24.02.23

10 Ct. No.654

Samarpita

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 2444 of 2014

National Insurance Company Ltd.

Versus

Niraj Kr. Gupta & Anr.

Mr. Parimal Kumar Pahari ……… Appellants

Mr. Jayanta Kr. Modal ……. Respondent No.1

This appeal is preferred against judgement and award dated 31st January, 2014, passed by learned Additional District Judge-cum Judge Motor Accident Claims Tribunal, Fast Track, 1st Court, Barrackpore, 24 Parganas (North), in MAC Case No. 463 of 2018. Granting compensation of Rs. 4,23,516/- 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 10th April, 2008, at about 13:20 hours while the victim was proceeding by his motor cycle along the B.T.Road and when he reached near Anannya Cinema Hall at Choumatha within Baranagar police station at that time all on a sudden the offending vehicle bearing Registration no. WB 03/5644 (Tata 608 Lorry) in high speed and in rash and negligent manner dashed the motor cycle of the victim. As a result of which the victim sustained grievous injuries on his person.

Immediately the local people shifted the victim to R.G.Kar Medical Collage and Hospital, wherefrom he was transferred to West Bank hospital, Andul Road, Howrah where the victim was treated as indoor patient from 10.4.2008 to 27.4.2008. On account of such injuries sustained in the accident, medical treatments and subsequent disablement, the victim injured filed application for compensation of Rs. 4,00,000/- together with interest under Section 166 of the Motor Vehicles Act, 1988.

The claimants in order to establish his case examined four witnesses and produced documents which have been marked as ***Exhibits 1 to 18*** respectively.

The appellant-insurance company also adduced evidence of one employee of RTO, Howrah, and produced document which has been marked as ***Exhibit-A.***

Upon considering the materials on record and the evidence adduced by the respective parties the learned Tribunal granted compensation of Rs. 4,23,516/- 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 the insurance company has preferred the present appeal.

In compliance to order dated 31st January, 2023, the appellant-insurance Company sent a copy of memorandum of appeal to respondent no. 2, owner of the offending vehicle which has been duly delivered to the said respondent as per track consignment report annexed to the affidavit-in-service.

In spite of such service of notice none appears on behalf of the respondent no. 2, owner of the offending vehicle.

Mr Parimal Kumar Pahari, learned Advocate for appellant-insurance company submits that the insurance company in its additional written statement has taken specific plea that the driver of the offending vehicle on the relevant date of accident was not holding valid and effective driving license to drive such vehicle and to support of such defence plea the insurance company adduced the evidence of one employee from licensing authority who produced the particulars of driving license, which clearly shows that on the relevant date of accident on 10th April, 2008 the validity of the license of the driver has expired. However, the learned Tribunal failed to consider such aspect. He further submits that since from the materials on record it is palpably clear that the driver of the offending vehicle on the relevant date of accident was not holding the effective and valid driving license to drive such vehicle, hence, insurance company cannot be saddled with the liability to pay compensation. In light of aforesaid submission he prays for modification of the award.

In reply to the contention raised on behalf of the appellant insurance company, Mr. Jayanta Kumar Modal, learned advocate for respondent no. 1-claimant submits that as per settled proposition of law in the event of breach of policy of insurance the principles of pay and recovery is to be applied.

Having heard the learned Advocate for respective parties, it is found that the insurance company in the present appeal has raised a solitary issue that since the driver of the offending vehicle on the relevant date of accident was not holding effective and valid driving license to drive such vehicle in breach of condition of the insurance policy, the insurance company cannot be saddled with the liability to pay compensation.

With regard to the above issue, it is found that the insurance company in its additional written statement has taken specific plea that on the relevant date of accident the driver of the offending vehicle did not hold valid and effective driving license to drive such vehicle. The insurance company in support of such plea adduced the evidence of one official of RTO, Howrah namely Swapan Kumar Dey as DW1, who produced the particulars of driving license no. WB 115013148 ***(Exhibit A)*** in the proceedings before the learned tribunal. The claimants produced the seizure list ***(Exhibit 3)*** dated 10th April, 2008. On perusal of the seizure list it is found that during the course of investigation the investigating agency seized one driving license in the name of the driver Khadaru Gaur being driving license No. WB 115013148 valid up to 03.8.2008. Be that as it may, the official of the licensing authority DW1 produced detail particulars of the aforesaid driving license and deposed that as per the office records license was valid up to 05.8.2007. The particulars of driving license ***(Exhibit A)*** proved by DW1 also shows that the aforesaid driving license of the driver of the offending vehicle was valid up to 5th August, 2007. Such oral evidence of DW1 and the documentary evidence in the form of particulars of driving license produced from the office of the licensing authority, Howrah, has not been discredited by any contrary evidence. Since the accident having taken place on 10th April, 2008, it manifest from the aforesaid evidence adduced on behalf of the insurance company that on the relevant date of accident the driver of the offending vehicle did not hold valid and effective driving license to drive such vehicle. Now, the question arises as to what would be the consequence of such breach. In ***National Insurance Company Ltd. Vs. Swaran Singh & Ors.*** reported in ***(2004) 3 SCC 297*** the Hon'ble Supreme Court observed that where on adjudication of the claim under the Act the tribunal arrives at a conclusion that the insurer has satisfactorily proved its defense in accordance with the provisions of Section 149(2) read with sub-Section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the tribunal. The Hon'ble Supreme Court in a subsequent decision of passed in ***Amrit Paul Singh versus TATA AIG General Insurance Company Limited*** reported in ***(2018) 7 SCC 558,*** following the observation in *Swaran Singh's case,* upheld the principle of pay and recovery in a case of breach of condition of insurance policy. Bearing in mind the aforesaid observations of the Hon'ble Court, since it is found that the driver of the offending vehicle was not holding effective driving license to drive such vehicle on the relevant date of accident, hence principles of pay and recovery is to be applied in the facts and circumstances of the present case. Accordingly, the imunged judgment and award is liable to be modified giving liberty to the insurance company to recover the amount, directed by the learned tribunal to pay, from the owner and driver of the offending vehicle.

It is found that the appellant-insurance company has made statutory deposit of Rs. 25,000/- vide OD Challan No. 323 dated 13.5.2014 and a sum of Rs. 3,98,516/- before the Registry of this Court vide OD Challan No. 1400 dated 9.9.2014 in terms of order of this Court dated 28 August 2014. However, no interest has been deposited on the aforesaid amount.

Accordingly, the insurance company is directed to deposit the interest on the awarded sum of Rs. 4,23,516/- as directed by the leanred tribunal from the date of claim application till deposit by way of cheque before the learned Registrar General, High Court Calcutta within a period of six weeks from date. The claimant is also entitled to receive the amount already deposited together with accrued interest.

Respondent no. 1-claimant is directed deposit *ad valorem* court fees on the compensation amount, if not already paid.

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

With the aforesaid observation the appeal is disposed of. The impugned judgment and award of the learned Tribunal is modified to the extent that the insurance company shall be at liberty to recover the compensation amount which it has been directed to pay by the learned Tribunal, from the owner and the driver of the offending vehicle. The quantum of compensation determined by the learned Tribunal is affirmed.

All connected application, if any, stands disposed of.

Interim order, if any, stands disposed of.

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

(Bivas Pattanayak, J)