IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction

12.07.2023
SL No.6
Court No. 551
Ali

F.M.A. 646 of 2009
IA No: CAN/2/2009 (Old No: CAN/251/2009)

Tamali Dasi & Ors.
Vs.
The New India Assurance Co. Ltd. & Ors.

Ms. Sima Ghosh,
Ms. Moumita Chakraborty
…for the appellants-claimants.

Mr. Animesh Das
….for the respondent-Insurance Co.

The instant appeal is preferred by the claimants against the judgment and award dated 22nd day of March, 2006 passed by Judge, Motor Accident Claim Tribunal, Fast Track 1st Court, Suri Birbhum in M.A.C. Case No. 82 of 2003.

The brief fact of the case is that on 7th December, 2002 while the deceased aged about 22 years, student of 2nd year B.A. was proceeding towards Panagrah-Moregram High Way near at Kalitha Village in a truck which carrying a deed body. The deceased was sitting inside the truck bearing No. W.B.-53-6036 being a member of a cremation party of the dead body at that time of the said truck lost his control, and accident took place. By such the deceased sustained grievous injuries and he was shifted to the Hospital thereafter the deceased was succumbed to his injuries at the Rampurhat Hospital.

The present appellants are the parents of the deceased and filed the claim case before the learned tribunal under Section 166 of the M.V. Act. During the trial the appellant No. 2 appeared before the learned tribunal as PW-1. One eye witness was appeared as PW-2. The police papers were also produced before the learned tribunal which was marked as exhibit.

The learned tribunal after hearing the parties and after hearing the learned advocate for the insurance company passed the impugned order directed the owner of the vehicle to pay the compensation amounting to Rs.1,34,500/- less the amount of Rs.50,000/- already awarded by the owner to the claimants under Section 140 of the M.V. Act.

Learned advocate for the appellant submitted before this court the impugned order passed by the learned tribunal suffers illegality. Learned tribunal has not considered the facts and circumstances of the case and came to an erroneous findings. She also pointed out that the learned tribunal should have ordered the insurance company to pay the compensation and the insurance company thereafter may be allowed to recover the same from the owner of the offending vehicle. He again submitted before this court that the learned tribunal has committed error for not calculating the amount of compensation to the tune that the deceased had monthly income of Rs. 2,500/-. He also pointed out that the instant appeal has been preferred on the ground that the observation of the learned tribunal that the deceased was a gratuitous passenger is not correct. He cited a decision of the Hon'ble High Court of Madras Reported in ***2013 ACJ 246 (Divisional Manager, United India Insurance Co. Ltd. Vs. Dhamayanthi and others).*** Finally, she submitted the impugned order passed by the learned tribunal need be set aside and necessary order of just compensation may be award.

The learned advocate appearing on behalf of the insurance company submitted before this court that the impugned order passed by the learned tribunal is not at all perverse. The learned tribunal has correctly viewed that the deceased was a gratuitous passenger in a goods carriage vehicle. She also pointed out that the income of the deceased was not sufficiently proved before the learned tribunal. Thus the learned tribunal has correctly assessed the income of the deceased notionally. He again pointed out that the owner of the vehicle has already complied with the provision of Section 140 of the M.V. Act by paying the claimants initial amount of Rs.50,000/-. At this juncture the direction upon the owner to pay the further compensation is not at all incorrect. He prayed for dismissal of the instant appeal.

Heard the learned advocate perused the materials on record it appears to me that the deceased was travelling in a truck which carrying a dead body, it was the plea of the claimants that the deceased was a member of the cremation party. The decision of Hon'ble Madras High Court is placed.

In Divisional Manager, United India Insurance Company Ltd. Hon'ble madras High Court has held that:-

> **"Section 2 (13) of the Motor Vehicles Act, 1988, defines the terms 'goods' which includes livestock and anything carried in vehicle except living persons therefore living person is not a goods but a dead person if transported becomes a cargo and it is covered within the meaning of goods defined in the section".**

In **National Insurance Company Ltd. Versus Bommithi Subbhayamma and Others** Hon'ble Apex Court referring the "**Asha Rani's Case**" has held that:-

> **"the meaning of the words "any person" must also be attributed having regard to the context in which they have been used i.e. "a third party". Keeping in view the provisions of the 1988 Act, we are of the opinion that as the provisions thereof do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods vehicle, the insurers would not be liable therefor".**

In **Union of India Insurance Co. Ltd. Versus Bodali Bai and others** Hon'ble Apex Court allowed the appeal of the insurance company with the observation that towards the gratuitous passenger the insurance company has no statutory or contractual liability to pay the compensation.

Heard the learned advocates perused the materials on record also heard the argument advanced on behalf of the appellants as well as the insurance company.

In considering the judgment of Hon'ble Apex Court in respect of **National Insurance Co. Ltd. V. Baljit Kaur** Hon'ble Apex Court has observed that the gratuitous passenger can obtain an order of compensation from the insurance company subject to the fact that the insurance company shall pay the compensation and recovered it from the owner if it is not come under the purview of contractual liability of the insurance company and the owner.

The Hon'ble Supreme Court in ***National Insurance Co. Vs. Swaran Singh & Ors.*** reported in ***AIR 2004 SC 1531*** has specifically formulated, in case of breach of any of the policy by the owner of a vehicle, the insurance company is not liable to pay the compensation but considering the social welfare legislation i.e. Chapter XI of the M.V. Act and also considering the present facts and circumstances, the insurer i.e. the insurance company may be directed to pay the compensation to the claimants and thereafter the insurance company is at liberty to recover the same from the owner of the vehicle.

The modalities for recovery and procedure thereof has already been mentioned by the Hon'ble Apex Court in ***Swarn Singh***.

In considering the guidelines of the Hon'ble Supreme Court passed in ***Swarn Singh*** as well as ***Baljit Kaur*** it appears that the impugned award passed by the learned tribunal need be modified. It further appears that the claimant has not proved the income of the deceased. The deceased was a student of a college. It is not necessary that every student of a college have same independent income thus the observation of the learned tribunal regarding the income of the deceased notionally i.e. Rs.15,000/- per annum appears to be correct.

In the instant case, the multiplier was adopted according to the age of the parents but this is not correct view the multiplier should be adopted according to the age of the deceased. It further directed that the learned tribunal had deducted $1/3^{rd}$ of his yearly income towards personal expenses but the present deceased is a bachelor so in that case the 50% of the income should be deducted. However, the present appellants are entitled to the future prospect as per direction of the Hon'ble Apex Court in ***Pranay Sethi.***

After considering the entire materials the just and proper compensation of this case would be the yearly income of the deceased is Rs.15,000/- 40% of the yearly income would be added to the future prospect i.e. Rs. 6,000/- thus the yearly income comes to Rs. 21,000/-, 50% of which would be deducted towards his personal expenses thus the yearly dependency comes to Rs. 10,500/-. The deceased was within the age group was 21-25 years thus the applicable multiplier of this case would be 18 after multiplying the multiplier with the yearly dependency the award comes to Rs. 1,89,000/-. The amount of Rs.50,000/- should be deducted as it has already given by virtue of a proceeding under Section 140 of the M.V. Act thus after deduction the balance amount appears to Rs. 1,39,000/-.

The insurance company is directed to pay the balance amount to the claimants alongwith interest @ 6% per annum from the date of filing of the claim application i.e. from 08.04.2003. The insurance company is further directed to pay the compensation to the claimants through the office of the learned Registrar General, High Court, Calcutta within eight weeks from the date of passing of this order.

The instant FMA is disposed of.

All connected applications, if any, stand disposed of.

Interim orders, if any, stand vacated.

Parties to act upon the server copy and urgent certified copy of this order be provided on usual terms and conditions.

(Subhendu Samanta, J.)