

FMA 2889 of 2016
With
CAN 1 of 2015 (Old CAN No. 9042 of 2015)
With
CAN 2 of 2019 (Old CAN No. 1133 of 2019)

The Oriental Insurance Co. Ltd.
Vs.
Smt. Siwpeyari Devi @ Shivpayari Devi & Ors.

Mr. P.K. Pahari

... ... for the appellant

Mr. J.K. Mandal

... ... for the respondents

The instant appeal is preferred by the insurance company against the judgment dated 20th April, 2015 passed by Commissioner, Employees' Compensation (2nd Court), Calcutta in Claim Case No.469 of 2005. The claimants preferred a claim application before the Employees Compensation Tribunal for getting compensation on the ground that their predecessor died in road traffic accident while he was employed as a driver of an offending vehicle bearing no.WB 23/6715. The evidences were adduced by the claimants before the learned Tribunal and after hearing both the parties the learned Tribunal has passed the award of Rs.3,38,880/- along with 12 per cent interest and directed the Oriental Insurance Company Limited to pay the compensation within 60 days.

The appeal was preferred by the insurance company only on the ground that the insurance company do not have the initial liability to pay the compensation. Moreover, the employer has the liability to pay. It is the submission of the learned Advocate for the insurance company by virtue of the dictum of several Division Bench of this Court, that the employer be directed to pay the compensation and in turn if it appears that the policy and other papers related to the offending vehicle is well covered under the policy of the insurance company then it may indemnified by the insurance company.

The impugned judgment has not followed the same principal. Thus the instant appeal has been preferred. It is the submission of the learned advocate for the appellant insurance company that the necessary direction for initial payment by the employer is necessary to be made.

Learned advocate for the claimants/respondents submitted before this Court that in view of the decision of Hon'ble Division Bench of this Court, the law has been changed. By virtue of the decision of Hon'ble Division Bench of this Court passed in National Insurance Company versus Nimai and Others., he pointed out that the Division Bench of this Court has specifically pointed out that when the ultimate

payment has to be made by the insurance company and when the claimants has chosen the forum of Workmen Compensation Tribunal so it is necessary to direct the insurance company to pay compensation. He referred the decision of the Hon'ble Division Bench in the matter of National Insurance Company versus Nimai and Others which is as follows:

“32.However, since the present 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 section 14 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.”

Heard the learned advocates. Perused the judgment passed by the Hon’ble Division Bench of this Court considering the entire circumstances, 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.

Learned advocate for the insurance company submits that the entire award amount has been deposited with the office of the learned Commissioner. The office of the learned Commissioner is directed to disbursed the same in the name of the claimants along with accrued interest, if any, according to the prevalent Rules.

The instant FMA is disposed of

All connected applications, if any, stand disposed of.

Parties to act upon the server copy and urgent certified copy of this order be provided on usual terms and conditions.

(Subhendu Samanta, J.)