22.09. 2023
Item No.23
n.b.
Ct. no. 551

FMA 1947 of 2013

Sujit Mukherjee
Vs.
The New India Assurance Co. Ltd. & Anr.

Mr. Uday Sankar Chattopadhyay,
Ms. Trisha Rakshit,
Ms. Rajashree Tah,
Ms. Aishwarya Dutta,
.....For the Appellant.
Mr. Sanjoy Paul,
Ms. Jaita Ghosh,
....For the Respondent.

The instant appeal has been preferred against the judgment dated May 30, 2013 passed by the learned Judge, Motor Accident Claims Tribunal, 1st Court, Burdwan, in M.A.C Case No.18/2013/72/2011/99/2005.

The brief fact the case is that the present appellant was minor when he suffered an accident by a tractor due to rash and negligent driving of the driver of the offending vehicle being no.WB 41/4533.

One application was filed before the learned Tribunal for getting compensation under Section 166 of the M.V. Act. The owner appearaed before the Tribunal and filed written statement but did not contest the later. The matter was contested by the Insurance Company.

After hearing the parties, the learned Tribunal has dismissed the claim case.

Bering aggrieved by and dissatisfied with the said judgment, the present appeal has been preferred.

Learned advocate for the appellant submits that the impugned award passed by the learned Tribunal is erroneous. The learned Tribunal did not considered the facts and circumstances of the case and came to an erroneous finding. He further pointed out that one 11 years old child was suffered an accident; while he was cycling, the tractor/trailor i.e. offending vehicle dashed him and he was suffered severe injuries at his leg. On the basis of accident, one F.I.R. was lodged on the same day. The police case ended in a charge-sheet against the driver of the offending vehicle. The evidences were adduced before the learned Tribunal. It would be apparent from the evidences that the child was 45 days in hospital for his medical treatment. There was skin grafting and operation in his leg. He had to visit the hospital for about one year for repair of his wound. Learned Tribunal has not considered the same. Learned Tribunal has dismissed the case on the ground tht the trailor attached to the tractor was not covered under the policy of the Insurance Company.

He further argued that the learned Tribunal has not concentrate upon the injury sustained by the appellant and only dismissed the case on the ground that there is no disability.

In support of his contention, learned advocate for the appellant cited an unreported decision of the Hon'ble Supreme Court passed in ***Dhondubai Vs. Hanmantappa***

***Bandappa Gandigude* since deceased through his Lrs. & Ors.** He argued that the Hon'ble Supreme Court has considered the issue and directed the Insurance Company to pay the compensation.

Learned advocate for the Insurance Company submits that the impugned award passed by the learned Tribunal suffers no illegality. The trailor attached to the tractor was not insured under the policy of the Insurance Company, moreover, the terms of the Insurance Policy was violated. The tractor was carrying sand, which is otherwise for agricultural and forestry purpose. He further argued that the terms of the policy was further violated, because the driver of the offending vehicle had no valid driving license at the time of accident. Thus, the Insurance Company is not liable to pay the compensation and the learned Tribunal has committed no error is passing the impugned order.

Learned advocate for the Insurance Company further argued that the evidences of doctor was precisely clear that the child's physical condition is very much O.K. So, at this juncture, it cannot be said that he is physically disabled. However, learned advocate for the respondent/Insurance Company submits that the claimant may be entitled to get the damages towards non-pecuniary head.

Heard the learned advocates and perused the unreported judgment of Hon'ble Supreme Court, it appears that the judgment passed by the Hon'ble Supreme Court under the provisions enumerated in Article 142 of the Constitution of India. Thus, the ratio of the judgment cannot be followed by this Court.

However, in considering the entire facts and circumstances of the case, it is true that the appellant was suffered an accident when he was 11 years old and due to such accident, he had to admit in the hospital for a period 45 days and there were several operations over the appellant. It has also been proved that the appellant visited the hospital for nearly one year to repair his wound.. In this case, I find no justification to entertain the finding of the learned Tribunal regarding the payment of compensation but as the appellant has suffered injury, he has also suffered a long standing pain, thus, he is entitled to get some compensation towards the head of pain and suffering(non-pecuniary damages)

In considering the entire circumstances and considering the age of the victim, I think it is necessary that Rs.50,000/- would be sufficient for the compensation of the claimant under the head of non-pecuniary damages.

As there is violation in the terms of the Insurance policy by the owner, so, the Insurance Company may not be liable to pay the compensation. As per direction of the Hon'ble Supreme Court in **Swaran Singh**, the Insurance Company is directed to pay the compensation to the claimant and in turn they are at liberty to recover the same from the owner of the offending vehicle.

The Insurance Company is directed to pay the compensation of Rs.50,000/- along with 6% interest per annum from the date of filing of the claim application i.e. from 26.8.2023 within eight weeks from the date of passing of this order with the office of the learned Registrar General, High Court, Calcutta. On such deposit, the claimants are liberty to receive the same, according to the prevalent rules.

Accordingly, FMA 1947 of 2013 is disposed.

Connected applications, if any, are also disposed of.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Subhendu Samanta, J.)