IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction

22.12.2023
SL No.21 & 22
Court No. 551
Ali

FMA 2027 of 2018
With
IA No. CAN 1 of 2017 (Old No. CAN 2032 of 2017)
+
CAN 2 of 2018 (Old No. CAN 5661 of 2018)
The National Insurance Co. Ltd.
Vs.
Smt. Swapna Dutta & Ors.
With

COT 68 of 2018
Smt. Swapna Dutta & Ors.
Vs.
The National Insurance Co. Ltd.

Mr. M.P. Chakraborty,
Ms. R. Karmakar
………. for the appellant/Insurance Co.

Mr. Krishanu Banik
…for the respondents /claimants.

The instant appeal has been preferred against the Judgment and Award dated 15th Day of December, 2016 passed by the learned Judge, Motor Accident Claims Tribunal, Barasat, North 24-Parganas, in MAC Case no. 107/638 of 2011.

The brief facts of the case is that the present respondent being the claimants have preferred an application before the learned tribunal for getting compensation on the ground that their predecessor was died in a road traffic accident due to rash and negligent driving of the driver of the offending vehicle duly insured under the policy of the Insurance Company.

The claim case was contested by the insurance company by filing written statement.

After hearing the parties and after receiving the evidences the learned tribunal has allowed the claim case and awarded a sum of Rs. 3,21,500/- along with interest @ 6% in favour of the claimants. Insurance company/appellant is directed to pay the compensation.

Being aggrieved by and dissatisfied with the same award, the present appeal has been preferred by the insurance company.

The claimants have preferred a cross appeal against the said award. Both the appeal and the cross appeal have been taken up for hearing for the brevity of the discussion.

The single ground of appeal has argued by the learned advocate for the appellant/insurance company before this appellate Court is that, the learned tribunal has not considered the fact that the insurance policy submitted by the claimants before the learned tribunal in respect of the offending vehicle is a fake one.

Learned advocate appearing on behalf of the insurance company placed the examination-in-chief of DW-1 i.e. one of the Administrative Officer of the insurance company who specifically deposed on oath before the learned tribunal in respect of different infirmities appearing in the alleged insurance policy. He argued that the learned tribunal has framed the issue No. 4 to decide whether the offending vehicle was covered under the valid insurance policy at the time of accident. In deciding the issue No. 4, the learned tribunal has held that the insurance company though has raised several issues against the fake insurance policy but has not filed any specific case against the owner of the offending vehicle, so the learned tribunal did not paid any head upon the submission of the insurance company. Learned advocate for the insurance company submits that the observation of the learned tribunal regarding issue No. 4 is not correct and the same is required to be set aside. The offending vehicle was not covered under the policy of the insurance company at the time of accident. Accordingly the insurance company is not liable to pay the compensation.

Learned advocate for the claimants submits that the claimants are the third party who preferred a claim application before the learned tribunal for fatal accident of their predecessor. The claimant has only filed the application along with same documents which they received from the concerned police station. The third party being an outsider to the contact of the insurance company and the owner, is not liable for any infirmities appearing in the insurance policy. He further argued that by virtue of the decision of the Hon'ble Supreme Court passed in **Challa Bharathama** as well as **Swaran Singh**. The insurance company may be directed to pay the just compensation and in turn they may be granted a leave to recover the same from the owner of the vehicle.

Heard the learned advocates; perused the materials on records and the issue raised before this appellate Court. It appears that the insurance company has contested the case for filing written statement. In their written statement, specifically in paragraph 13 (e), they have challenged the insurance policy. The positive statement of insurance company is that, the insurance company has never issued any policy in respect of the offending vehicle bearing No.WB-41B/8962 (Lorry) at the time of alleged accident. They have also in a specific plea that the policy certificate filed alongwith the claim application is totally false and/or forged one. To substantiate their plea, they have produced a witness (DW-1) being Mr. Tapash Kumar Chyatterjee, an Administrative Officer of the company, who during his examination-in-chief on oath has pointed out several discrepancies in the alleged policy certificate. The Xerox copy of the policy certificate was actually produced by the PW-1. At the time of examination-in-chief, it was tendered before the learned tribunal. The learned tribunal has formally exhibited the document as exhibit-7.

In perusing the police papers it appears that the owner of the offending vehicle, namely, **Saim Akhtar** has produced before the police in respect of the documents of the offending (Lorry) on 27.07.2011 between 9:40 to 10:05 hrs and they were seized by police. The seized documents all-certificate of registration, certificate of fitness, Tax Token, pollution certificate and DL in respect of the offending vehicle but such documents does not contain the insurance policy. Surprisingly, it appears that the claimant has produced the Xerox copy of insurance policy and it is unknown wherefrom he got the copy of the insurance policy. The DW-1 has specifically pointed out that the format of the alleged policy (Exhibit-7) is not matching the format of the policy certificate of that relevant year. To show the format, the DW-1 has produced the two certificates for the relevant period of other vehicles.

It appears that the learned tribunal has not properly gone through the evidence of DW-1 and decided the issue No. 4 in a slip-shod manner. It further appears that the claimants have also not put the relevant questions to the DW-1 regarding the merit of examination-in-chief of DW-1. Accordingly, the matter appears cannot be decided without awarding an opportunity to the claimants to explain his possession of policy certificate and/or to further cross examination, the DW-1. Accordingly, I think it necessary, to remand the entire matter back before the learned MACC Tribunal, Barasat for re-assessment of the entire matter, specifically issue No. 4.

Accordingly, the impugned award passed by the learned tribunal is set aside.

The MAC Case be remanded back to the learned tribunal for proper determination afresh. Learned tribunal shall initiate the proceeding again from the stage of evidence.

The claimants and the insurance company are at liberty to produce their evidence, if any, in respect of the alleged insurance policy.

The matter is pending since 2011.

Accordingly, the learned tribunal is directed to dispose of the matter within March, 2024 according to the law after awarding sufficient opportunities to the parties.

Let a copy of this order along with LCR be sent back to the office of the learned tribunal immediately for compliance.

Insurance company is at liberty to withdraw the amount which was deposited during the pendence of the instant appeal alongwith accrued interest, if any.

The instant FMA 2027 of 2018 alongwith COT 68 of 2018 is disposed of.

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

Interim orders, if any, stand vacated.

Parties to act upon the server copy and urgent certified copy of this order be provided on usual terms and conditions.

(Subhendu Samanta, J.)