IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction

11.12.2023
SL No.7
Court No. 551
Ali

FMA 18 of 2018
With
IA No. CAN/1/2017 (Old NO: CAN/10115/2017)

The Oriental Insurance Co. Ltd.
Vs.
Lulfa Bewa & Ors.

Mr. Parimal Kumar Pahari
………. for the appellant/Insurance Co.

Mr. Snehasis Jana
…for the respondents /claimants.

The instant appeal has been preferred against the Judgment and Award dated 14th June, 2008 passed by learned Commissioner, Employees' Compensation Tribunal, West Bengal in Claim Case no. 218 of 2008.

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 a driver of vehicle No. WB-57/5478 under employment of one Partha Pal and was preferring the duty as a driver under the same employment. On 30.05.2007 the said vehicle met with an accident as a result of collision with another vehicle on NH-34 under Chakdaha P.S., as a result the predecessor of the present applicant, namely, Taijel Sk became seriously injured and, thereafter, succumbed to his injuries.

The claimants have prayed compensation before the owner of the offending vehicle but the owner did not pay the compensation, accordingly, they preferred a claim case before the learned tribunal.

The insurance company contested the case before the learned tribunal and after hearing the parties the learned tribunal has allowed the claim in favour of the claimants amounting to Rs. 4,27,140/- alongwith interest @ 12% per annum from the expiry of one month from the date of accident and directed the insurance company to pay the compensation.

Being aggrieved by and dissatisfied with the impugned judgment, the insurance company has preferred the present appeal.

Learned advocate for the insurance company submits that the deceased died under the employment of the owner of the vehicle. The owner is solely liable to pay the compensation and if the owner satisfied that there was a contact between the owner and the insurance company; thereafter, the insurance company is at liability to indemnify the owner. In this case the learned tribunal has directed directly the insurance company to pay the compensation. He further argued that the observation of the learned tribunal is erroneous so the award passed by the learned tribunal is not justified.

The learned advocate for the respondents-claimants submits that by virtue of the decision of the Hon'ble High Court, the insurance company may be liable to pay the compensation.

Mr. Parimal Kumar Pahari, learned advocate appearing on behalf of the insurance company has frankly submitted before this Court that the Division Bench of this Hon'ble Court has decided the issue, on earlier occasions this Court has adopted the same view in several appeals that the insurance company may be directed to pay the compensation if the vehicle duly insured by the insurance company.

Heard the learned advocate for the claimants and the appellant. By virtue of the decision of the Hon'ble Division Bench of this Hon'ble Court passed in **National Insurance Company Versus Nimai and Others**. The Division Bench of this Court has specifically pointed out that when ultimate payment has to be made by the insurance company and when the claimants has chosen the forum of Workmen's Compensation Tribunal so it is necessary to direct the insurance company to pay the compensation. The paragraph 32 and 33 of the **Nimai** is set out as under:-

"32.However, since the p[resent cases involve accidental

injury and death arising out of use of motor vehicles, the claim for compensation could be laid either under the provisions of the 1923 Act or the 1988 Act. it is the forum under the former Act that the concerned claimant chose to approach. Once a party elects the forum under the 1923 Act, he cannot claim any benefit under the 1988 Act and vice versa. Upon reading the relevant provisions of the 1923 Act and the 1988 Act, we are of the view that while under the latter Act the insurance company may be held liable to indemnify the claimant provided the vehicle involved in the accident is covered by a policy issued by it, the same is not so in case of a claim for compensation succeeding before the Commissioner under the former Act. Mr. Singh is right in his contention that unless section14 of the 1923 Act is attracted in a given case, the compensation found payable to the claimant cannot be directed to be made good by the insurance company; the liability is that of the insured employer who should pay and recover from the insurance company.

33. For the reasons aforesaid, the appeals are liable to succeed and the impugned decisions interdicted. However, Mr. Singh and Mr. Das have very fairly submitted that the vehicles involved in the accidents in

> ***question being covered by policies issued by National and Oriental and the claimants being poor people would otherwise be prejudiced if remand were ordered, they shall pay compensation as directed by the concerned Commissioners to Nimai and Afruja.”***

Perused the direction of the Hon’ble Division Bench of this Court.

Considering the entire materials it appears to me that the offending vehicle was well covered under the policy of the insurance company at the time of alleged accident. Thus, in my view I find no infirmity in the award passed by the learned tribunal.

The learned advocate for the insurance company submits that the entire awarded amount has already been deposited to the office of the learned Commissioner. This Court has already directed the learned Commissioner to invest the same in a short term deposit scheme.

Accordingly, the office of the learned Commissioner is directed to disburse the same in the name of the claimants alongwith accrued interest, if any, according to the prevalent Rules.

On the above observation, the instant FMA 18 of 2013 is disposed of.

All connected 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.)