27.06. 2023
item No.03
n.b.
ct. no. 551

FMA 2903 of 2013
with
IA No. CAN 2 of 2014(Old No. CAN 11738 of 2014)

Biswajit Khan
Vs.
National Insurance Co. Ltd. & Ors.

Mr. Uday Sankar Chattopadhyay,
Mr. Suman Sankar Chatterjee,
Mr. Santanu Maji,
Ms. Trisha Rakshit,
Mr. Rajashree Tah,
.....for the appellant.

Mr. Rajdeep Bhattacharya,
.... For the respondent No.2.
Mr. Arabinda Kundu,
... for the respondent no.1.

The instant appeal has been preferred by the claimant against the two Insurance Companies after being aggrieved by and dissatisfied with the judgment and order dated September 8, 2006 passed by the Judge Motor Vehicle Claim Tribunal, 4th Court, Burdwan under M.A.C case no. 4 of 2006/15 of 2005.

It appears that the learned Tribunal has awarded a sum of Rs.2,00,000/- in favour of the claimant/appellant and it was directed the owner of the Bus(offending vehicle) is liable to pay the compensation.

The appeal was preferred on some grounds.

It is the submission of the learned advocate for the appellant that the income of the appellant/claimant was not properly considered by the learned Tribunal in determining the compensation. It is also submission of the learned advocate for the appellant that the injury and the certificate of permanent disablement issues by the Government Hospital was not considered by the learned Tribunal. Learned Tribunal was also erroneous for not fixing the responsibilities upon the insurance companies. On the basis of the above mentioned three grounds, learned advocate for the appellant submitted before this Court that in the claim application the income of the present appellant was stated to be Rs.8,000/-, i.e. Rs.6,000/- per month for Motor parts business and Rs.2,000/- per month for business of Amway India Enterprise.

It appears that no document regarding the income of the claimant was proved placed or before the learned Tribunal. Income tax return of one year was produced by the claimant to show his income for the relevant year to be Rs.8,000/- per month.

It is observed by the learned Tribunal that the return was submitted just after the date of accident. So, it cannot be considered for assessing the income of the claimant. I find no infirmity in the finding of the learned tribunal regarding income of the claimant. It further appears that though claimant has stated in his claim application that Rs.1,25,000/- was incurred to be the expenses of his treatment. But, no document in this regard was proved before the learned Tribunal.

Learned advocate for the appellant submitted that the document was produced in a bunch before the learned Tribunal but, it was returned back after passing of the judgment. It appears that the LCR does not reflect any of such document. Thus, it is unable for this Court to consider any of these documents.

It is the submission of the claimant that both the Insurance Company i.e. National Insurance Co. Ltd. & New India Assurance Company Limited are liable to pay the compensation.

The peculiar facts and circumstances of this case is that the present appellant being the driver of Motor Cycle duly insured by New India Assurance Co. Ltd. met with an accident with a Bus insured by National Insurance Co. Ltd. So, it is submission of the learned advocate for the appellant that both Insurance Companies are the joint tort feasures. It is the submission of the learned advocate that the observation of the learned Tribunal regarding fixing liability upon the owner of the Bus is erroneous. In support of his contention, he cited the decision of **Khenyei Vs. New India Assurance Company Ltd. reported in (2015) 9 SCC 273.**

Learned advocates for the National Insurance company submitted before this Court that the claimant has failed to produce any Insurance policy paper of the

Bus before the Tribunal. Thus, the learned Tribunal has ordered the owner of the Bus to pay the compensation. He firmly augured that the Motor Cycle was also involved in the same accident, it was driven by the claimant. Thus, the National Insurance Co. cannot be liable to pay the compensation, without specific proof of cover of the policy at the relevant time of accident, it is not possible for the Insurance Company to pay the compensation.

Learned advocate for the claimant submitted that the Insurance Company has filed an application under Section 170 of the Motor Vehicles Act taking all responsibility to contest the case on all avoidable defence. Thus, at this juncture Insurance Company cannot deny its liability to pay the compensation while the number of the policy was properly mentioned in the claim application.

It appears that the claim application at para 17A mentioned in the policy number of the Bus but, surprisingly such policy paper was not placed before the learned Tribunal, only a policy paper of New India Assurance Company Limited was produced. Thus, without the policy paper it is uncertain whether the particular vehicle was covered under the policy of the Insurance Company on the date of accident or not. Thus, I find no merit in the submission of the learned advocate for the claimant.

Learned advocate for the New India Assurance Company Limited submitted before this Court that after the accident one police case was registered. On the basis of the FIR, it is mentioned the Bus to be the offending vehicle. The investigation of the police is ended in charge-sheet accusing the driver of the Bus. Thus, respondent no.2/New India Assurance Company Limited has no liability to pay the claim amount in the accident. The New India Assurance Company Limited has no contribution in the accident. Thus, he cannot be directed to pay the compensation.

In support of his contention he cited two decisions reported in **(2008) 7 SCC 428** and **(2009) 5 SCC 112**. The Hon'ble Supreme Court in **(2009) 5 SCC 112** has held that while two vehicles were involved in the accident and it appears that vehicle contributed the accident is not the insurer, the other vehicle, which not contributed the accident, cannot be held liable to pay the compensation. Hon'ble Supreme Court in **(2008) 7 SCC 428** has held that the Insurance policy is covered for payment of compensation to the third party not the driver of the vehicle.

Thus, considering the submissions and judgment laws advanced by the parties, it appears to me that there is no merit to entertain the instant appeal.

It appears that the learned Tribunal has awarded Rs.2,00,000/- to the claimant towards a consolidated amount for both pecuniary and non-pecuniary losses and the owner of the Bus was directed to pay the compensation. Though, it was not proved that the Bus was covered under the policy of the National Insurance Company Limited but considering the submission and presence of the National Insurance Co. Ltd. on behalf of the offending Bus and also in considering the Judgment of Hon'ble Supreme Court passed in State of **Haryana Vs. Baljit Kaur**, it would be prudent to order to pay the compensation as awarded by the learned Tribunal to the claimant/appellant and thereafter, recover the same from the owner of the Bus.

Thus, the order of the Tribunal is moditied, the claim is entitled to get the award of Rs.2,00,000/- from the respondent no.1/National Insurance Company Limited along with 6% per annum from the date of filing of the claim application.

The National Insurance Co. Ltd. shall pay the compensation within 50 days from the date of passing of this order and shall recover the same from the owner of the Bus.

With the above observations, the **FMA 2903 of 2013** is disposed of.

All connected application, if any, are also disposed of.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Subhendu Samanta, J.)