08.09.2023
Ct. no.654
Item no.196
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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(Appellate Side)

FMA 937 of 2022
(CAN 1 of 2019) (Old CAN 2901 of 2010)

Reliance General Insurance Co. Ltd.
Vs.
Belenur Bibi Ors.

Ms. Gopa Das Mukherjee
...for the appellant-insurance company

Mr. Saidur Rahaman
..for the respondents-claimants

This appeal is preferred against the judgment and award dated 14th December, 2018 passed by the learned Additional District Judge-cum-Judge, Motor Accident Claims Tribunal, Fast Track, 3rd Court, Malda in MAC case no.10 of 2014 granting compensation of Rs.4,01,300/- together with interest in favour of the claimants under Section 163A of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 27th October, 2013 at about 16-00 hours while the victim was waiting for a bus near Dariapur in front of Hafijur Madrasa, at that point of time the offending vehicle bearing registration no. NL-01K/9489 proceeding towards Farakka in a rash and negligent manner dashed the victim, as a result of which the victim sustained multiple grievous injuries. Immediately, the victim was shifted to Malda Medical College & Hospital, where he succumbed to his injuries and died. On account of sudden demise of the deceased, the claimants being the parents of the deceased filed application for compensation of Rs. 3,00,000/- together with interest under Section 163A of the Motor Vehicles Act, 1988.

The claimants in order to establish their case examined claimant no. 2 and produced documents, which have been marked as **Exhibits 1** to **6** respectively.

The appellant-insurance Company also adduced the evidence of three witnesses and produced documents which have been marked as **Exhibits A** to **G** respectively.

Since the owner of the offending vehicle did not contest the claim application, hence, service of notice of appeal upon the said respondent stands dispensed with.

Upon considering the materials on record and evidence adduced by the claimants, the learned Tribunal granted compensation of Rs.4,01,300/- together with interest in favour of the claimants under Section 163A of the Motor Vehicles Act, 1988.

Being aggrieved by and dissatisfied with the impugned judgment and award of the learned Tribunal, the appellant-insurance company has preferred the present appeal.

Ms. Gopa Das Mukherjee, learned advocate for the appellant-insurance company submits that the offending vehicle did not have valid insurance policy on the date of accident in view of the fact that the cheque issued towards premium of policy of insurance was dishonoured due to insufficiency of funds. The insurance company subsequent thereto had issued letter of intimation on 25th September, 2013 for cancellation of policy to the owner of the offending vehicle. Since the policy of the insurance company was cancelled due to dishonour of cheque which was duly intimated to the owner of the alleged offending vehicle, the insurance company cannot be saddled with the liability to make payment of compensation to the claimants. In the light of her aforesaid submissions, she prays for setting aside of the impugned judgment and award of the learned Tribunal.

In reply to aforesaid contentions raised on behalf of the insurance company, Mr. Saidur Rahaman, learned advocate for the respondents-claimants submits that the letter intimating the cancellation of insurance policy has been issued prior to dishonour of the cheque. Further, no document has been produced to show receipt of intimation and cancellation of the policy of insurance. Such being the position on the relevant date of accident, the offending vehicle was validly covered under the policy of insurance. In view of his aforesaid submissions, he prays for dismissal of the appeal.

Having heard the learned advocates for the respective parties, the only issue that has fallen for consideration is whether on the relevant date of accident the offending vehicle was under valid coverage of insurance or not.

In order to appreciate the aforesaid issue, it would be apposite to look to the additional written statement filed on behalf of the appellant-insurance company. The insurance company has specifically stated in its additional written statement that the owner of the offending vehicle issued cheque bearing no.180085 dated 24th September,2013 in favour of the insurance company towards payment of premium against the policy of insurance company. The insurance company upon receipt of the aforesaid cheque issued cover note for the period from 25th September,2013 to 24th September, 2014. The aforesaid cheque was dishonoured due to insufficient funds. The insurance company vide letter dated 25th September, 2013 intimated the owner of the alleged offending vehicle of cancellation of the insurance policy due to dishonour of the cheque. In order to substantiate such fact, the insurance company has examined three witnesses and produced the copy of the letter of intimation **(Exhibit A/1**), cheque bearing no.180085 **(Exhibit-C)** and cheque returned memo **(Exhibit-D).**

Upon perusal of the letter of intimation for cancellation of policy (**Exhibit A/1**), it is found that the same has been issued on 25th September, 2013. However, the cheque returned memo shows that the same has been issued on 30th September, 2013 by the HSBC Bank **(Exhibit D)**. Thus, it manifest prior to receiving information of dishonour of the said cheque issued towards payment of premium of policy of insurance the letter of cancellation of policy of insurance was issued by the insurance company. Further, in the letter of intimation of cancellation of policy the cheque number, the date of the said cheque and the amount is kept blank. Thus from the materials as discussed above it is comprehensible that no such proper letter of intimation of cancellation of policy of insurance has been issued by the insurance company. There are no other document on record to show that after receiving information of dishonour of the cheque informed vide memo dated 30th September, 2013, of HSBC Bank, the insurance company has issued any letter of intimation to the owner of the offending vehicle of cancellation of the insurance policy. Such being the position, in the absence of cogent evidence suggesting cancellation of policy of insurance with proper intimation, it can safely be said that the offending vehicle was validly covered on the date of accident (i.e. 27th October, 2013).

For the aforesaid reasons, the appeal fails.

It is found that the insurance company has already deposited an amount of Rs.5,64,245/- vide O.D. challan no.1487 dated 11th August, 2022 and Rs.46,986/- vide O.D.Challan no. 1487 dated 11th August, 2022 and Rs.25,000/- towards statutory deposit vide O.D. challan no.2699 dated 29th January, 2019 before the registry of this Court.

The learned Registrar General, High Court, Calcutta, shall release the aforesaid amount together with accrued interest in favour of the claimants in equal proportion upon satisfaction of their identity.

With the aforesaid observation, the appeal stands disposed of. The impugned judgment and award of the learned Tribunal is affirmed. No order as to costs.

All the connected applications, if any, stand disposed of.

Interim order, if any, stands vacated.

Let a copy of this order along with the Lower Court Records be sent to the learned Court below for information in accordance with the rules.

Urgent photostat copy of this order, if applied for, be given to the parties upon compliance of necessary legal formalities.

(Bivas Pattanayak, J.)