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Ct. No.237
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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURICTION
APPELLATE SIDE

FMA 1447 of 2013

The New India Assurance Company Limited
Vs.
Smt. Parul Panja & Ors.

Mr. Rajesh Singh
... For the appellant/Insurance Co.

Mr. Amit Ranjan Roy
... For the respondents/claimants

This appeal is directed against the judgment and award dated 9th January, 2013 passed by the learned Judge, Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court-I, Howrah, in connection with MAC Case No.34 of 2007 under Section 166 of the Motor Vehicles Act, 1988 whereby the learned Judge assessed compensation to the tune of Rs.3,21,500/- along with interest @ 7% per annum.

The claim petition was filed on account of death of one Gopal Panja, a Khalasi of the Lorry, bearing registration no.WB-03/2014, in a motor accident occurred on 8th December, 2006 at about 4.00 p.m. At the time, the said lorry was proceeding from Burdwan to Kolkata through Durgapur Expressway with excessive speed and in reckless manner and dashed behind a stationary lorry, bearing registration no.WB-37A/6087, at the road side near Hotel Hindusthan. As a result, the victim, being

Khalasi of the lorry, bearing registration no.WB-03/2014, sustained severe injury on his person and immediately admitted in Burdwan Medical College & Hospital, thereafter transferred to SSKM Hospital, Kolkata, thereafter Labbaik Medical Centre Private Limited and ultimately in Uluberia Sub-Divisional Hospital where the victim died on 31st January, 2007. After the accident, Memari Police Station Case No.239 of 2006 dated 8th December, 2006 under Sections 279/332/304A of the Indian Penal Code was started and ended with charge sheet against the driver of the lorry.

The Owner of the vehicle did not contest the claim case but the New India Assurance Company Limited contested the case by filing written statement denying all material averments in the claim petition contending, inter alia, that at the time of accident, the driver of the offending lorry has no valid driving licence and also without route permit. It was further alleged in the written statement that the Insurance Company is not liable to pay any compensation to the claimants.

To prove the case, the claimants examined as many as two witnesses, namely, Parul Panja, wife of the deceased, as PW-1 and one Pratap Dolui was examined as PW-2. PW-1 corroborated the entire contents of the claim petition and PW-2, claiming himself to be an eyewitness of the incident, has testified that the accident took place on 8th December, 2006 at about 4.00 p.m. over Durgapur

Expressway near Palsit over-bridge in front of Hotel Hidusthan. He also testified that at that time, the lorry, bearing registration no.WB-03/2014, was proceeding from Burdwan side to Kolkata side with high speed and in reckless manner. As a result, it dashed a parked lorry. Gopal Panja, being Khalasi of that lorry, sustained severe injury all over his body and admitted to Uluberia Sub-Divisional Hospital. The driver of the lorry, bearing registration no.WB-03/2014, was responsible for the accident. In course of their evidence, a good number of documents were admitted in evidence, including certified copy of First Information Report, charge sheet, seizure list, post-mortem report, referral card, death certificate, insurance policy etc.

Learned Judge of the Tribunal after elaborate discussion of the evidence together with the documents on record returned his finding that Gopal Panja died in the accident by the involvement of the lorry, bearing registration no.WB-03/2014. Therefore, the claimants are entitled to compensation. Accordingly, the learned Tribunal awarded a sum of Rs.3,21,500/- as compensation.

In course of argument, Mr. Rajesh Singh, learned advocate, appearing on behalf of the appellant/Insurance Company has submitted that the claimants could not show any document regarding seizure of driving licence of the driver of the lorry, bearing registration no.WB-

03/2014, and the route permit. Mr. Singh has further submitted that police authorities also did not seize any driving licence of the driver of the lorry and route permit. Mr. Singh also submitted that the accident took place on 8th December, 2006 and the victim Gopal Panja remained in hospital and finally died on 31st January, 2007, i.e., after 50 days of the accident. According to Mr. Singh, it was a natural death due to cardiac respiratory failure and lobar pneumonia. Referring to Section 147 of the Motor Vehicles Act, 1988 Mr. Singh has submitted that the deceased was a Khalasi and he died in course of his employment. Therefore, the Insurance Company has only limited liability under the Workmen's Compensation Act. It is submitted that the Insurance Company may be held liable for entire compensation subject to payment of extra premium.

Mr. Amit Ranjan Roy, learned advocate, appearing on behalf of the respondents/claimants has submitted that there are sufficient evidence on record that Gopal Panja, being a Khalasi of the lorry, sustained severe injury in the accident occurred on 8th December, 2006 by the involvement of the lorry, bearing registration no.WB-03/2014. Mr. Roy has further submitted that the death may be due to cardiac respiratory failure but that does not negate the injury sustained by Gopal Panja and he remained admitted in different hospitals for 50 days after the accident. Mr. Roy has also submitted that according to the policy, the employees were covered by paying extra premium. Therefore, the question of operation of Workmen's Compensation Act does not arise.

None of the learned advocates appearing on behalf of the parties to this appeal has argued on the point of accident and whereby Gopal Panja, being Khalasi of the lorry, sustained injury. It was also not disputed that after the accident Gopal Panja admitted in different hospitals for 50 days. That apart, from the evidence of witnesses and the documents, particularly, certified copy of the FIR, charge sheet and seizure list, I do not find any reason to hold contrary to the observation of the learned Tribunal regarding accident and injury sustained by Gopal Panja as well as death of Gopal Panja.

It is true that police did not seize either the driving licence or route permit in connection with vehicle no.WB-03/2014 but for that reason Insurance Company cannot be absolved of the liability to pay compensation.

From the entire record as well as documents in support of injuries sustained by Gopal Panja, since deceased, I find that immediately after the accident he was admitted in different hospitals and remained there for 50 days and ultimately he died for the reason of cardiac respiratory failure and lobar pneumonia. These two causes of death were found natural as it appears from the post-mortem report but that does not mean that Gopal Panja was not admitted in hospital after sustaining severe injury in the accident. Moreover, every death is caused due to cardiac respiratory failure and, admittedly, Gopal Panja remained admitted for 50 days in different hospitals and for that reason, he may be a patient of lobar pneumonia. Therefore, I find no merit in the submission of Mr. Singh on this issue.

With regard to limited liability, I find hardly any reason to go into the issue as policy shows the payment of extra premium for three employees. Therefore, the question of operation of Workmen's Compensation Act does not arise.

In the aforesaid view of the matter, I do not find any reason to interfere with the judgment passed by the learned Tribunal in connection with MAC Case No.34 of 2007. Thus, the appeal stands dismissed.

However, the appellant/New India Assurance Company Limited is at liberty to recover the awarded amount with interest from the owner of the lorry, bearing registration no.WB-03/2014, on the issue of driving licence and route permit before an appropriate forum.

It is reported that the appellant/Insurance Company has already deposited the entire awarded amount along with interest before the office of the learned Registrar General of this Court. From the records, it appears that the respondents/claimants already withdrawn Rs.1,60,750/- out of the awarded amount deposited by the appellant/Insurance Company.

Therefore, the respondents/claimants are entitled to the balance amount along with accrued interest.

The learned Registrar General is requested to disburse the balance amount along with accrued interest to the respondents/claimants in equal share on proper identification and proof.

All pending applications, if there be any, stand disposed of.

Records of the learned Tribunal along with a copy of this order be transmitted back immediately.

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

(Bibhas Ranjan De, J.)