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Ct. No.237
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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURICTION
APPELLATE SIDE

FMA 484 of 2013
with
IA No. CAN 2 of 2013 (CAN 10010 of 2013)
(Application not in the file)
with
CAN 3 of 2016 (CAN 4327 of 2016)

Smt. Roydhani @ Raidhoni Garai
Vs.
The New India Assurance Company Limited & Anr.

Mr. Amit Ranjan Roy
... For the appellant/claimant

Mr. Parimal Kumar Pahari
... For the respondent no.1/Insurance Co.

This appeal is directed against the judgment and award dated 7th April, 2010 passed by the learned Motor Accident Claims Tribunal, Special Court, Asansol, in MAC Case No.55 of 2008/6 of 2008 under Section 163A of the Motor Vehicles Act, 1988, whereby the learned Tribunal assessed the compensation and directed the owner of the offending vehicle to pay the awarded amount.

Being aggrieved by and dissatisfied with the said order, the appellant/claimant preferred the instant appeal with a prayer for direction upon the Insurance Company to pay the compensation on the ground that policy coverage was in respect of third party.

The respondent no.1/New India Assurance Company Limited contested the claim petition under

Section 163A of the Motor Vehicles Act, 1988 filed on account of death of one Mithun Gorai in a motor accident by the involvement of one Tata Sumo, bearing registration no.WB-38J/6460, denying all material allegations of the claim petition contending, inter alia, that the claimant is not entitled to any compensation as there was no policy in respect of occupant.

In course of the trial, one witness was examined on behalf of the claimant. In course of evidence, a good number of documents were exhibited, including insurance policy, charge sheet, First Information Report, seizure list and post-mortem report.

On behalf of the Insurance Company, one Bipod Taran Saha, Branch Manager, Raniganj Branch of the New Indian Assurance Company Limited was examined as DW-1.

In this appeal, both the learned advocates appearing on behalf of the parties have submitted that the Insurance Company may be given liberty to realise the amount of compensation from the owner of the vehicle after payment of compensation to the appellant/claimant.

On this, the learned Tribunal directed the owner of the offending vehicle to pay compensation on the ground of relationship between the deceased and the claimant and absence of any additional premium as per the Insurance Policy (Ext.-A) by the owner of the said vehicle, for taking coverage of the passenger proceeding in the said vehicle, which is a private vehicle. So the learned Tribunal relying on the decisions of this Court reported in 2007 ACJ 1676 (United India Insurance Co. Ltd. v. Bhagyalakshmi & Ors.) and 2008 (1) TAC 51 (Cal) (Amit Bar & Ors. v. National Insurance Company Ltd.), directed the owner of the vehicle to pay compensation.

After considering the evidence of DW-1, Bipod Taran Saha, who testified that the policy was private car policy and in such type of policy no additional premium was paid for taking coverage of passengers proceeding in the said vehicle. From the policy itself, I find that though it is a third party basic but it is private car policy "B" package and no premium was paid in respect of passengers.

In that view of the circumstances, considering the object of enactment of the Act as well as catena of decisions of the Hon'ble Apex Court in respect of payment of compensation even in case of gratuitous passenger and to recover the compensation from the owner, I am constrained to hold that the New India Assurance Company Limited should be directed to pay the compensation and recover the same from the owner of the vehicle, bearing registration no.WB-38J/6460.

In the aforesaid view of the matter, the appellant/ claimant is entitled to the compensation amount as awarded by the learned Tribunal to the tune of

Rs.3,64,500/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e., on 28th July, 2008 till the deposit of the same.

Accordingly, the respondent no.1/New India Assurance Company Limited is directed to deposit the entire awarded amount granted by the learned Tribunal to the tune of Rs.3,64,500/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e. on 28th July, 2008 till the actual deposit of the amount before the office of the learned Registrar General of this Court, within six weeks from the date of this order.

The respondent no.1/New India Assurance Company Limited is at liberty to recover the entire awarded sum with interest from the owner of the vehicle, bearing registration no. WB-38J/6460, through execution proceeding in terms of the observations of the Hon'ble Apex Court in **Shamanna & Ors. v. The Divisional Manager, The Oriental Insurance Co. Ltd. & Ors.** reported in **AIR 2018 SC 3726** and **Oriental Insurance Co. Ltd. v. Nanjappan & Ors.** AIR 2004 SC 1630 : (2004) 13 SCC 244.

The learned Registrar General is requested to disburse the amount to the appellant/claimant on proper identification.

With the observation, the appeal, being FMA 484 of 2013, stands disposed of.

All pending applications, if there be any, stand disposed of.

Records of the learned Tribunal along with a copy of this order be transmitted back immediately.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Bibhas Ranjan De, J.)