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

FMA 2865 of 2013
with
IA No. CAN 1 of 2021
(Application not in the file)

Lakshmi Turi
Vs.
The Universal Sampo General
Insurance Company Limited & Anr.

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

Mr. Rajesh Singh
... For the respondent no.1/Insurance Co.

This appeal is directed against the judgment and award passed on 24th May, 2013 by the learned Judge, 5th Court, Motor Accident Claims Tribunal, Burdwan, in MAC Case No.36 of 2011 renumbered as 137 of 2021 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 appellant/claimant 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:-

> "I have gone through the decision cited by the ld. advocate for the O.P. No.2. In the said decision tractor was registered for agriculture purpose but it was used for carrying passengers by attaching a trolley and thereafter it met with an accident and it was held by the Hon'ble Court that since tractor was registered for agriculture purpose it can not be used to carrying passengers and for any other purpose other than the purpose for which it was registered and since trolley was also not insured, the insurer has no liability to indemnify the owner of the vehicle.
>
> Therefore, in the instant case tractor was registered for commercial purpose and the trolley was not insured and hence, trolley was drawn by the tractor in violation of the terms and conditions of the insurance policy and the O.P. No.2 is not liable to indemnify the O.P. No.1, and, therefore, the OP. No.1 i.e. the owner of the involved vehicle is liable to pay the entire compensation to the petitioner."

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 appellant/ claimant.

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 respondent/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.”

In the aforesaid view of the matter, I find it justified to dispose of this appeal with a direction upon the respondent/Insurance Company to pay the awarded amount of Rs.3,04,500/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e., on 30th May, 2011, till the date of deposit before the learned Registrar General of this Court, within six weeks from the date of this order.

The appellant/claimant is entitled to the amount of Rs.3,04,500/- along with interest @ 6% per annum from the date of filing of the claim petition till the actual payment.

The respondent/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 appellant/claimant will be entitled to withdraw the entire amount with interest.

The learned Registrar General will release the amount to the appellant/claimant on proper identification.

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

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.)