22.11. 2023
item No.5 &6
n.b.
ct. no. 551

FMA 4575 of 2016
with
CAN 3 of 2023
+
CAN 4 of 2023

The New India Assurance Co. Ltd.
Vs.
Ruby Chakraborty & Ors.
With
FMA 4576 f 2016
With
IA No. CAN 1 of 2016(Old No. CAN 1015 of 2016)
+
CAN 3 of 2023
+
CAN 4 of 2033
ICICI Lombard General Insurance Co. Ltd.
Vs
Ruby Chakraborty &Ors.

Mr. Rajesh Singh,
..... appellant.
Mr. Jayanta Banerjee,
Mr. Sandip Bandopadhyay,
Smt. Ruxmini Basu Roy
...... the claimant.
Mr. Binay Panda,
Mr. Subham Bhakat,
.... For the State.

In Re. CAN 3 of 2023 & CAN 4 2023

Identical applications being filed by claimant/respondent in both the appeals for recording the attainment of majority of respond nos.2 and 3 and for correction of the name of the respondent no.3.

Heard the learned advocates CAN 3 of 2023 is allowed with a direction to concerned department to correct the Memo of the Appeals according to the prayers of the CAN 3 of 2023 and CAN 4 of 2023.

In Re. FMA 4575 of 2016
With
FMA 4576 of 2016

Both the appeals have preferred by two Insurance Companies against a single award dated January 11, 2015 passed by the learned Judge, Motor Accident Claims Tribunal, Paschim Midinipore, in M.A. C. case No. 294 of 2007 under Section 166 of M.V. Act.

The claimant preferred the claim application before the leaned Tribunal for getting compensation by making party both insurer of two offending vehicles one is Truck bearing WB 03/7804 and another is Auto Rickshaw bearing no. WB 33X/0091. Both the owner of the vehicles were also made party in the proceeding before the learned Tribunal. The owners never appearing before the learned Tribunal but the Insurance Companies contested claim case by filing written statements respectively. The learned Tribunal after hearing the parties, has awarded a compensation amounting to Rs.3,70,000/- in favour of the claimants along with 6% interest per annum from the date of filing of the claim application. Learned Tribunal has directed both the insurer are equally responsible for the said accident and also directed that the 50% of the compensation has to be paid each of the insurer.

The insurer of the Truck has preferred appeal on the ground that the alleged insurance company the New India Assurance Company Ltd. was not insurer of the offending vehicle bearing no. WB 03/7804(Truck) at the date of alleged accident. Thus, the New Indian Assurance Co. Ltd. Is not liable to pay any portion of the compensation.

The insurer of the Auto Rickshaw i.e. ICICI Lombard General Insurance Co. Ltd. has preferred another appeal on the ground that the ICICI Lombard General Insurance Co. Ltd. is not liable to pay the compensation. The FIR was lodged against the Truck; the final police report i.e charge sheet also submitted accusing driver of the truck to be responsible for the accident. Eye witness, police witness also deposed before the learned Tribunal against the driver of the truck to be responsible for the accident. Thus, the insurer of Auto Rickshaw i.e. ICICI Lombard General Insurance Co. Ltd. is not responsible for the accident, so he may not be directed to pay any portion of the compensation.

Learned advocate for the New India Assurance Co. Ltd. submits that the claim petition was submitted before the learned Tribunal without mentioning the policy number of the so-called offending vehicle (Truck). It has been specifically pleaded by the New India Assurance Co. Ltd. by filing written statement that the said Insurance Company has nothing with the office regarding issuance of the policy in favour of the offending vehicle i.e. truck. He further argued that the charge-sheet has been submitted with the seizure list, which contained that the police has seized an insurance policy from the offending truck but no policy number was mentioned in the seizure list.

Learned advocate for the insurance company further argued that specific report has been obtained from the concerned office of the insurance company wherein it transpires that the offending vehicle(Truck) was never insured under the appellant insurance company at the time of accident. It is the specific argument for the insurance company that the policy number was not provided in anywhere. The claimant never proved it before the learned Tribunal that the offending Truck was insured by the appellant; till then the learned Tribunal has erroneously fixed the liability upon the insurance company to pay the 50% of the compensation. He argued that only mentioning the name of the insurance company is not sufficient. According to the rule, the claim application has to be filed along with name and the policy number of the insurance company. On that score of the above argument he submits that the observation of the learned Tribunal regarding fixing liability to pay the compensation by the New India Assurance Company Limited is erroneous and the portion of the award may be set aside.

The learned advocate for the ICICI Lombard General Insurance Co. Ltd. has submitted that the entire case preferred by the claimant is filed against the driver of the truck. The fact of the case disclosed that the truck was parked dangerously over the road and without signal. The accident occurred solely for the purpose of parking a truck in dark on the highway. Thus, the claimant has preferred claim application accusing the driver of the truck to be responsible for the accident. The investigation of the police is ended with charge sheet accusing driver of the truck to be responsible for the accident. He further argued by virtue of the decision of the Hon'ble Supreme Court passed in ***M/s. Tamil Nadu State Transport Corporation, Tanjore rep. By its M.D. Vs. Natarajan & Ors.*** *reported in* ***2003 (2) T.A.C. 241 (S.C.).*** The insurer of the auto rickshaw is not liable to pay the compensation. He argued that the driver of the auto rickshaw was died in such accident, so the insurer of the auto rickshaw is not liable to pay the portion of the compensation.

Heard the learned advocates and perused the materials on record, perused the observation of the Hon'ble Supreme Court passed in ***M/s. Tamil Nadu State Transport Corporation, Tanjore (supra).*** It appears that the Hon'ble Supreme Court while considering the contributory negligence, is of the view that the portion of the negligence contributed by the driver cannot be again claimed from the insurer of this injured driver.. So, considering the observation of the Hon'ble Supreme Court above it appears to me that the principle laid down by the Hon'ble Supreme Court is not applicable in this case.

It appears to me that the sole point for appeal by both the insurance companies is that they are not liable to pay the portion of the compensation. Let me assess whether the learned Tribunal is justified in fixing the liability upon both insurance company.

The factual matrix of the case is that the truck was parked with loaded unsafe condition with concreted electric pole and no red signal was shown on O.T. Road (N.H. 60) near Shyampura village within the jurisdiction of Belda Police Station, District Paschim Medinipur; at the time of one auto rickshaw was coming from Kharagpur side through N.H. 60 and driver of the auto rickshaw bearing No.WB 33X 0091 did not see the signal of the aforesaid standing truck and met with an accident. By such the driver of the auto rickshaw sustained grievous injuries and taken to hospital. The investigation of the police ended in charge sheet admitting the driver of the truck to be responsible for the accident, as he had parked the Truck in dark in unsafe condition over the road.

It is the argument by the New India Assurance Company that the offending truck was never insured under the policy of the insurance company at the time of accident. During the course of argument the police report is called for. The police has submitted a report through the learned advocate, who submits that the report discloses that the CD does not contain any policy paper. I have also perused the CD.

In considering the submission of the learned advocate and also in considering the report of the police, it appears to me that the seizure was effected after the accident but such seizure does not mention the number of the insurance policy of the offending truck. Furthermore, it is proved that the truck was responsible for the accident but at the same time without proving the responsibility and the contract between the owner and the insurer of the truck, the insurer of the truck is not be liable to pay any portion of the compensation. In that score, the owner of the truck could not deny his liability. It appears that the owner of the truck was summoned but he did not appear before the learned Tribunal or did not file any written statement.

Considering the same it appears to me that the insurance company of the alleged truck i.e. the New India Assurance Company Limited is not liable to pay any portion of the compensation, rather the owner of the truck is liable to pay the portion of the compensation.

It appears to me that the claim case was filed by the claimants for getting compensation, who are the legal heirs of the driver of the auto rickshaw. They may not be denied to receive their compensation. The auto rickshaw has their specific insurance policy with ICICI Lombard General Insurance Co. Ltd. So the claimants are entitled to get the compensation entirely from the ICICI Lombard General Insurance Co. Ltd. However, as it is observed that the owner of the Truck is also responsible to pay the portion of the award. So, ICICI Lombard General Insurance Co. Ltd. is directed to initiate a separate proceeding to recover the portion of the compensation from the owner of the truck.

Accordingly, both the appeals are disposed of with a direction that the claimants are entitled to get the compensation. ICICI Lombard General Insurance Co. Ltd. has deposited the entire awarded amount with this Court along with 6% interest per annum from the ate of filing of the claim application, claimants are entitled to get the compensation along with interested as deposited by the ICICI Lombard General Insurance Co. Ltd. according to the prevalent rules.

The New India Assurance Company Limited is at liberty to withdraw the statutory amount deposited by them at the time of filing of the instant appeal.

Both the appeals are disposed of.

The Case Diary be returned to the learned advocate appearing for the State.

The appointment of the learned advocate appearing on behalf of the State be regularized by the concerned authority.

Connected applications, if any, are also disposed of.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Subhendu Samanta, J.)