08.09.2023
Ct. 654
D/L 199 & 200
ab

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURIDICTION
APPELLATE SIDE

FMA 1285 of 2022
With
CAN 1 of 2020
CAN 2 of 2020

The National Insurance Co. Ltd.
-Vs-
Smt. Rina Rani Bera Mandal & Anr.

With

COT 41 of 2021

Smt. Rina Rani Bera Mandal @ Smt. Rina Rani Mandal
-Vs-
National Insurance Co. Ltd & Anr.

Mr. Sanjay Paul,
Ms. Jaita Ghosh
... for the appellant-Insurance Company

Mr. Ashique Mondal,
Mr. Snehasis Jana,
Mr. Bibikananda Tripathy
... for the respondent no. 1-claimant

This appeal is preferred against the judgment and award dated 29th June, 2019 passed by the learned Judge, Motor Accident Claims Tribunal, 1st Court, Tamluk, Purba Medinipur in MAC Case No. 408 of 2014 granting compensation of Rs. 32,35,024/- together with interest in favour of the claimant under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 19th January, 2014 at about 10.00 a.m. while the victim was going from Chandipur to Reyapara by the offending vehicle bearing registration No. WB-29A/5895 (Trekker) through Chandipur-Nandigram pitch road and when the said trekker reached near Nandapur it capsized on the roadside, as a result of which the victim sustained severe injuries all over his body. Immediately the victim was shifted to CMRI Hospital, Kolkata where he succumbed to his injuries and died on 30th January, 2014. On account of sudden demise of the victim, the claimant being the widow filed application for compensation of Rs. 50,00,000/- together with interest under Section 166 of the Motor Vehicles Act, 1988.

The claimant in order to establish her case examined four witnesses and produced documents, which have been marked as **Exhibits 1** to **14** respectively.

The appellant-insurance company did not adduce any evidence.

By order dated 19th September, 2022, service of notice of appeal upon the respondent no. 2, owner of the offending vehicle has been dispensed with.

Upon considering the materials on record and the evidence adduced on behalf of the claimant, the learned Tribunal granted compensation of Rs. 32,35,024/- together with interest in favour of the claimant under Section 166 of the Motor Vehicles Act, 1988.

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

Challenging the impugned judgment and award of the learned Tribunal, the claimant has also preferred a cross-objection being COT 41 of 2021.

Both the appeal and the cross objection are taken up together for consideration and disposal.

Mr. Sanjay Paul, learned advocate for the appellant-insurance company submits that the policy of insurance **(Exhibit-6)** shows that the liability of the insurance company has been limited to 9 (nine) passengers. However, from the written complaint of the informant and charge sheet submitted by the investigating agency, it would be evident that about 18 (eighteen) persons were travelling in the said trekker on the relevant date of accident. The aforesaid aspect clearly violates the terms and conditions of the insurance policy and for such reason, the insurance company cannot be saddled with liability to pay compensation. In the light of his aforesaid submissions, he prays for setting aside the impugned judgment and award of the learned Tribunal.

In reply to the contentions raised on behalf of the appellant-insurance company, Mr. Ashique Mondal, learned advocate for the respondent no. 1-claimant submits that precisely there is no evidence on record to suggest that on the relevant date of accident, the offending vehicle was carrying more than nine persons and therefore, the argument advanced on behalf of the appellant-insurance company is without any basis. He further submits that the claimant is entitled to an amount equivalent to 50% of the annual income of the victim towards future prospect since at the time of accident the victim was 35 years of age and was a school teacher (on probation). He further submits though the claimant proved the medical expenses of the victim by adducing the evidence of P.W. 4, Executive, Medical Reports Department at CMRI, Kolkata, but, the learned Tribunal failed to grant such medical expenses incurred for treatment of the victim. In view of his aforesaid submissions, he prays for enhancement of the compensation on modification of the impugned judgment and award of the learned Tribunal.

Having heard the learned advocates for the respective parties, following issues have fallen for consideration. *Firstly*, whether on the relevant date of accident, the offending vehicle was carrying more than nine passengers, thereby violating the terms and conditions of the policy of insurance; *secondly*, whether the claimant is entitled to an amount equivalent to 50% of the annual income of the victim towards future prospect and *lastly*, whether the claimant is entitled to medical expenses incurred for treatment of the victim.

With regard to the first issue, it is found that the insurance company in its additional written statement has raised a specific plea that on the relevant date of accident, the offending vehicle was carrying more than nine passengers in violation of the terms and conditions of the policy of insurance which was issued for liability of nine passengers and for damage of third party property of Rs. 6,000/-. The insurance company has not led any evidence to bring such fact on record. Further, there is no evidence in the cross-examination of the eyewitness P.W.2, Narayan Bharati to suggest that on the relevant date of accident, there were more than nine persons travelling in the offending vehicle. To be precise, no suggestion whatsoever has also been given to the eyewitness P.W. 2, in this regard. Mr. Paul, learned advocate for the appellant-insurance company relying on the contents of the written complaint and charge sheet tried to impress upon the Court that on the relevant date, more than nine passengers were travelling in the offending vehicle violating the terms and conditions of the insurance policy. At the outset, the written complaint and the charge sheet are not the substantive evidence. Be that as it may, upon going the contents of the written complaint, it is found that on the relevant date 18 persons, including passengers and bystanders were injured. It does not state that 18 passengers were travelling in the offending vehicle on the relevant date. While noting the brief fact of the case, the investigating agency in the charge sheet has stated that 18 passengers were travelling in the offending vehicle, which is not the actual reproduction of the fact stated in the written complaint. In view of the above, the arguments advanced on behalf of the insurance company in this regard fall short of merit.

So far as the future prospect is concerned, it is found that admittedly at the time of accident, the victim was 35 years of age and was a school teacher in a government school. Following the observations of the Hon'ble Supreme Court made in ***National Insurance Company Limited versus Pranay Sethi and others*** reported in ***2017 ACJ 2700***, the claimant is entitled to an amount equivalent to 50% of the annual income of the victim towards future prospect.

So far as the medical expenses are concerned, it is found that P.W. 4, Executive, Medical Reports Department at CMRI, Kolkata deposed that from the money receipt, it is explicit that the patient party paid an amount of Rs. 2,97,000/- and he proved the final bill marked **Exhibit-14** (with objection). No contrary, evidence has been adduced by the insurance company challenging such final medical bill. Upon perusal of the final medical bill (**Exhibit-14**), it is found that an amount of Rs. 2,97,000/- has been paid towards medical expenses of the victim. Accordingly, claimant is also entitled to aforesaid medical expenses incurred towards treatment of the victim.

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.24,883/-
Annual income (Rs.24,883/- x 12)	Rs.2,98,596/-
Add: 50% of the annual income towards future prospect	Rs.1,49,298/-
	Rs.4,47,894/-
Less: 1/3rd towards personal and living expenses	Rs.1,49,298/-
	Rs.2,98,596/-
Multiplier 16 (Rs.2,98,596/- x 16)	Rs.47,77,536/-
Add: Medical Expenses	Rs.2,97,000/-
Add: General damages Loss of estate: Rs.15,000/- Loss of consortium: Rs.40,000/- Funeral expenses: Rs.15,000/-	Rs.70,000/-
Add: 10% escalation on general damages	Rs.7,000/-
Total compensation	Rs.51,51,536/-

Thus, the claimant is entitled to compensation of Rs. 51,51,536/- together with interest @ 6% per annum from the date of filing of claim application (08.08.2014) till payment.

It is found that the appellant-insurance company has deposited a sum of Rs. 47,86,977/- *vide* OD Challan No. 2313 dated 3rd November, 2022 and an amount of Rs.25,000/- towards statutory deposit *vide* OD Challan No. 3070 dated 1st October, 2022. Both the aforesaid deposits together with accrued interest be adjusted against the entire compensation amount and interest thereon.

Appellant-Insurance Company is directed to deposit the balance amount of compensation of Rs. 19,16,512/- together with interest before the learned Registrar General, High Court, Calcutta by way of a cheque within a period of six weeks from date.

The respondent no. 1-claimant is directed to deposit *ad valorem* Court fees on the amount of compensation assessed, if not already paid.

Upon deposit of the balance amount of compensation and the interest as indicated hereinabove, learned Registrar General, High Court, Calcutta shall release the aforesaid amount in favour of the respondent no. 1-claimant, upon satisfaction of her identity and payment of *ad valorem* Court fees, if not already paid.

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

With the aforesaid observations, the appeal as well as the Cross Objection stand disposed of. The impugned judgement and award 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**.)