IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

Appellate Side

Present:

The Hon'ble Justice Bibhas Ranjan De

F.M.A 2325 of 2005

With

The National Insurance Company Limited

Vs.

Mantu Khanra & Ors.

For the Appellant/ Insurance Company :Mr. Rajesh Singh, Advocate

For the Respondents/ Claimants :Mr. Krishanu Banik, Advocate

For the Oriental Insurance Co. Ltd. : Ms. Gopa Das Mukherjee

Hearing concluded on : November 17, 2022

Judgment on : November 22, 2022

Bibhas Ranjan De, J.

1. Judgement and award passed in Motor Accident Claim Case No. 959 of 2001, under Section 166 of the Motor Vehicles Act, 1988, passed by Motor Accident Claims Tribunal, Additional

District Judge, 1st Court, Paschim Medinipur, has been challenged in this appeal at the instance of National Insurance Company Ltd.

2. Claim petition was filed for compensation to the tune of Rs. 5,00,000/- on account of accidental death of one Rabi Khanra, husband of claimant no. 1 on 21.09.2001 at about 6.00 a.m. while Rabi Khanra (since deceased), as helper cum mechanic, boarded on the truck no. WB-33/0875. The said truck was being driven rashly and negligently and met head on collision with a S.B.S.T.C bus bearing no. WB-39/3322 coming from the opposite side. Rabi Khanra sustained severe injury and shifted Bankura Medical College & Hospital where he succumbed to his injuries. At the time of death, deceased was aged 35 years and earned Rs. 150/- per day.

3. Insurance Companies (National & Oriental Insurance Company Ltd.) of both the vehicles contested the claim petition by filing their respective written statement denying all material allegations delineated in the claim petition. In course of trial, only claimant Smt. Mantu @ Manu Khanra deposed as PW-1 in support of claim petition and in course of her evidence certified copy of FIR, copy of Post Mortem Report, copy of the charge sheet, Voter ID Card were admitted in evidence.

4. Ld. Tribunal, framed issues on the pleadings and in terms of evidence adduced on behalf of the claimants returned his findings issue wise and passed an award of Rs. 2,65,500/- directing both National Insurance and Oriental Insurance Company Ltd. to pay the entire awarded amount to the extent of Rs. 1,32,750/- each. And to add to that, Ld. Tribunal also extended liberty to the National Insurance Company to realize compensation paid by it to the claimants from the insured/ S.B.S.T.C in excess of limited liability of Rs. 75,000/- has agreed in their original Insurance Policy.

5. On careful perusal of the evidence coupled with the documents exhibited, I do not find any reason to enter into any issue of accident or accidental death of Rabi Khanra by the involvement of two vehicles duly insured with National Insurance Company Ltd. & Oriental Insurance Company Ltd.

6. The appeal has been preferred by the National Insurance Company only on the ground of limited liability of Rs. 75,000/-.

7. Ld. Advocate, Mr. Rajesh Singh, appearing on behalf of the appellant/Insurance Company, has referred to the policy kept in the informal paper book and submitted that National Insurance Company has no liability to pay compensation beyond Rs. 75,000/-. Mr. Singh, in his usual fairness, has referred to the case of ***Oriental Insurance Company Ltd. vs. Nanjappan*** and others reported in ***2004 ACJ 721***, and submitted that National Insurance Company may be directed to pay the entire amount of Rs. 1,32,750/- and to recover the amount in excess of Rs. 75,000/- from S.B.S.T.C/ owner.

8. Hon'ble Apex Court observed in ***Nanjappan*** (supra) as follows:

> *"7. The view of the High Court cannot be maintained in view of what has been stated in **Asha Rani's case, 2003 ACJ 1 (SC)** and **Devireddy's case, 2003 ACJ 468 (SC)**. To that extent the judgment of the High Court is unsustainable. At the same time, the observations of this Court in **Baljit Kaur's case, 2004 ACJ 428 (SC)**, also need to be noted. In para 21 of the judgment, it was observed as follows:*
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> *"The upshot of the aforementioned discussions is that instead and in place of the insurer the owner of the vehicle shall be liable to satisfy the decree. The question, however, would be as to whether keeping in view the fact that the law was not clear so long such a direction would be fair and equitable. We do not think so. We, therefore, clarify the legal position which shall have prospective effect. The Tribunal as also the High Court had proceeded in terms of the decision of this Court* in **Satpal Singh, 2000 ACJ 1 (SC)**. *The said decision has been overruled only in **Asha Rani, 2003 ACJ 1 (SC).** We, therefore, are of the opinion that the interest of justice will be sub-served if the appellant herein is directed to satisfy the awarded amount in favour of the claimant if not already satisfied and recover the same from the owner of the vehicle. For the purpose of such recovery, it would not be necessary for insurer to file a separate suit but it may initiate a proceeding before the 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. We have issued the aforementioned directions having regard to the scope and purport of Section 168 of the Motor Vehicles Act, 1988 in terms whereof it is not only entitled to determine the amount of claim as put forth by the claimant for recovery thereof from the insurer, owner or driver of the vehicle jointly or severally but also the dispute between the insurer on the one hand and the owner or driver of the vehicle involved in the accident inasmuch as can be resolved by the tribunal in such a proceeding."

9. Ld. Advocate, Ms. Gopa Das Mukherjee, on behalf of the Oriental Insurance Company, has submitted that the Oriental Insurance Company discharged its liability by paying of Rs. 1,32,750/- with interest to the claimants.

10. Ld. Advocate, Mr. Krishnu Banik, on behalf of the claimants/ respondents, during his argument at the initial stage conceded the submissions made on behalf of the Oriental Insurance Company and also submitted that National Insurance Company may be directed to discharge its liability also by paying of Rs. 1,32,750/- with interest to the claimants.

But at the time of parting with his argument, Mr. Banik advanced an alternative argument of '**just compensation'** and has referred to a decision of Hon'ble Apex Court in ***Surekha W/O Rajendra Nakhate & Ors vs. Santosh S/O Namdeo Jadhav & Ors.*** Reported in ***2020 ACJ 2156.***

11. On going through the decision of ***Surekha*** (supra), I find that the claimants preferred appeal before the Hon'ble High Court of judicature at Bombay, bench at Aurangabad in the first appeal no. 2564 of 2016 for just compensation and after being denied claimants/appellants preferred special leave petition before the Hon'ble Supreme Court and Hon'ble Supreme Court determine the just compensation unlike the case in my hand. Here in our case, claimants never preferred any appeal against the judgement and award passed by the Ld. Tribunal. Not only that, claimants never filed any cross-appeal/objection also after filing of the instant appeal by the National Insurance Company. It appears from the record that claimants accepted the judgment and award passed by the Ld. Tribunal and admittedly received the award of Rs. 1,32,750/- along with interest from the Oriental Insurance Company. Therefore, in my humble opinion, this Court finds hardly any scope to consider the just compensation, in this appeal.

12. Therefore, National Insurance Company is liable to pay the awarded amount of Rs. 1, 32, 750/- along with interest. At this stage, it is reported by Mr. Singh on behalf of the Insurance Company that Rs. 75,000/- had already been paid by the National Insurance Company by issuing cheque in favour of the claimants and therefore, Insurance Company is liable to pay rest amount of Rs. 57,750/-. Mr. Singh has sought for liberty to withdraw the statutory amount of Rs. 25,000/-. On the other hand, Mr. Banik has submitted that he had no instruction regarding payment of Rs. 75,000/- by the Insurance Company.

13. Keeping an eye to the submissions advanced on behalf of the parties to this appeal, National Insurance Company is directed to deposit Rs. 57,750/- along with interest @ 6% per annum from the date of filing of the claim petition till the date of deposit before the office of the Ld. Registrar General within six (6) weeks from date, if part of the awarded amount i.e. Rs. 75,000/- had already been paid, otherwise entire amount of Rs. 1,32,750/- has to be paid along with interest in the manner stated above. In case of already payment of Rs. 75,000/- by issuing cheque, National Insurance Company is directed pay interest on the said amount @ 6% per annum from the date of filing of the claim petition till the date of payment of the amount of Rs. 75,000/-. National Insurance Company is also at liberty to withdraw the statutory amount of Rs. 25,000/-.

14. National Insurance Company shall be at liberty to realize the amount in excess of Rs. 75,000/- from the S.B.S.T.C/

owner as per aforementioned guidelines laid down by the Hon'ble Apex Court in ***Nanjappan*** (supra).

15. Ld. Registrar General is request to disburse the amount in equal share as minors have already attained the age of majority by the laps of time.

16. F.M.A. 2325 of 2015 is being disposed of without any order as to cost.

17. All pending applications, if any, stand disposed of accordingly.

18. Let the records of the Tribunal along with a copy of this order, be transmitted back at once.

19. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]