

GAHC010123182017



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

Case No. : MACApp./84/2017

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

VERSUS

SMTI LAKHI DAS and 3 ORS
W/O LATE DWIJEN CH. DAS

2:SMTI PHULESWARI DAS

M/O LATE DWIJEN CH. DAS
BOTH ARE R/O VILL. JHARPARA
P.O. LENGTISINGA
P.S. ABHAYAPURI
DIST. BONGAIGAON
ASSAM
PIN 783384

3:TARUN KUMAR SINGHA

S/O SRI TANJEW SINGHA
BERABAX
P.O. SONAI
DIST. CACHAR
ASSAM
PIN 788119

4:M/S DUDHNOI OIL SERVICE

P.O. and P.S. DUDHNOI
DIST. GOALPARA
ASSAM
PIN 78312

Advocate for the Petitioner : MS.R D MOZUMDAR, MS.C MOZUMDAR

Advocate for the Respondent : MR.A BOROR-3, MS A RAMCHIARY,MS C TALUKDAR (R-4),MS T RAMCHIARY (R-4),MS.M BASUMATARY(R-3),MR.B RAMCHIARY(R-3,4),MR. T U LASKAR,MR.N DHAR,MS.C TALUKDAR,MR.M DEKA,MR.S ISLAM,MRH HAQUE,FOR CAVEATOR,MR.I A TALUKDAR

BEFORE
HONOURABLE MRS. JUSTICE YARENJUNGLA LONGKUMER

Date : 30-04-2026

JUDGMENT AND ORDER (ORAL)

The instant appeal under section 173 of the Motors Vehicle Act (M.V. Act 1988 for short) has been filed by the Oriental Insurance Company against the judgment and award dated 05.06.2015 passed by the learned Member, MACT-3 Kamrup in MAC Case No.718/2011 and the order dated 21.12.2015 passed in MISC Case No.14/2015.

2. By the impugned judgment 05.06.2015 the MACT has awarded compensation of Rs.12,77,00/- to the claimants as compensation on account of the death caused to the deceased husband of the claimant No.1 in a motor vehicle accident and the liability to pay such compensation has been fastened upon the appellant/Insurance Company. Thereafter, a Misc Case No.14/2015 was filed by the claimants praying for recovery of the awarded amount as the insurance company did not deposit the awarded amount even after the lapse of four months from the day of passing the judgment and award dated

05.06.2015. The appellant/insurance company also filed an affidavit in the Misc Case 14/2015 objecting to the deposit of the awarded amount as the date of accident was not covered by the alleged insurance policy and therefore the insurer was not liable to pay the compensation amount. However, the learned MACT dismissed the objection of the insurer on the ground that the insurance company should have proved the same during the trial.

3. Learned counsel Ms. R.D Mozumdar appearing for the insurance company submits that it is clearly established from the record that the insurance policy was effective only from 27.01.2011, whereas the accident occurred on 22.01.2011. Learned counsel states that this Court by order 17.07.2018 had had taken the view that in view of the allegations and counter allegations made by both the sides an opportunity should be given to adduce evidence in respect of the policy. The Trial Court record was sent to the Tribunal for allowing the parties to adduce additional evidence in respect of the policy. It was further directed that the Tribunal shall complete the process of taking evidence within 3 months from the date of the evidence of the parties and send back the record along with the additional evidence. Thereafter, the additional evidence was adduced and the records have been received back. Learned counsel for the appellant draws the attention of this Court to the evidence of DW-2/Pranay Kr. Brahma who is the Divisional Manager Bongaigaon Division of the Oriental Insurance Company. The DW-2 testified that the offending vehicle was insured with the company till 2010 but after that the vehicle was being driven without any policy from 21-01.2011 to 27.01.2011. He also stated that the owner has to submit the RC, proposal form, station report of the Motor vehicle Inspector and money receipt for getting the vehicle insured with the company. Further, the proposal form is to be signed by the owner along with its declaration. He

deposed that manual policies were issued only till 2008 and from 2009 onwards the system has become computerised. He stated that barcode was issued from the year 2017. In his cross-examination the DW-2 deposed that upon verification of the documents it was revealed that the policy was issued on 27.01.2011 from 00.00 hrs till midnight of 26.01.2012. However, the accident occurred on 22.01.2011 and as such the policy submitted by the owner of the vehicle is found to be a manufactured document as the policy was issued only on 27.01.2011 with validity till midnight of the next year instead the date 21.01.2011 as shown in the policy exhibited as Ext.II by the vehicle owner. Shri Sarvesh Suman, A.O Legal department of the regional office of Oriental Insurance company at Guwahati also adduced evidence as the policy in question was issued from the Bongaigaon office which is under the Guwahati Regional office. This DW has exhibited the computer generated insurance policies pertaining to the Oriental Insurance Company. The computer-generated policy at Exhibit C shows that the owner of the vehicle/respondent 4 had a valid insurance policy only from 27.01.2008. The computer generated policies issued on 21.01.2011 is also exhibited as Ext.D wherein the name of the respondent no.4 does not figure.

4. Learned counsel has also relied on the evidence of one Mr. Robin Gayari who was produced as a witness by the respondent No.4/M/s Dudhnoi Oil Service. This witness deposed that he is the owner of the vehicle bearing registration AS-25 C/3037, oil tanker which had been hired by the M/s Dudhnoi Oil Service on contractual basis. He had deposed that the said vehicle was duly insured by the Oriental Insurance Company Ltd vide insurance policy No.322300/31/2011/7279 dated 21.01.2011. However, in his cross-examination Robin Gayari stated that he is not the registered owner of the vehicle and

further that he is not a salaried employee of the Dudhnoi Oil Station. Therefore, learned counsel submits that the respondent No.4/Dudhnoi Oil Service who was the owner of the offending vehicle never appeared before the Tribunal. Learned counsel submits that the insurance policy exhibited by the vehicle owner before the Tribunal is clearly a manufactured document as the issuance of manual policy has stopped in 2009 and only computer generated policies were issued from the year 2009 and as per the policies in the computer database, it is apparently clear that the policy was effective only from 27.01.2011. She has submitted that it is abundantly clear that at the time of accident, the offending vehicle was not covered under any insurance policy and the policy was obtained only subsequent to the occurrence of the accident therefore, fastening the liability upon the appellant is unsustainable in law. The learned counsel for the appellant has placed reliance on the following authorities in support of her submission: -.

1. ***Judgment 13.12.2018 passed in MACApp.190/2014***
2. ***Judgment dated 30.10.2025 passed in MACApp.244/2013***
3. ***Anil and Others vs New India Insurance Company Ltd in (2018) 2 SCC 482***
4. ***United India Insurance Company vs Rajendra Singh in (2000) 3 SCC 581***

Relying on the above judgments, the learned counsel submits that by producing a fake policy, the claimants have managed to obtain the award from the Tribunal. No judgment of a Court can be allowed to stand if it has been obtained by fraud as fraud unravels everything. She submits that it is a settled proposition of law that a judgment or decree obtained by plain fraud on the Court is a nullity and non est in the eye of law.

5. Per contra learned counsel Mr S.Islam appearing for the claimant respondents submits that Robin Gayari is the owner of the offending vehicle but he had given the vehicle to the respondent No.4 on contractual basis. He submits that the insurer had never raised the issue of fraud at any time during the trial of the case before the Tribunal. If at all the appellant had come to know that the policy produced by the owner of the vehicle was fake, the insurer should have filed an FIR, however, no such steps had been taken by the insurer till date. He has also submitted that the Insurance Company also failed to produce before the Tribunal any proposal form that the vehicle owner submitted. By relying on ***Balbir Kaur & others vs New India Assurance Company, 2009 13 SCC 370***, learned counsel submits that a policy, which is issued from a future date must be with the consent of the policy maker. The insurance company cannot issue a policy unilaterally from a future date without the consent of the policy holder. He submits that from the deposition of DW-2, the Divisional Manager, it can be seen that the vehicle owner had been consistently paying the premium till 2010 and DW also deposed that he had not submitted the application form submitted by the insured to the company and he also did not remember as to when the vehicle owner had submitted the proposal form. This goes to show that it was due to the lapses of the officials of the insurance company that the policy was not issued on time.

6. The learned counsel further submits that the fraud has not been established during the trial. He submits that the alleged fraud policy was produced and exhibited by the vehicle owner which was not rebutted by the insurance company before the trial Court. He also submits that the claimants/respondents have already withdrawn half of the 50% of the award deposited by the insurance company. He has therefore prayed that the interest of justice would

be met if this Court directs the insurance company to pay the remaining amount of the award and to recover from the owner and the driver of the offending vehicle.

7. The learned counsel for the respondents/claimants have also relied on the case of:-

1. Oriental Insurance Company vs Zaharulnisha in 2008 12 SCC 385
2. Oriental Insurance Company vs Premlata Shukla and Others in 2007 13 SCC 476
3. Manager National Insurance Company Ltd vs Saju P.Paul and Another in 2013 2 SCC 41
4. Amrit Paul Singh and Another vs Tata AIG General Insurance company Ltd in AIR 2018 SC 2662

8. The Court has duly considered the submissions of the learned counsel for the parties and perused the material available on record including the Trial Court Records. The Court has also duly considered the authorities relied upon by the parties.

9. The main issue to be decided in this appeal is whether the Insurance Company can be held liable for payment of compensation to the victim of a road accident when it is evident that the offending vehicle was not insured, and whether the subsequent insurance of the vehicle after the accident would fasten any liability upon the insurance company.

10. In the instant case it is an admitted fact that the claimant respondents are the legal heirs and rightful dependants of the deceased who died in a motor vehicle accident. It is also not denied that the deceased was a third party and therefore entitled to be compensated. No doubt, the insurance

company had never raised the issue of the policy being fake and manufactured before the Tribunal. However, as was held in the case of **Rajendra Singh (supra)** the appellants could not have resisted the claim before the Tribunal on the basis of the fake policy because the insurance company at that stage had no knowledge that the policy was fake. The law is settled that the issue of fraud can be raised at any stage of legal proceedings including appeal or revision because fraud vitiates everything. A judgment or decree obtained by fraud is a nullity.

11. Moreover, the fact that there was no valid insurance policy covering the vehicle of respondent No.4 is a negative fact and the insurance company cannot be asked to prove a negative fact by leading evidence as held by a coordinate bench of this Court in MACApp.190/2014. The Court held that on the contrary the burden to establish the fact that the vehicle was insured is upon the claimant.

12. As a result this Court is of the view that at the time of the accident there was no valid insurance coverage in respect of the offending vehicle. No doubt the legislative intent behind the motor vehicles act is clear. The victims of road accident should not be left remediless merely because of dispute between the insured and the insurer.

13. This case was remanded back to the Tribunal for adducing additional evidence and has returned back. By adducing additional evidence, the Appellant Insurer has been able to prove that the policy produced during the trial was a clear case of misrepresentation as far as the dates of validity are concerned. This was a fraudulent act on the part of the owner to change the dates.

14. It is noted that the contention of misrepresentation was raised belatedly by

the Insurance company only in the objection in Misc case No.14/2015. Nothing was produced in the main claim proceedings due to which the Tribunal proceeded on the basis that the Insurance Policy was valid on the date of the accident. Relying on the case of ***New India Assurance Co.Ltd Vrs Narayan Singh & Others*** reported in ***2025 INSC 1178***, the impugned judgement and award dated 05.06.2015 is partially modified. The appellant/Oriental Insurance Company shall not recover the amount of Rs.3,19,250/- already withdrawn by the claimant/respondents. However, the claimant/respondents shall be at liberty to realise the remaining amount of the award from the respondent No.4/M/s Dudhnoi Oil Station, owner of the vehicle AS-25 C 3036 (Oil tanker), in accordance with law.

15. The amount deposited by the appellant/insurance before this Court by way of statutory deposit of Rs. 25,000/- and the balance amount of Rs.3,19,250/- shall be refunded to the appellant after due verification.

16. The appeal is allowed and the impugned judgment stands modified to the extent indicated above.

18. Registry is directed to return the TCR forthwith.

JUDGE

Comparing Assistant