

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 284 of 2010

The Oriental Insurance Co. Ltd.
Vs.
Bishnu Roy & Ors.

Mr. Sanjay Paul
... For the appellant/Insurance Co.

Mr. Saidur Rahaman
... For the respondent no.1/claimant

This appeal is directed against the judgment and award dated 23rd May, 2008 passed by the learned Judge, Motor Accident Claims Tribunal, Fast Track Court, Malbazar, in connection with MAC Case No.252 of 2005 under Section 166 of the Motor Vehicles Act, whereby the learned Tribunal awarded compensation to the tune of Rs.80,000/-.

The claim petition was filed by one Bishnu Roy claiming Rs.1,00,000/- in respect of his permanent partial disability on account of the accident by the involvement of the truck bearing No.WGV-4749. On 24th April, 2005 at about 19.00 hrs. the claimant met with an accident while claimant was travelling with the aforesaid truck through NH 31, near Mahakal Dham. The said truck capsized due to rash and negligent driving. He sustained multiple injuries on his hands, legs, head etc. and suffered permanent partial disability.

After the accident, Metellia P. S. Case No.27 of 2005 dated 25th April, 2005 under Sections 279, 338 & 304A of the Indian Penal Code was started and ended with charge-sheet. The said truck was duly insured with the Oriental Insurance Company Limited.

The Insurance Company contested this case by filing written statement, denying all averments in the claim petition, contending inter alia that the claimant is not entitled to any compensation, as he was gratuitous passenger

To prove the case, the claimant examined himself as PW-1, and Madan Roy, PW-2. PW-1, has corroborated the entire contents of the claim petition. In course of his evidence, a good number of documents, viz. copy of FIR, charge-sheet, seizure list and policy were admitted in evidence.

PW-2, claimed himself to be an eye-witness to the accident. He specifically stated that he saw the accident. PW-2, testified that on 24th April, 2005 at about 7 p.m. he along with the claimant and other passengers were travelling by the offending truck and the said truck met with an accident at Mahakal Dham, Lataguri forest. The said truck capsized due to rash and negligent driving.

After analysing the evidence and documents on record, the learned Tribunal assessed compensation to the tune of Rs.80,000/- in favour of the claimant.

Mr. Rahaman, the learned advocate appearing on behalf of the claimant/respondent no.1 disputes the compensation amount. On the other hand, Mr. Paul, the learned advocate appearing on behalf of the appellant/Insurance Company submits that the claimant is not entitled to any compensation as he was gratuitous passenger of the offending truck, bearing No.WGV-4749. Alternatively he submits, that in case of direction upon the Insurance Company to make payment, opportunity should be given for recovery, in view of settled principle of law.

In the aforesaid view of the matter, I do not find any reason to interfere with judgment passed by the learned Tribunal. It is not disputed that the petitioner was a gratuitous passenger of the truck bearing No.WGV 4749, and the Insurance Company is not liable to pay any compensation.

In view of the principle laid down in **Oriental Insurance Co. Ltd. v. Nanjappan & Ors.** reported in **2004 ACJ 721**, as also in a case of **Shamanna & Ors. v. The Divisional Manager, The Oriental Insurance Co. Ltd. & Ors.** reported in **AIR 2018 SC 3726**. I find no other alternative but to direct the appellant Insurance Company to pay the entire compensation to the claimant/respondent no.1 and to recover it through execution proceedings, in view of the principle laid down in Nanjappan (supra) and Shamanna (supra).

It is reported that the entire awarded sum has already been deposited by the Insurance Company before the office of the learned Registrar General.

The respondent no.1/claimant is at liberty to withdraw the entire amount with accrued interest from the office of the learned Registrar General of this Court.

The learned Registrar General is requested to disburse the entire amount along with all accrued interest to the respondent no.1/claimant on proper identification.

With the above observation, the appeal, being FMA 283 of 2010, is 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.)