

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No(s).14015/2010

(From the judgement and order dated 22/02/2010 in MACA No.42/2007 of The HIGH COURT OF GUWAHATI ,ASSAM)

KHENYEI Petitioner(s)

VERSUS

NEW INDIA ASSURNACE CO.LTD.& ORS. Respondent(s)

(With prayer for interim relief and office report)
(FOR FINAL DISPOSAL)

WITH SLP(C) NO. 14699 of 2010

(With appln.(s) for exemption from filing c/c/ of the impugned judgment and prayer for interim relief and office report)

SLP(C) NO. 14700 of 2010

(With prayer for interim relief and office report)

SLP(C) NO. 14701 of 2010

(With prayer for interim relief and office report)

SLP(C) NO. 14743 of 2010

(With prayer for interim relief and office report)

SLP(C) NO. 14847 of 2010

(With prayer for interim relief and office report)

SLP(C) NO. 14865 of 2010

(With prayer for interim relief and office report)

(FOR FINAL DISPOSAL)

Date: 17/09/2013 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE T.S. THAKUR

HON'BLE MR. JUSTICE VIKRAMAJIT SEN

For Petitioner(s) Mr.Arunabh Chowdhury,Adv.
Mr. Anupam Lal Das,Adv.
Mr. Anirudh Singh,Adv.
Mr. Gainilung Panmei,Adv.
Mr. Vaibhav Tomar,Adv.

For Respondent(s) Mr. Kishore Rawat,Adv.
Mr. M.K. Dua,Adv.

UPON hearing counsel the Court made the following
O R D E R

The short question that falls for determination in these petitions is whether Traylor Truck bearing registration No.HR-38/D/3604 owned by Respondent No.2 Prem Singh was on the date of the accident, i.e., 29.7.2003 insured with Respondent No.1-New India Assurance Company Ltd.(for short 'Company'). It is not in dispute that the accident in question involved two vehicles one of which happened to be Traylor Truck mentioned above while the other happened to be Bus bearing No.NL-06/B/0027 which was admittedly insured with Respondent No.1 Company.

Before the Tribunal, the claimants-petitioners in these petitions had specifically asserted that the Traylor Truck was also duly insured with Respondent No.1 Company under Certificate

of Insurance bearing No.33461 issued from its Telco Tied Unit, Telco Spare Parts Building, Jamshedpur, under Adityapur Divisional Office, Adityapur, Jamshedpur, Bihar which insurance cover was valid upto 24.3.2004. The affidavit filed in the course of hearing before the Tribunal by one Mr. Tapas Kumar Ghosh, Divisional Manager of the Jamshedpur Divisional Office denied this allegation and urged that the Certificate of Insurance in question was not issued from his office. The High Court has relying upon the above affidavit and the absence of any other material to show that any insurance cover was existed for the offending vehicle held that the liability to pay compensation to the extent of two-thirds of the amount determined could not be fastened on the Insurance Company. The present special leave petitions assail that finding.

We have heard Mr. Arunabh Chowdhury, learned counsel appearing for the petitioners and Mr. M.K. Dua, learned counsel appearing for the Insurance Company at some length. The question whether the offending Trailor Truck mentioned hereinbefore was indeed insured with the first respondent Company, can be answered only if the facts asserted by the petitioners regarding the existence of such an insurance cover are verified. In the ordinary course, this should have been done more effectively before the Tribunal but keeping in view the fact that a large number of people belonging to weaker strata of society have been injured and are left high and dry, on account of the alleged absence of insurance cover for the Trailor Truck, we are inclined to make another attempt to verify the facts. For that purpose, we direct issue of bailable warrant against Respondent No.2, the owner of the vehicle who has chosen not to appear despite service of notice from this Court. The warrants shall be directed to the Sessions Judge, Hazaribagh, Jhamshedpur, Bihar for service through the concerned jurisdictional police station. The Sessions Judge shall submit a report regarding service of the warrants to this Court before the next date of hearing.

We are also of the view that since the offending Trailor Truck was said to be financed with Telco Tied Unit, Telco Spare Parts Building, Jamshedpur, a notice shall issue to the said Company to file an affidavit stating whether Trailor Truck mentioned above was indeed financed by the said Company, and if so, whether the same was duly covered by an insurance policy, and if so, disclose the particulars of said policy including the Insurance Company with which the same insured. We are not for the present impleading the Telco Tied Unit as a party to these proceedings as all that we require from that company is information regarding the existence of any insurance cover for the offending Trailor Truck.

More importantly, we are inclined to direct the General Manager of New India Assurance Company, Eastern Region to file an affidavit after due and proper verification from all concerned quarters whether or not the offending Trailor Truck was insured with the said company in terms of Certificate of Insurance bearing No.33416 said to be valid upto 24.3.2004 and if so, the Branch/Unit with which the said insurance cover was obtained. The General Manager shall do the needful within six weeks from today.

Post again after six weeks.

(O.P. Sharma)
Court Master

(Veena Khara)
Court Master