

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 368 of 2008

The Oriental Insurance Co. Ltd.
Vs.
Smt. Sabitri Das & Ors.

Mr. Parimal Kumar Pahari
... For the appellant/ Insurance Co.

On prayer, learned advocate on behalf of the appellant/Oriental Insurance Company Limited has received one copy of the Paper Book from the records of the Court.

Mr. Parimal Kumar Pahari, learned advocate, on behalf of the appellant/Oriental Insurance Company Limited appears but none appears on behalf of the respondents in spite of repeated calls.

The appeal is taken up for disposal on merit as it is pending since 2008.

Heard learned advocate appearing on behalf of the appellant/Oriental Insurance Company Limited.

This appeal is directed against the judgment and award passed on 22nd May, 2007 by the learned Judge, Motor Accident Claims Tribunal, Additional District Judge, 4th Court, Paschim Medinipur, in connection with MAC

Case No.662 of 2005 under Section 166 of the Motor Vehicles Act, 1988.

The claim petition was filed on account of death of one Debasish @ Pralhad Das in a motor accident by the involvement of two vehicles, i.e., one Motor Cycle, bearing registration no.WB-34L/6065 and one Bus, bearing registration no.WB-11/8831 occurred on 9th April, 2005 at Midnapore Town about 1.00 p.m. at the relevant point of time the deceased Debasish @ Pralhad Das was driving the aforesaid motor cycle with a pillion rider, i.e., his elder brother through Ranjgunj-Midnapore Road. Suddenly, the aforesaid bus coming from opposite side with a high speed collided with that motor cycle. In effect, both the driver and the pillion rider of the motor cycle died on spot. According to the claimants, Debasish @ Pralhad Das had a business of betel shop and having income of Rs.4,000/- to Rs.4,500/- per month. Accordingly, the claimants prayed for compensation to the tune of Rs.5,50,000/-.

The appellant/Oriental Insurance Company Limited contested the case by filing written statement denying all material allegations in the claim petition contending, inter alia, that the Insurance Company had no liability to pay compensation.

In course of trial, two witnesses were examined. Both the witnesses corroborated the averments of the claim petition.

Learned Judge of the Tribunal after considering the entire evidence on record, returned his finding to the effect that the death of the deceased was due to head-on collision of the two vehicles and both the vehicles were insured with the National Insurance Company Limited and the Oriental Insurance Company Limited, respectively, and both the Insurance Companies are liable to pay compensation equally. Accordingly, the learned Tribunal directed both the Insurance Companies to pay Rs.75,000/- each after deducting Rs.50,000/- which was already paid to the claimants by the Insurance Companies in equal share under Section 140 of the Motor Vehicles Act, 1988.

Mr. Pahari, learned advocate appearing on behalf of the appellant/Oriental Insurance Company Limited submitted that the appeal has been preferred only on the ground of liability of the Insurance Company as the policy was not covered for the owner's risk as it was a policy of third party risk. Mr. Pahari has tried to establish that if the owner is not covered in the policy, the Insurance Company is not liable to pay as in this case the owner/driver of the motor cycle died in the accident and that motor cycle was insured with Oriental Insurance Company Limited.

But, on careful perusal of the policy (Ext.-A), I find that the insurance policy received premium of Rs.50/- towards personal accident coverage. Therefore, I am unable to accept the argument advanced on behalf of Mr.

Pahari as the insurance policy itself shows the insurance coverage for the owner/driver of the motor cycle to the extent of Rs.1,00,000/-.

In this case, liability of the Oriental Insurance Company Limited was assessed at Rs.1,00,000/- in total by the learned Tribunal.

In the factual situation, I find no merit in the appeal. Accordingly, the appeal fails and stands dismissed.

It is reported that the appellant/Oriental Insurance Company Limited has already deposited the entire amount as awarded by the learned Tribunal to the office of the learned Registrar General of this Court.

In such circumstances, the respondents/claimants are entitled to withdraw the amount with accrued interest from the office of the learned Registrar General.

The learned Registrar General is requested to disburse the amount with accrued interest to the respondents/claimants in the manner as prescribed in the order of the learned Tribunal on proper identification.

With the above observation, the appeal, being FMA 368 of 2008, is disposed of on merit.

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.)