

Ct. 14.7
No. 26 2021
7
akb

F.M.A. 1562 of 2017

(Via Video Conference)

National Insurance Co. Ltd.

Vs.

Mahuya Chakraborty @ Mahuya Nath Sarkar & Ors.

Mr. Sanjay Paul

...For the Respondent/Insurance Co.

Mr. Subhankar Mandal

...For the Respondents/Claimants

Informal paper book filed today be kept with the record.

The instant appeal has been filed by the National Insurance Co. Ltd. against the Judgment and award dated 6th April, 2017 passed by the Additional District & Sessions Judge, 1st Court, Motor Accident Claims Tribunal, Barasat, 24 Parganas (North) in M.A.C. Case No. 02 of 2015/ 5084 of 2014.

The claimant's case before the Tribunal was that on 16.01.2014 while the victim Proloy Nath Sarkar was returning home by riding his motor-cycle bearing No.WB-26U/9008 when another motor-cycle bearing No. WB-18D/2299 coming very rash and negligent manner and dashed the victim. Resulting which the victim sustained severe injuries all over his person and ultimately succumbed to his injuries. It was pleaded that at the time of accident the victim was aged about 34 years old and used to earn Rs.30,000/- per month as permanent School Teacher under Govt. of West Bengal. Therefore, the heirs of the victim filed claim application under Section 166 of the Motor Vehicles Act, 1988 praying for compensation along with interest from the owner of the offending vehicle as well as the Insurance Company.

After hearing the parties and after perusal of the

deposition of witnesses and relevant documents the Learned Tribunal was pleased to pass an award to the tune of Rs.35,63,796/ together with 6% interest from date of claim application till payment in favour of the claimants. Despite service of notice of summon, the owner of the offending vehicle chose not to contest the case before the Tribunal and the matter was heard ex-parte against him.

Being aggrieved by and/or dissatisfied with the said award and/or Judgment dated 6th April, 2017 passed by the M.A.C. Tribunal, the appellant insurance company filed the instant appeal on the following grounds:

The learned Tribunal committed error in law by holding the insured vehicle as offending vehicle since in the F.I.R. the number of the offending vehicle mentioned as WB-01-W/1385 but the claimants in collusion with concerned Police Officer as well as owner of the insured vehicle included the insured vehicle as offending vehicle with an ulterior motive.

The learned Tribunal committed error in law while upholding the evidence of eye-witness, as alleged, since the said witness never informed the Police about the alleged accident, moreover, the Police never interrogated the said witness and cited as charge-sheeted witness, inspite of that the Learned Tribunal held that the insured vehicle bearing No. WB-18D/2299 as offending vehicle and directed the appellant to pay compensation upon the heirs of the victim.

Upon placing the above grounds, the learned Advocate for the Insurance Company trying to establishes that the insured vehicle bearing No. WB-18D/2299 was never involved in the accident since the written complaint

lodged with the concerned police station by the brother of the deceased alleging that the offending vehicle bearing No.WB-01-W/1385 was riding very rash & negligent manner and dashed his brother but the concerned police officer seized the insured vehicle bearing No. WB-18D/2299 on 06.03.2014 i.e. after 48 days from date of accident and issued charge-sheet against the rider of the said vehicle. Therefore, the claimants in collusion with the concerned Police Officer as well as owner of the insured vehicle included the insured vehicle as offending vehicle and the Learned Tribunal ought not to have directed the appellant to pay compensation upon the heirs of the deceased.

In turn the learned Advocate for the respondents/claimants submits that the fact for non-involvement of insured vehicle as well inclusion of insured vehicle as offending vehicle in collusion with the concerned Police Officer as well as owner of the insured vehicle was never pleaded by the insurance company in its written statement. The widow of the deceased, appeared before the tribunal as Pw-1 deposed that the offending vehicle bearing No. WB-18-D/2299 was riding very rash & negligent manner and dashed her husband. In cross-examination the Insurance Company never denied and/or put any suggestion that the offending vehicle bearing No. WB-18-D/2299 was never involved in the accident which tantamount admission on the part of insurance company.

The learned Advocate for the claimants further submit that eye-witness to the accident appeared before the tribunal as Pw-2 deposed that the offending vehicle bearing No. WB-18-D/2299 was riding very rash & negligent manner and dashed the victim Proloy Nath Sarkar with great

force. In cross-examination the insurance company never denied and/or put any suggestion that the offending vehicle bearing No. WB-18-D/2299 was never involved in the accident which tantamount admission on the part of insurance company.

The learned Advocate for the claimants further submits that the Insurance Company never summoned the concerned Investigating Officer as witness before the Tribunal to contradict the findings as made in the charge-sheet. The insurance company never summoned the owner of the insured/offending vehicle bearing No. WB-18-D/2299 as witness before the tribunal to establish that the vehicle was not involved in the accident rather despite service of summon issued by the tribunal said owner chose not to contest and/or contradict the allegation made against him which tantamount admission on the part of said owner of insured/offending vehicle.

Gist of the submission of the learned Advocate for the claimant is that the appeal filed by the insurance company is frivolous and not tenable in the eye of law and the ground for non-involvement of insured vehicle is raised for the first time by the insurance company in this appeal.

Regarding quantum of compensation, the Learned Advocate for the claimants submit that the learned Tribunal committed error in law while not granting 50% additional income towards future prospect since the deceased was a permanent school Teacher under Govt. of West Bengal and aged about 34 years old. Said Learned Advocate further submits that the Learned Tribunal also committed error in law while granting Rs.9,500/ instead of Rs.70,000/ towards

general damages. Therefore, the award passed by the Learned Tribunal should modify accordingly. In support of such submissions, the Learned Advocate for the claimant relied upon the judgment of Hon'ble Apex Court in the case of *National Insurance Co. Ltd. –Vs- Pranay Sethi & Ors.* reported in (2017) 16 SCC 680.

In reply the learned Advocate for the Insurance Company submits that neither the claimants/respondent filed any separate appeal nor filed any cross-objection for enhancement of compensation as passed by the Tribunal, therefore, the claimants are not entitled to get 50% additional amount towards future prospect as well as Rs.70,000/ towards general damages.

After having heard the Counsel for the parties, this Court finds that the appellant Insurance Company never pleaded in the written statement that the insured vehicle was not involved in the accident. The insurance company failed to adduce any contra evidence before the Tribunal to prove that the insured vehicle was not involved in the accident rather the evidence adduced by the claimants were unchallenged before the tribunal. Therefore, the award passed by the tribunal directing the appellant insurance company was absolutely just and reasonable and appeal does not bear any merit.

Regarding enhancement of quantum of compensation I find substance on the submissions of Mr. Paul and hold that in absence of any separate appeal and/or cross-objection, compensation as awarded by the Tribunal cannot be enhanced.

Mr. Paul submits that his client has already

deposited the entire awarded sum together with accrued interest thereon before the learned Registrar General of this Hon'ble Court in compliance with the order dated September 12, 2017 passed by this Hon'ble Court.

The learned Advocate for the respondents / claimants acknowledges that his clients have not received any compensation amount in terms of the award dated 06.04.2017 passed by the learned Tribunal.

Therefore, the Registrar General is directed to pay entire amount lying with him as deposited by the appellant Insurance Company pertaining to instant appeal together with accrued interest thereon to the respondents/claimants in accordance with law in the same manner and proportion as decided by the Court below. The Registrar General shall check the veracity of the bank account and the identity of the claimants before disbursing the amounts.

Such payment must reach the claimants within four weeks from the date of receipt of the Bank details from the claimants/respondents.

With the aforesaid directions, the instant appeal bearing F.M.A. No. 1562 of 2017 shall stand disposed of.

In view of disposal of this appeal, connected applications, if any, are also disposed of. The concerned Department is directed to trace out the applications and tag the same with this appeal.

There shall be no further order as to costs.

LCR, if any, may be returned back to the court below.

Urgent Photostat certified copy of this order, if applied for, be given to the parties, upon compliance of all formalities, on priority basis.

(*Shekhar B. Saraf, J.*)