

THE GAUHATI HIGH COURT
(The High Court of Assam, Nagaland, Meghalaya, Manipur,
Tripura, Mizoram & Arunachal Pradesh)

Writ Appeal No. 239 of 2007

Smt. Jayanti Roy Choudhury,
W/O Sri Dilip Roy Choudhury,
Kharupetia Town,
District-Darrang.

.....Appellant.

-Versus-

1. The Union of India,
represented by the Secretary,
Ministry of Home Affairs,
New Delhi-1.
2. The Chief Election Commissioner,
Govt. of India, New Delhi-1.
3. The State of Assam,
represented by the Secretary,
General Administration Department,
Dispur, Guwahati-6.
4. The Deputy Commissioner,
District Election Office, Darrang.
5. The Additional Deputy Commissioner,
Darrang District at Mangaldoi.
6. M/S National Insurance Company Ltd.,
represented by its Regional Manager,
Bhangagar, Guwahati-5.

.....Respondents.

Advocate(s) for the Appellant : Mr. S. Chauhan, Advocate.

Advocate(s) for the Respondent : Mrs. B. Goyal,
GA, Assam,
Mr. C. Baruah, CGC,
Mr. B.K. Purkayastha,
Ms. A. Neog, Advocates.

B E F O R E**THE HON'BLE MR. JUSTICE RANJAN GOGOI**
THE HON'BLE MR. JUSTICE B.P. KATAKEY

Dates of Hearing : 07.05.2010

Date of Judgment & Order : 14.05.2010

JUDGMENT AND ORDER**[Katakey, J.]**

This appeal, by the writ petitioner, is directed against the order dated 08.10.2002 passed by the learned Single Judge, in WP(C) No.6604/2002, dismissing the writ petition as not maintainable and observing that the appellant may approach the Civil Court for appropriate decree.

2. The facts relevant for the purpose of the present appeal may be noticed as under:-

A motor vehicle bearing registration No.AS-13-3327 (Bus) belonging to the appellant was requisitioned under the order of the Addl. Deputy Commissioner, Darrang, Mangaldoi, w.e.f. 12.02.1998 in exercise of the power conferred under Section 160, 161, 162 & 163 of the Representation of People Act, 1951, for using the said vehicle during the General Election to the House of people. While the said vehicle was under requisition and control of the respondent authorities, it met with an accident on 14.02.1998, while

it was proceeding to a polling station under 58 Dalgaon Legislative Assembly Constituency carrying the polling parties. The Transport Cell in-charge of the office of the Deputy Commissioner, Mangaldoi, thereafter, requested the Motor Vehicle Inspector, Darrang, Mangaldoi, to examine the vehicle and furnish his report relating to the repairing works required to be undertaken to make the said vehicle roadworthy, pursuant to which the report was submitted. The respondent authorities, thereafter, on 19.02.1998 released the vehicle from requisition, in favour of the appellant, asking her to repair the vehicle at her own cost and to submit the bill towards such repairing cost. Accordingly, the appellant repaired the vehicle at her own cost and submitted a bill for Rs.29,288/- towards the cost incurred by her. The Deputy Commissioner, Darrang, Mangaldoi, on 06.07.1999 informed the Chief Electoral Officer, Assam, about submission of such bill and requested him to sanction and release the said amount for payment to the appellant. The Deputy Commissioner, however, by a subsequent communication dated 01.09.2000 informed the appellant about the Government's refusal to pay the amount towards the repairing cost of the vehicle, on the ground that the appellant should have claimed compensation from the insurance company, there being a policy of insurance issued by the insurance company. A proceeding under the provisions of the Consumer Protection Act was thereafter initiated by the appellant before the District Consumer Protection Forum, Darrang at Mangaldoi, claiming compensation for the deficiency in service,

which, however, was dismissed by the District Forum vide order dated 21.06.2002, by holding that the said application is not maintainable. The appellant then filed the writ petition before this Court claiming the aforesaid amount of Rs.29,288/- as compensation, which amount she has incurred towards the cost in repairing the vehicle, with interest, which, however, has been dismissed by the learned Single Judge, vide order dated 08.10.2002.

3. We have heard Mr. S. Chauhan, the learned counsel for the appellant, Mr. P.S. Deka, the learned State counsel appearing for the respondent Nos.3, 4 and 5 and Mr. B.K. Purkayastha, the learned counsel appearing for the respondent No.6. None appears for the respondent Nos.1 and 2 despite service of notice.

4. Mr. Chauhan, the learned counsel for the appellant referring to the pleadings in the writ petition as well as the annexures appended thereto, filed by the appellant, has submitted that there being no dispute to the basic facts relating to the requisition of vehicle belonging to the appellant by the Addl. Deputy Commissioner under the provision of the Representation of People Act, 1951, damage caused to the said vehicle because of the accident while the said vehicle was under requisition, direction of the Deputy Commissioner to repair the said vehicle at the cost of the appellant after the inspection by the Motor Vehicle Inspector relating to the damages caused to the vehicle, incurring expenditure to the

tune of Rs.29,288/- therefor and submission of bill for that amount, which was duly forwarded by the Deputy Commissioner to the Chief Electoral Officer requesting him to sanction and release the said amount for payment to the appellant, the learned Single Judge ought not to have dismissed the writ petition on the ground that there is no admission on the part of the respondent authorities about the basic facts and its liability and relegate the appellant to the Civil Court. It has further been submitted by Mr. Chauhan that the Government has refused to pay the amount, without disputing the quantum, only on the ground that the appellant should have claimed the said amount from the insurance company, the vehicle being under the contract of insurance between her and the insurance company, as is evident from the communication dated 01.09.2000 issued by the Deputy Commissioner, Darrang, to the appellant. Mr. Chauhan submits that when the vehicle is under requisition under the provisions of the Representation of People Act, 1951, the insurance company is not liable for compensation towards the damage of the vehicle, which stand is evident from the written statement filed by the insurance company before the District Consumer Forum. The learned counsel, therefore, submits that necessary directions may be issued to the State respondent to make payment of the aforesaid amount of Rs.29,288/- with interest.

5. Mr. P.S. Deka, the learned State counsel appearing for the respondent Nos.3, 4 and 5 has submitted that though the said

respondents have not disputed the fact relating to the requisition of the vehicle, involvement of the said vehicle in an accident during requisition, the extent of damages caused to the said vehicle as well as the cost incurred for repairing the said vehicle, there being a contract of insurance between the owner of the vehicle as well as the insurance company, a claim ought to have been lodged with the insurance company for payment of the expenditure incurred by the appellant in repairing the vehicle, which admittedly has not been done and as such the State has rightly refused to pay the amount to the appellant.

6. Mr. Kar Purkayastha, the learned counsel appearing for the respondent No.6 insurance company has submitted that though the appellant continued to be the registered owner in respect of the vehicle in question, she did not have any control over the vehicle while the same was under requisition under the provisions of a statutory enactment and as such she cannot be termed as 'owner' within the meaning of Section 2(30) of the Motor Vehicles Act, 1988, for the purpose of claiming any amount from the insurance company, as held by the Apex Court in ***National Insurance Co. Ltd. Vs. Deepa Devi and others*** reported in ***(2008)1 SCC 414*** and hence the insurance company cannot be made liable under a contract of insurance for payment of any amount towards the repairing cost of the vehicle, which met with an accident while the vehicle was under requisition. According to the learned counsel in such a situation the

liability is on the State to make payment of such cost to the registered owner and not the insurance company under the contract of insurance.

7. We have considered the submissions of the learned counsel for the parties and also perused the pleadings as well as the order passed by the learned Single Judge, which is under challenge.

8. There is no dispute to the basic facts, as noticed above, relating to the requisition of the vehicle belonging to the appellant by the Addl. Deputy Commissioner w.e.f. 12.02.1998 under the provisions of the Representation of People Act, 1951, involvement of the said vehicle in an accident on 14.02.1998 while the vehicle was under requisition, examination of the said vehicle by the Motor Vehicle Inspector to assess the damage caused, direction to the appellant to repair the vehicle at her own cost and to submit the bill, release of the said vehicle from requisition on 19.02.1998, submission of the bill for Rs.29,288/- by the appellant to the Deputy Commissioner towards the repairing cost of the vehicle and issuance of the communication dated 06.07.1999 by the Deputy Commissioner to the Chief Electoral Officer requesting him to sanction and release the said amount for payment to the appellant. The existence of a contract of insurance between the appellant and the respondent No.6 insurance company in respect of the vehicle in question is also not in dispute. It appears from the communication

dated 01.09.2000 issued by the Deputy Commissioner, Darrang, that the Government has refused to pay the amount only on the ground that the appellant, in view of the contract of insurance, should have claimed the amount from the insurance company within the time limit as stipulated in the policy. From the said facts, it, therefore, appears that the amount of Rs.29,288/- spent by the appellant for repairing of the vehicle, damage to which was caused due to the accident occurred while the same was under requisition, has not been disputed.

9. It is no doubt true that when there is a contract of insurance between the appellant and the respondent insurance company, in respect of the vehicle in question, normally the appellant is to claim the amount spent by her towards the repairing cost of the vehicle from the insurance company under the contract of insurance. But in the instant case it was the stand of the respondent insurance company before the District Consumer Forum that since the vehicle was under requisition, when it met with an accident, they are not liable for any compensation under the contract of insurance, which is also the stand of the respondent insurance company in this appeal. The question, therefore, is whether the insurance company is liable for the compensation, under the contract of insurance, for the damages caused to the vehicle belonging to the appellant.

10. The Apex Court in ***National Insurance Co. Ltd. (supra)*** while considering the definition of the 'owner' within the meaning of Section 2(30) of the Motor Vehicles Act, 1988 vis-à-vis the liability of the insurance company, under a contract of insurance, for payment of the compensation under the said Act, has held that when a vehicle is requisitioned by a statutory authority, pursuant to the provisions contained in a statute, the registered owner of the vehicle loses the entire control over the vehicle, who has no other alternative but to handover the possession to the statutory authority, in view of the order of requisition, and such owner would only be entitled to the payment of requisition compensation, for the period the vehicle remains under the control of the said authority or its officers and the insurance company cannot be made liable for payment of any compensation under the provisions of the Motor Vehicles Act, 1988, even though there is a contract of insurance.

11. In view of the law laid down by the Apex Court in ***National Insurance Co. Ltd. (supra)***, the appellant, therefore, cannot claim any amount from the respondent No.6 insurance company, as compensation, for the damages caused to the vehicle in an accident occurred while the vehicle was under requisition by the authority under the provisions of the Representation of People Act, 1951. The State respondents, hence, cannot refuse to pay the amount to the appellant on the pretext of not lodging a claim by her with the insurance company.

12. As noticed above, the learned Single Judge has dismissed the writ petition and relegated the petitioner to the Civil Court on the ground that the State respondents have not admitted their liability. We have already noticed that there is no dispute relating to the basic facts, including the expenditure incurred by the appellant in repairing the vehicle. That being the position, the appellant ought not to have been relegated to the Civil Court for claiming compensation to the tune of the expenditure incurred by her for repairing the vehicle.

13. In view of the aforesaid discussion, the order dated 08.10.2002 passed by the learned Single Judge is set aside. The respondent Nos.1 to 5 are directed to pay the appellant a sum of Rs.29,288/- with interest @6% per annum from the date of filing of the writ petition i.e. 07.10.2002 till the date of payment. The said respondents are directed to pay the said amount with interest within a period of 6(six) months from today.

14. The writ appeal is accordingly allowed. No cost.

JUDGE

JUDGE

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