

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 1568 of 2008
with
IA No. CAN 1 of 2007 (CAN 3737 of 2007)

United India Insurance Company Limited
Vs.
Dipali Roy & Anr.

with
COT 57 of 2008

Dipali Roy
Vs.
United India Insurance Company Limited & Anr.

Mr. Rajesh Singh
... For the appellant/Insurance Co. in FMA
1568 of 2008 & respondent no.1/
Insurance Co. in COT 57 of 2008

Mr. Jayanta Banerjee
Mr. Sandip Bandyopadhyay
... For the respondent/claimant in
FMA 1568 of 2008 & Cross Appellant/
Claimant in COT 57 of 2008

On prayer, learned advocates on behalf of the
appellant/Insurance Company and the claimant/cross-
appellant have received one copy each of the Paper Book
from the records of the Court.

This appeal is directed against the judgment and
award dated 19th December, 2006 passed by the learned
Judge, Motor Accident Claims Tribunal, Additional District
Judge, 1st Court, Nadia, in connection with MAC Case
No.330 of 2003 under Section 166 of the Motor Vehicles
Act, 1988 whereby the learned Tribunal awarded
Rs.12,000/- as compensation.

Being aggrieved by and dissatisfied with the said judgment, United India Insurance Company Limited preferred this appeal on the ground that the injured was travelling by a vehicle, bearing registration no.WB-51/1268 (Tata-609), as gratuitous passenger and, therefore, the Insurance Company is not liable to pay any compensation.

On the other hand, on behalf of the claimant, one cross appeal, being COT 57 of 2008, was filed for the enhancement of the amount of compensation in view of the pain and suffering and future medical expenses.

The injured filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 on account of her injury received in a road traffic accident happened on 16th June, 2002 at about 2.30 p.m. while she along with other passengers travelling by the vehicle, bearing registration no.WB-51/1268, from Betain Sadhubazar to Ramnagar Burning Ghat for cremation of a dead body. At the relevant point of time, the vehicle was driving with high speed and in rash and negligent manner and as a result turned upside down. The victim/claimant sustained injury and she was taken to hospital and remained there for a period from 16th June, 2002 to 23rd June, 2002. The claimant being an old woman of 56 years having income of Rs.1,800/- per month from her business of selling green vegetables. That is why the claim petition was filed by the

claimant with a prayer for compensation to the tune of Rs.60,000/-.

Owner of the offending vehicle did not contest the claim petition but the United India Insurance Company Limited contested the case by filing written objection denying all material averments of the claim petition contending, inter alia, that there was no fault on the part of the said vehicle and the Insurance Company was not liable to pay any compensation.

To prove the case, the claimant examined as many as five witnesses, namely, Mahadeb Biswas, an employee of Nadia District Hospital, proved the admission of the injured Dipali Roy from 16th June, 2002 to 23rd June, 2002 and his cross-examination was declined on behalf of the Insurance Company.

The injured Dipali Roy examined herself as PW-2. She corroborated the entire contents of the claim petition. In course of her evidence, she stated that she incurred Rs.5,000/- for her treatment.

One Ramananda Roy, son of the injured/claimant Dipali Roy, was examined as PW-3. He testified that he also sustained injury in the same accident and he was discharged from Palashipara Primary Health Centre after primary treatment. He further stated that his mother was hospitalised for seven days.

One Santosh Ghosh was examined as PW-4 and he testified that he saw the accident while the Matador,

bearing registration no.WB-51/1268, capsized. He further testified that two persons died at the hospital and the claimant of this case also sustained injury.

One Dr. Susanta Kumar Biswas, the then Orthopaedic Surgeon at Nadia District Hospital, came to depose before the learned Tribunal and he testified that he treated the patient, namely, Dipali Roy and he proved the bed-head tickets and other medical papers before the learned Tribunal. No specific cross-examination was made on behalf of the Insurance Company.

In course of evidence, First Information Report, OPD tickets of the hospital, all bed-head tickets, discharge certificate and insurance certificate were admitted in evidence and marked as Exhibit 1 to 5.

Learned Judge of the Tribunal after considering the entire evidence on record returned his finding that the accident alleged in this case took place on 16th June, 2002 due to rash and negligent driving of the vehicle, bearing registration no.WB-51/1268, and thereby the claimant sustained injury. Even she had to admit in the hospital from 16th June, 2002 to 23rd June, 2002. Considering all facts and circumstances, the learned Tribunal granted Rs.12,000/- compensation in view of expenditure towards treatment as well as pain and suffering.

Mr. Rajesh Singh, learned advocate, on behalf of the appellant/United India Insurance Company Limited

has submitted that sufficient compensation was granted by the learned Tribunal and the Insurance Company is entitled to recover the said amount from the owner of the vehicle.

Mr. Jayanta Banerjee, learned advocate, on behalf of the claimant/injured in respect of COT 57 of 2008 has submitted before this Court that the amount of compensation is required to be increased in terms of pain and suffering of the claimant after the accident alleged and proved in this case.

Considering all the facts and circumstances, particularly, the admission of the claimant/cross-appellant in the hospital for seven days, I find that compensation amount should be increased from Rs.12,000/- to Rs.20,000/-.

It is reported that the statutory amount of Rs.25,000/- was deposited on behalf of the appellant/United India Insurance Company Limited at the time of filing of the appeal and later on the appellant/United India Insurance Company Limited withdrew Rs.13,000/- vide an order dated 30th September, 2008 in terms of the awarded amount of Rs.12,000/- which is still lying with the office of the learned Registrar General of this Court.

Considering the facts and circumstances of the instant case, I find that the claimant/cross-appellant is entitled to Rs.20,000/- along with interest @ 6% per

annum from the date of filing of the claim petition, i.e., on 7th June, 2003 till the deposit of the amount. The claimant/cross-appellant is also entitled to interest @ 6% per annum on the amount of Rs.12,000/- from the date of filing of the claim petition, i.e., on 7th June, 2003 till 4th May, 2007.

Accordingly, the appellant/United India Insurance Company Limited is directed to deposit the enhanced amount of Rs.8,000/- (Rs.20,000/- – Rs.12,000/-) along with interest @ 6% per annum from the date of filing of the claim petition, i.e. on 7th June, 2003 till the actual deposit of the amount before the office of the learned Registrar General of this Court, within six weeks from the date of this order.

The appellant/United India Insurance Company Limited is also directed to deposit interest @ 6% per annum on the amount of Rs.12,000/- from the date of filing of the claim petition, i.e., on 7th June, 2003 till 4th May, 2007, before the office of the learned Registrar General of this Court, within six weeks from date.

The appellant/United India Insurance Company Limited is at liberty to recover the entire awarded sum with interest from the owner of the vehicle, bearing registration no.WB-51/1268, through execution proceeding in terms of the observations of the Hon'ble Apex Court in **Shamanna & Ors. v. The Divisional Manager, The Oriental Insurance Co. Ltd. & Ors.**

reported in **AIR 2018 SC 3726** and **Oriental Insurance Co. Ltd. v. Nanjappan & Ors.** reported in **AIR 2004 SC 1630 : (2004) 13 SCC 244.**

The claimant/cross-appellant is entitled to withdraw the entire awarded amount with interest.

The learned Registrar General is requested to disburse the entire amount along with interest and accrued interest to the claimant/cross-appellant on proper identification and proof.

With the above observations, the appeal, being FMA 1568 of 2008, along with CAN 1 of 2007 (CAN 3737 of 2007) and the cross-appeal, being COT 57 of 2008, stand 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.)