IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction

21.09.2023
SL No.14
Court No. 551
Ali

FMA 982 of 2011
IA No: CAN/1/2018 (Old No:CAN/6290/2018)

Jahanara Rani Bewa & Ors.
Vs.
United India Insurance Co. Ltd. & Ors.

Mr. Saidur Rahaman
……………. for the appellants-claimants.

Mr. M.P. Chakraborty,
Ms. Ratnadipa Karmakar
…for the respondent No 1-United India insurance Co.

Mr. Sanjay Paul,
Ms. Jaita Ghosh
…for the respondent No 2-Oriental insurance Co.

The instant appeal has been preferred against the judgment and award dated 30th June, 2010 passed by learned Judge, Motor Accident Claims Tribunal, 2nd Court, Berhampore, Murshidabad in M.V. Case no. 301 of 2004 under Section 163-A of the MV Act.

The brief fact of the case is that the present appellant being the claimants filed an application before the learned tribunal for getting compensation under Section 163-A of the M.V. Act on the ground that their predecessor died in a road traffic accident due to rash and negligent driving of the drivers of the two offending vehicles duly insured under the policy of the insurance companies. The claim case was contested by both the insurance companies and after hearing both the parties the learned tribunal has awarded a sum of Rs. 1,52,000/-in favour of the claimants and directed the owner of the vehicle No. WB 53/3997 to pay the compensation on the ground that the terms of the policy of the United India Insurance Co. Ltd. with the owner was violated by the owner himself.

Being aggrieved by and dissatisfied with the impugned award the present appeal has been preferred.

The learned advocate for the appellants submits that the award passed by the learned tribunal is erroneous. The learned tribunal has considered the income of the deceased to be Rs. 15,000/- per annum. The alleged accident happened in the year 2002. The deceased was a sole bread earner of their family. So, at this juncture, the income of the deceased cannot be considered to be Rs. 15,000/- per annum but it should be at least Rs.3,000/- per month. He also submits that the learned tribunal has awarded compensation by fixing the general damages of Rs. 2,000/- which is erroneous in a case under Section 163-A of the M.V. Act the general damages would be Rs. 9,500/-. So, he prayed for just and proper compensation.

Learned advocate appearing on behalf of the opposite party No. 1-United India Insurance Co. Ltd. submits that the two vehicles are involved in the alleged accident but the driver of the United India

Insurance Co. Ltd. i.e. the vehicle No. WB-53/3997 was made liable to pay the compensation. The observation of the learned tribunal regarding fixing the liability upon the single insurance company is not correct. Both the vehicles were involved in the alleged accident so both the insurance companies may be liable to pay the compensation. However, the terms of the policy with the United India Insurance Co. Ltd. and the owner of the truck has firmly proved to be violated. So, at this juncture, the United India Insurance Co. may not liable to pay the compensation.

The learned advocate appearing on behalf of the Oriental Insurance Co. Ltd. submits that the truck bearing No. WB-33/7786 was not actually responsible for the accident. The other truck i.e. the truck bearing no WB-53/3997 is solely responsible for the accident. The driver of the said truck (WB-53/3997) was running the vehicle with rash and negligent manner thus the learned tribunal has correctly assessed the compensation and directed the owner of the offending truck to pay the compensation. The Oriental Insurance Co. Ltd. may not be directed to pay the compensation as the driver of the truck bearing No. WB-33/7786 was not driven the vehicle rash and negligent manner.

Heard the learned advocate perused the materials on record it appears to me that the alleged accident was happened on 4th of August, 2002. Just after the accident one Indrajit Sarkar lodged a complaint with the Kanksa P.S. on 05.08.2002. On the basis of such written complaint, the Kanksa Police Station Case No. 116/02 was initiated. On perusing the police record specially the FIR, it appears that at the time of accident both the vehicles were running rash and negligent manner and there were a head on collision between two trucks. This case is filed under Section 163-A of the MV Act; only involvement of Motor Vehicle is required to be proved. In this case, both the vehicles were involved in the said accident. The negligency on the part of the driver is not required proved in this case. Thus, at this juncture, I think it necessary that both the vehicles are jointly and equally liable to pay the compensation.

It appears to me that the learned tribunal has directed the owner of the vehicle to pay the compensation. The issue of pay and recovery has been sufficiently settled by the Hon'ble Supreme Court in the case of **Swaran Singh** as well as **Challa Bharathamma.** In case of violation of the terms of the agreement of the policy the insurance company is not actually liable to pay the compensation; but for the purpose of payment to the claimants; the insurance company may be directed to pay the compensation and in turn they are at liberty records the same from the owner of the vehicle according to the guidelines laid down by the Hon'ble Supreme Court in **Swaran Singh.**

Considering the same, I think it necessary that the observation of the Honb'ble Apex court in **Swaran Singh** is very much applicable in this case. The insurance companies are equally directed to pay the compensation and they are at liberty to recover the same from the owner of the offending vehicle.

In considering the just and proper compensation of this case it appears to me that the deceased died in a road traffic accident in the year 2002 and he was the sole bread earner of the family of the appellants; thus in this court the income of the deceased should be calculated in terms of Rs. 2,500/- per month. At the time of accident the deceased was 42 years old so according to the 2nd schedule of Section 163-A of MV Act, the applicable multiplier of this case would be 15. The claimants are also entitled to get the general damages amounting to Rs. 9,500/-.

Considering the entire aspects the just and proper compensation is recasted as follows:-

Calculation of compensation

1. Income Rs.2,500/-
2. Annual Income be assessed as
   ...(Rs.2,500/- X 12)............ Rs.30,000/-
3. Less: 1/3rd
   towards personal & living expenses Rs.10,000/-
   Rs.20,000/

4. Multiplier 15
(Rs.20,000/-X 15).....................................Rs.3,00,000/

5. Add: General Damages ....Rs. 9,500/-

Balance compensation.......... Rs. 3,09,500/-

So the award comes to Rs. 3,09,500/-. The insurance companies are directed to pay the compensation alongwith interest @ 6% per annum from the date of filing of the claim application i.e. from 25th of August, 2004.

Both the insurance companies, namely, United India Insurance Co. Ltd. and Oriental Insurance Co. Ltd. are directed to pay the 50% of the compensation each within eight weeks from the date of passing of this order with the office of the learned Registrar General, High Court, Calcutta. On such payment the claimants are at liberty to recover the same according to prevalent rules subject to ascertainment of payment of requisite court fees. The office of the learned Registrar General, High Court, Calcutta is directed to pay the compensation to the claimants vide four equal account payee cheques. After such payment the insurance companies are at liberty to recover the same from the owner of the vehicles as mentioned above.

The instant FMA 982 of 2011 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.)