09.10.2023
Ct. no.654
Sl.No.183
KB/sn

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMAT 298 of 2020

The United India Insurance Co. Ltd.
-Vs-
Smt. Anima Manna & Ors.

Mr. Sanjay Paul
Ms. Jaita Ghosh
... For the appellant-insurance company.

Mr. Krishanu Banik
Mr. Tathagata Banik
... For the respondent no. 1-claimant.

This appeal is preferred against the judgment and award dated 4th January, 2020 passed by learned Additional District Judge cum Judge, Motor Accident Claims Tribunal, 2nd Court, Hooghly at Chinsurah, in M.A.C. Case No. 43 of 2017 granting compensation of Rs.5,70,000/- together with interest in favour of the respondent no.1-claimant under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 17th February, 2017 at about 10.15 a.m. while the victim was proceeding by a bicycle keeping left side of the road towards Jhapantala vegetable market and when he reached there, at that time the offending vehicle bearing registration no. NL-02L/5583 dashed the victim from behind, in a rash and negligent manner, as a result of which the victim fell down and was ran over by the said vehicle. Due to the said accident the victim sustained severe injuries on his person and was immediately shifted to Polba P.H.C. wherefrom he was taken to Chinsurah Imambara Sadar Hospital and thereafter he was taken to Kolkata Medical College and Hospital where he succumbed to his injuries and died on the same day at 3 p.m. On account of sudden demise of the victim, the claimant, being the widow of the deceased filed application for compensation of Rs.10,00,000/- under Section 166 of the Motor Vehicles Act, 1988.

The claimant in order to establish her case examined two witnesses and produced documents which have been marked as **Exhibits 1** to **12** respectively.

The appellant-insurance company also adduced evidence of one witness and produced documents which have been marked as **Exhibits A** and **B** respectively.

The respondent no.2-owner of the offending vehicle did not contest the claim application and the case was disposed of *ex parte* against him and accordingly the service of notice of appeal upon the said respondent stands dispensed with.

Upon considering the materials on record and the evidence adduced on behalf of the respective parties, the learned Tribunal granted compensation of Rs.5,70,000/- together with interest in favour of the claimant under Section 166 of the Motor Vehicles Act with a liberty to the appellant-insurance company to recover the amount from the owner of the offending vehicle in accordance with law.

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

Mr. Sanjay Paul, learned advocate for appellant-insurance company submits that the offending vehicle is a fork lift truck and is a machine which is not meant to be plied on public road. The insurance policy issued by the insurance company is a contractor plant and machinery insurance policy and not a vehicular policy. The Clause (h) to the exceptions in the insurance policy **(Exhibit-B)** provides that the loss/damage in transit on a public road would not be indemnified by the insurance company. Since the alleged vehicle was plied on a public road on the relevant date of accident hence there was violation of the terms and conditions of insurance policy and the policy being a plant and machinery policy and not a vehicular policy the insurance company cannot be saddled with the liability to pay compensation. He further submits that the learned Tribunal erred in determining the income of the victim at Rs.10,000/- per month and failed to appreciate that such claim is not supported by any cogent documentary evidence. He further submits that the learned Tribunal erred in granting Rs.1,00,000/- towards pain and agony. Further the rate of interest on the compensation needs to be scaled down bearing in mind the prevalent banking rate of interest. In light of his aforesaid submission, he prayed for setting aside the impugned judgment and award of the learned Tribunal and/or modification of the same.

In reply to the contention raised on behalf of the insurance company, Mr. Krishanu Banik, learned advocate for respondent no.1-claimant submits that since the offending vehicle was adapted for use on road as per Section 2 (28) of the Motor Vehicles Act the vehicle should be considered as a motor vehicle under the Motor Vehicles Act. To buttress his contention, he relies on the following decisions:

(i) ***Bose Abraham versus State of Kerala & Anr.*** reported in ***(2001) 3 SCC 157***,

(ii) ***Sub-Area Manager, Western Coal Fields Ltd. versus Smt. Anjutai & Ors.*** (in ***First Appeal No. 1823 of 2019***) of Bombay High Court (Nagpur Bench),

(iii) ***Bajaj Allainz General Insurance Company Limited, Nungambakkam, Chennai versus P. Kothandam & Another*** reported in ***2021 0 Supreme (Mad) 2111***.

He further indicates that the Deputy Manager of the insurance company (DW1) has admitted in cross-examination that the vehicle is a motor vehicle as per the Motor Vehicles Act and, therefore, it is an admitted position that the offending vehicle is a motor vehicle. The insurance company at the time of issuance of policy of insurance was aware of the fact that it was issuing a policy for a motor vehicle and thus the caption of the policy will not affect the rights of the parties otherwise covered by the insurance policy. Furthermore he submits that since the policy of insurance covers third parties and as such the insurance company is liable to pay the entire amount of compensation to be assessed in favour of the claimant. In support of his contention, he relies on the following decisions:

(i) ***New India Assurance Company versus Smt. Uma Jhunjhunwala and others*** reported in ***AIR 2000 Cal 22***,

(ii) ***Oriental Fire and General Insurance Co. versus Firdos Pervez Mysorewala*** reported in ***2003 (3) T.A.C. 200 (Guj.)***,

(iii) ***United India Insurance Co. Ltd. versus Jagat & Ors.*** (in ***MAC. APP. 55/2012***) of Delhi High Court.

So far as the quantum of compensation is concerned, he submits that the victim at the time of accident was a practicing advocate and therefore the learned Tribunal has rightly assessed the income of the victim at Rs.10,000/- per month. With regard to the objection raised by insurance company in respect of grant of compensation towards pain and agony and rate of interest granted on the compensation amount by the learned Tribunal, he leaves the matter to the discretion of the Court.

Having heard the learned advocate for respective parties, the following issues have fallen for consideration.

Firstly, whether the offending vehicle is a motor vehicle under the Motor Vehicles Act; *secondly*, whether the insurance company is liable to pay compensation; *thirdly,* whether the learned Tribunal erred in determining the income of the victim; *fourthly,* whether the learned Tribunal erred in granting compensation under pain and agony; and *lastly*, whether the rate of interest on the compensation amount needs to be scaled down from 8% per annum;

With regard to the first issue as to whether the offending vehicle is a motor vehicle under the Motor Vehicles Act, it would be appropriate to reproduce the definition of motor vehicle under the Motor Vehicles Act embodied under Section 2 (28) which reads as follows.

> *"(28) "motor vehicle" or "vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding twenty-five cubic centimeters;"*

Bearing in mind the aforesaid definition, it is found from the insurance policy **(Exhibit-B)** that the vehicle is a fork lift truck having a chassis number. D.W.1 in his cross-examination stated that the fork lift truck has big wheels on the back side and medium wheel on the front side. Thus it is not in dispute that the fork lift truck is fitted with wheels to move from one place to other. Therefore, the fork lift truck is adapted for use on roads. Admittedly, the said vehicle has been registered under the Motor Vehicles Act. D.W.1 has also admitted in cross-examination that the offending vehicle is a motor vehicle under the Motor Vehicle Act and can move on its own. From the above materials it goes without saying that the offending vehicle is a motor vehicle under the Motor Vehicles Act. I find substance in the submission of Mr. Banik, learned advocate for respondent no.1 relying on *Bose Abraham (supra), P. Kothandam (supra)* and *Smt. Anjutai (supra)* in this regard.

With regard to the second issue as to whether the insurance company is liable to pay compensation, it has been strenuously argued by Mr. Paul, learned advocate for the insurance company that the policy is contractor's plant and machinery policy and as such the insurance company cannot be held liable to pay compensation in the event of loss or damage in the public place. Although the policy of insurance is a contractor's plant and machinery policy, however, one cannot be oblivious to the fact that at the time of issuance of insurance policy the insurance company certainly had knowledge that the said vehicle was a motor vehicle having a chassis number. The policy of insurance **(Exhibit-B)** shows that it covers third party liability. Thus the insurance company is liable to pay compensation for loss or damage to the third party. I find substance in the submissions of Mr. Banik, learned advocate for respondent no.1-claimant relying on *Smt. Uma Jhunjhunwala (supra)*, *Firdos Pervez Mysorewala (supra)* and *Jagat (supra)* that the insurance company shall satisfy the entire compensation. Mr. Paul, learned advocate for appellant-insurance company has also argued that there was violation of terms and conditions of insurance policy since the vehicle was plied on public road which is opposed to the exception in the policy that any loss or damage in transit from one location to another the insurance company is not liable to pay compensation. Admittedly the accident has taken place on a public road. The exception (h) in the insurance policy provides that loss, damage whilst in transit from one location to another location (public liability will not be payable while contractor's plant and machinery are on public roads). Thus there was violation of the terms of the insurance policy. It is found that the learned Tribunal has passed order for pay and recovery. Bearing in mind the aforesaid exception, the order of pay and recovery passed by the learned Tribunal is not interfered with.

With regard to the third issue relating to determination of income, it is found that the learned Tribunal has assessed the income of the victim at Rs.10,000/- per month. PW-1, Smt. Anima Manna, widow of the deceased, deposed that her deceased husband was an income tax lawyer. Hence, bearing in mind the profession of the victim, I am of the opinion that the income of Rs.10,000/- per month assessed by the learned Tribunal is reasonable and does not call for interference.

So far as the compensation towards pain and agony is concerned, following the observations of ***National Insurance Company Limited versus Pranay Sethi and Others*** reported in ***(2017) 16 SCC 680*** the compensation under the general heads is to be restricted to Rs.70,000/- under conventional heads of loss of estate, loss of consortium and funeral expenses. Accordingly, compensation granted towards pain and agony to the tune of Rs.1,00,000/- is set aside.

The last issue relating to interest on compensation amount, it is found that the learned Tribunal has granted interest @ 8% per annum. However, bearing in mind, the prevalent banking rate of interest the compensation shall carry interest @ 6% per annum from the date of filing of the claim application (23.03.2017) till payment.

The other factors have not been challenged in this appeal.

Bearing in mind the above factors, calculation is made hereunder:

Calculation of Compensation

Monthly income	Rs.10,000/-
Annual income (Rs.10,000/- x 12)	Rs.1,20,000/-
Less: 1/3rd deduction towards personal and living expenses	Rs.40,000/-
	Rs.80,000/-
Multiplier 5 (Rs.80,000/- x 5)	Rs.4,00,000/-
Add: General damages Loss of estate: Rs.15,000/- Loss of consortium: Rs.40,000/- Funeral expenses: Rs.15,000/-	Rs.70,000/-
Total compensation	Rs.4,70,000/-

Thus, the claimant is entitled to compensation of Rs. 4,70,000/- together with interest @ 6% per annum from the date of filing of claim application(23.03.2017) till payment.

It is found that the appellant-insurance company has deposited a sum of Rs. 7,41,018/- *vide* OD Challan No. 188 dated 15th July, 2021 and an amount of Rs.25,000/- towards statutory deposit *vide* OD Challan No. 3111 dated 16th October, 2020. Both the aforesaid deposits together with accrued interest be adjusted against the entire compensation amount and interest thereon.

Learned Registrar General, High Court, Calcutta shall release the aforesaid compensation amount and the interest as indicated herein above, in favour of the respondent no.1, upon satisfaction of her identity.

Upon satisfaction of the entire compensation amount, if any amount is left over, the same shall be refunded to the Insurance Company.

Liberty to recover the compensation amount by the insurance company from the owner of the offending vehicle passed by the learned Tribunal is not interfered with.

With the aforesaid observations, the appeal stands disposed of. The impugned judgement and award of the learned Tribunal is modified to the above extent. No order as to costs.

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

Interim order, if any, stands vacated.

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

(Bivas Pattanayak, J.)