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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURICTION
APPELLATE SIDE

FMA 2330 of 2013

M/s. Bajaj Allianz General Insurance Company Limited
Vs.
Sujita Mondal & Ors.

Mr. Amitava Mitra
Ms. Antara Choudhury
... For the appellant/Insurance Co.

Mr. Jayanta Kumar Mandal
Ms. Sima Ghosh
... For the respondents/claimants

This appeal is directed against the judgment and award dated 3rd March, 2011 passed by the learned Judge, Motor Accident Claims Tribunal, Additional District Judge, 4th Court, Suri, Birbhum, in connection with MAC Case No.105 of 2008 under Section 163A of the Motor vehicles Act, 1988 whereby the learned Tribunal awarded compensation to the tune of Rs.4,41,500/- along with simple interest @ 7.5% per annum from 06.01.2009 till the deposit of the awarded amount.

The claim petition was filed on account of death of one Subhas Mondal in a motor accident occurred on 31st October, 2007 at about 11.00 p.m. by the involvement of one Motor Cycle, bearing registration no.WB-54-D/9296. At the time of the accidental death, Subhas Mondal was 29 years of age having income of Rs.3,000/- per month from his business. That is why claim petition was filed by the claimants with a prayer for compensation to the tune of Rs.4,50,000/-.

The Insurance Company contested the case by filing written statement denying all material allegations in the claim petition contending, inter alia, that the alleged motor cycle was not involved in the accident and the claimants are not entitled to any compensation.

To prove the case, the claimants examined as many as three witnesses, namely, Sujata Mandal, the wife of the deceased, as PW-1, who corroborated the entire contents of the claim petition. One Omed Ali Khan, who was the driver of the ambulance, was examined as PW-2. He testified that on the alleged date of accident, they were returning from Rampurhat at about 11.00 p.m., he witnessed the accident near Tilpara Gosain Mandir while the motor cycle dashed a pedestrian near the said Tilpara Gosain Temple. One Abdul Kannan @ Mayna was examined as PW-3 who claimed himself to be an eyewitness to the incident. He also testified that he along with Omed Ali Khan and Ramesh Ghosh were returning from Rampurhat side with vehicle no.WB-53/3477 and they saw the accident near Tilpara Gosain Mandir by the involvement of a motor cycle which dashed a pedestrian near Tilpara Gosain Temple. In course of their evidence, a good number of documents were admitted in evidence, including certified copy of First Information Report, charge sheet, seizure list, post-mortem report, insurance policy etc.

On behalf of the Insurance Company, one witness, namely, Dinabandhu Banerjee, Upper Division Clear of Motor Vehicles Section-I, was examined as OPW-1. He produced the driving licence of the motor cycle and submitted that it was valid upto 28th November, 2025, but according to register (Exhibit-A), the licence was issued on 23rd November, 2008 and due to clerical mistake, it was written as 23rd November, 2005. From the Exhibit-A issued by the Licensing Authority, Birbhum, it is found that the licence was issued in the name of the driver of the vehicle on 23rd November, 2008.

In course of argument, Mr. Amitave Mitra, learned advocate, appearing on behalf of the appellant/Insurance Company has emphasised on two grounds of this appeal. One is that the driver of the motor cycle had no valid licence at the time of alleged accident, so the Insurance Company is not liable to pay any compensation. It is further submitted by Mr. Mitra that in course of evidence on behalf of the claimants' side, a fake driving licence was filed. He referred to Exhibit-A which was issued by the Licensing Authority, Birbhum Motor Vehicles Department wherefrom it is seen that at the relevant point of time the driver had no valid licence which was issued only on 23rd November, 2008.

Mr. Mitra has further drawn my attention to the cross-examination of PW-2 and PW-3 (eyewitnesses) and submitted that there are material contradiction between the two witnesses regarding happening of the accident.

Mr. Jayanta Kumar Mandal, learned advocate, appearing on behalf of the respondents/claimants has submitted that he has nothing to submit regarding driving licence as the Insurance Company has the liberty to recover the amount of compensation from the owner in case of any violation of policy. Mr. Mandal has further submitted that this is a case under Section 163A of the Motor Vehicles Act, 1988, so proof of negligent driving through eyewitnesses is absolutely immaterial.

I have carefully gone through the evidence of OPW-1 together with Exhibit-A and I find that the driver of the motor cycle obtained driving licence only on 23rd November, 2008 from the Licensing Authority, Birbhum Motor Vehicles office. Therefore, in absence of any contrary evidence, I find no other option but to hold that the driving licence submitted on behalf of the claimants in respect of the driver of the offending vehicle may be fake one. From that point of view, the Insurance Company will pay the awarded amount and is at liberty to recover the same from the owner of the motor cycle.

So far as the contradiction among the eyewitnesses is concerned, I find that the accident usually takes place in a quick succession and in that case evidence of persons around the accident place cannot be expected to be parrot like. Moreover, this is a case under Section 163A of the

Motor Vehicles Act, 1988 and accidental death of Subhas Mondal by the involvement of one Motor Cycle, bearing registration no.WB-54-D/9296, has well established by the evidence of witnesses examined on behalf of the claimants as well as documents, viz., FIR, seizure list, charge sheet and post-mortem report.

In the aforesaid view of the matter, I do not find any merit in this appeal and for that reason I am inclined to interfere with the judgment passed by the learned Tribunal.

It is submitted by the learned advocates appearing on behalf of the parties to this appeal that only principal amount of Rs.4,41,500/- was deposited, though there is an order of paying simple interest @ 7.5% per annum.

In these circumstances, the appellant/Bajaj Allianz General Insurance Company Limited is directed to deposit interest @ 7.5% per annum from 6th January, 2009 till 26th January, 2013 before the office of the learned Registrar General of this Court, within six weeks from the date of this order.

The respondents/claimants are at liberty to withdraw the awarded compensation with all accrued interest and the interest from 6th January, 2009 till 26th January, 2013.

The appellant/Bajaj Allianz General Insurance Company Limited is at liberty to recover the entire awarded sum from the owner of the vehicle, bearing registration no.WB-54-D/9296, 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 learned Registrar General is requested to disburse the awarded amount with all accrued interest and the interest from 6th January, 2009 till 26th January, 2013 to the respondents/claimants in equal share on proper identification and proof.

With the above observations, the appeal, being FMA 2330 of 2013, is 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.)