findings made above, this Court is of the considered opinion that the impugned judgment and order was passed after taking everything into consideration and there is found no infirmity in the same.

35. The appellant/Insurance Company is however not left without any remedy but could still pursue the issue of fraud and the invalidity of the policy vis-à-vis the owner of the said offending vehicle. As far as the respondent No. 1/claimant is concerned, they cannot be deprived of just compensation due and payable to them.

36. Of the authorities cited by the learned counsel for the respondent No. 1, one found relevant by this Court is the case of Swaran Singh (supra) wherein the principle of pay and recover later would apply to the present case since there is no dispute that the claimant/respondent No. 1 are entitled to the award of compensation as decided by the learned Tribunal and since the appellant/Insurance Company has raised the issue of invalidity of the policy in question, even if this aspect is considered, it would be incumbent for the Insurance Company to satisfy the award and to recover the same from the owner and driver of the offending vehicle following due process of law. In this regard, para 104 and 107 are set

forth herein to prove this point.

> "*104. It is, therefore, evident from the discussions made hereinbefore that the liability of the insurance company to satisfy the decree at the first instance and to recover the awarded amount from the owner or driver thereof has been holding the field for a long time.*
>
> *107. We may, however, hasten to add that the Tribunal and the court must, however, exercise their jurisdiction to issue such a direction upon consideration of the facts and circumstances of each case and in the event such a direction has been issued, despite arriving at a finding of fact to the effect that the insurer has been able to establish that the insured has committed a breach of contract of insurance as envisaged under sub-clause (ii) of clause (a) of sub-section (2) of Section 149 of the Act, the insurance company shall be entitled to realise the awarded amount from the owner or driver of the vehicle, as the case may be, in execution of the same award having regard to the provisions of Sections 165 and 168 of the Act. However, in the event, having regard to the limited scope of inquiry in the proceedings before the Tribunal it had not been able to do so, the insurance company may initiate a separate action therefor against the owner or the driver of the vehicle or both, as the case may be. Those exceptional cases may arise when the evidence becomes available to or comes to the notice of the insurer at a subsequent stage or for one reason or the other, the insurer was not given opportunity to defend at all. Such a course of action may also be resorted to when a fraud or collusion between the*

victim and the owner of the vehicle is detected or comes to the knowledge of the insurer at a later stage."

37. This Court may hasten to add that in the case of the appellant/Insurance Company, the alleged case of fraud was said to have been detected at a very early stage of the proceedings before the learned Tribunal and as such, suitable action should have been taken then.

38. In the final analysis, this Court has come to the conclusion that the impugned judgment and order does not suffer from any infirmity and is therefore not liable to be set aside and quashed. The same is hereby upheld.

39. The appellant/Insurance Company is directed to comply with the direction of the learned Tribunal and to make payment of the compensation awarded to those entitled to herein within a period of two months from the date of receipt of certified copy of this judgment.

40. The Tribunal's record is hereby directed to be send back.

41. Appeal disposed of. No costs.

Judge

Meghalaya
31.05.2023
"Tiprilynti–PS"