11
22.09.2022
Ct. No.237
pg.

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURICTION
APPELLATE SIDE

FMA 318 of 2011
with
IA No. CAN 2 of 2011 (CAN 1915 of 2011)
(Application not in the file)

National Insurance Co. Ltd.
Vs.
Smt. Bimala Maity @ Agan & Ors.

Mr. Parimal Kumar Pahari
... For the appellant/Insurance Company

Mr. Amit Ranjan Roy
... For the respondents/claimants

This appeal is directed against the judgment and award passed on 12th August, 2010 by the learned Judge, Motor Accident Claims Tribunal, 4th Court, Paschim Medinipur, in MAC Case No.111 of 2007 under Section 163A of the Motor Vehicles Act, 1988.

This appeal has been preferred on the ground of only seeking direction for payment by the Insurance Company instead of the owner of the vehicle at the first instance.

None of the advocates appearing on behalf of the parties to this appeal raised any issue regarding accident, liability as well as the quantum of award given by the learned Tribunal. Learned advocate on behalf of the respondents/claimants submitted that he is seeking a direction for payment by the Insurance Company at the first instance and to recover it from the owner of the vehicle.

The learned Tribunal after appreciation of the entire evidence on record and the documents thereon came to its finding as follows:-

> "It may be noted here that Ld. Advocate, appearing for the O.P. No.2 submitted with reference to the documents, exhibited, that the deceased had no valid driving licence as his licence was shown to be valid upto 08.04.2006, while the alleged accident occurred on 24.12.06. There is no paper to show that at the relevant time the driving licence of the deceased was valid. Though no copy of the policy Insurance Certificate has been produced, but it is admitted that O.P. No.2 was the Insurer of the said vehicle bearing no.WB-29/5420 at the relevant time. In this context the provision under Section 163A or 166 M.V. Act, being a beneficiary legislation, I think it would be justified if the O.P. No.2 is directed to pay the said amount of compensation instead of shifting the liability of paying compensation on the owner of the vehicle with the observation that the Insurance Company is at liberty to realise the said amount of compensation from the owner, if in case of any violation of any terms of the Insurance Policy Certificate."

The aforesaid reasons delineated in the judgment have not been disputed by any of the learned advocates on behalf of the parties to this appeal. I am also of the opinion that there is no reason to interfere with this observation of the learned Tribunal with regard to the liability to pay compensation. Accordingly, the owner of the vehicle was directed to pay the compensation to the respondents/ claimants.

Both the learned advocates appearing on behalf of the parties to this appeal relied on a case of **Shamanna & Ors. v. The Divisional Manager, The Oriental Insurance Co. Ltd. & Ors.** reported in **AIR 2018 SC 3726**. From the observation of the Hon'ble Apex Court, it is settled that at the first instance the Insurance Company will pay and recover it from the owner of the vehicle. The relevant observation of the Hon'ble Apex Court is as follows:-

> "**13.** So far as the recovery of the amount from the owner of the vehicle, the insurance company shall recover as held in the decision in **Oriental Insurance Co. Ltd. v. Nanjappan & Ors.** MANU/ SC/0122/2004 : (2004) 13 SCC 244 where this Court held that "... that for the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer."

In this regard, learned advocate appearing on behalf of the appellant/Insurance Company also relied on the ratio of **Oriental Insurance Co. Ltd. v. Nanjappan & Ors.** AIR 2004 SC 1630 : (2004) 13 SCC 244 wherein the Hon'ble Apex Court observed as follows:-

> "**8.** Therefore, while setting aside the judgment of the High court we direct in terms of what has

> been stated in Baljit Kaur's case (supra) that the insurer shall pay the quantum of compensation fixed by the Tribunal, about which there was no dispute raised, to the respondents-claimants within three months from today. For the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the insured, owner of the vehicle shall be issued a notice and he shall be rquired to furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executing Court shall take assistance of the concerned Regional Transport authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the insured, owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured. The appeal is disposed of in the aforesaid terms, with no order as to costs."

It is submitted that the appellant/Insurance Company has already deposited the total awarded compensation of Rs.4,15,000/- before the learned Registrar General of this Court at the time of filing of the appeal. So the appellant/Insurance Company is directed to deposit interest @ 6% per annum on the award compensation of Rs.4,15,000/- from the date of filing of the claim petition till the date of deposit before the learned Registrar General of this Court, within six weeks from date.

The respondents/claimants are entitled to the awarded compensation of Rs.4,15,000/- along with interest @ 6% per annum from the date of filing of the claim petition till the actual payment.

The appellant/Insurance Company is entitled to recover the entire amount from the owner of the vehicle through execution proceeding instead of filing a separate suit in terms of the observations of the Hon'ble Apex Court in **Shamanna** (supra) and **Nanjappan** (supra).

The respondents/claimants will be entitled to withdraw the entire amount with interest.

The learned Registrar General will disburse the amount to the respondents/claimants on proper identification.

The learned Registrar General will also disburse the share of the minors in the manner as prescribed in the judgment of the learned Tribunal.

With the observation, the appeal, being FMA 318 of 2011, stands disposed of.

All pending applications, if any, also stand disposed of.

Records of the learned Tribunal 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.)