27.06. 2023
item No.15
n.b.
ct. no. 551

FMA 3354 of 2013

Oriental Insurance Company Limited
Vs.
Sri Dilip Chandra Saha & Anr.

Mr. Gopa Sas Mukherjee,
.....for the appellant.

Mr. Jayanta Banerjee,
Ms. Ruxmini Basu Roy,
.... For the respondent.

The instant appeal has been preferred by the Oriental Insurance Co. Ltd. against the judgment and award dated May 7, 2013 passed by Judge, Motor Accident Claims Tribunal, 2nd Court, Jalpaiguri, in Motor Accident Claim Case No. 161 of 2007.

The brief fact of the case is that the claimant/respondent suffered an accident on August 15, 2006 while he was proceeding on a Motor Cycle at the time of offending vehicle bearing no. WB-72/2864 hit the claimant in rash and negligent manner. The claimant sustained sever injuries and was treated in the Hospital. The claim case was filed under Section 166 of Motor Vehicle Act. The Insurance Company appeared before the Learned Tribunal contested the case by filing written statement and additional written statement. After hearing the learned Tribunal has allowed the claim case and directed the Insurance Company/appellant to pay the compensation to the claimant/respondent amounting to Rs.3,00000/-.

The appeal is preferred by the Insurance Company on the ground that no medical paper was proved before the learned Tribunal regarding the expenses spent by the respondent, till then the learned Tribunal has awarded 1,00,000/- towards the medical treatment which is erroneous.

Another ground was taken by the appellant that the claimant/respondent was driving the Motor Cycle at the relevant point of time without a valid licence. During the cross-examination he ascertained to file the driving licence but it was not produced at all. Moreover, the driver of the offending vehicle have no valid driving licence at the time of accident. Thus, the insurance company/appellant has no liability to pay the compensation. Rather, if the insurance company is directed to pay, they may be allowed to recover the same from the owner of the offending vehicle.

Learned advocate for the respondent/claimant submitted before this Court that the claimant has suffered the accident and his leg was injured. He treated at different place of hospitals. For such accident, he suffered the multiple injury in the Rt tibia and he had to proceed to Patna at least for 20 times for such treatment. He further submitted before this court that the police case was started on the basis of the FIR bearing Kotwali P.S. case

No.303 of 2006 date 18.11.2006. The police has took up the investigation and submitted the charge sheet after seizing the vehicle as well as the papers thereof. He pointed out that the investigation of the police ended in charge-sheet accusing driver of the offending vehicle to be responsible for the accident. At the time of accident, the offending vehicle was covered under the policy of the Insurance Company. So, the Insurance Company cannot deny its liability. He further pointed out that the charge-sheet has specifically mentioned regarding seizing of the driving licence and their validity thereof. At the time of accident, both the driver of the offending vehicle as well as the driver of the Motorcycle have valid driving licence.

Heard the learned advocates.

It is argued on behalf of the Insurance Company that no document was proved regarding treatment of the claimant but it appears from the paper book that the disability certificate, discharge certificate and other treatment papers of Ananda Lok Hospital Siliguri and at Popular Hursing Home, Patna, Bihar were produced and were exhibited collectively without objection. From the discharge certificate itself, it appears that the claimant was suffering a prolonged treatment.

Charge sheet, seizure list and other police papers disclosed that both the vehicle had valid driving licence at the time of accident. Thus, I find no materials to disbelieve the exhibited police papers.

Another ground was taken by the learned advocate learned advocate for the Insurance Company that there are delay in lodging the FIR, alleged accident took place on August 15, 2006 and the FIR was lodged on November 18, 2006. It appears from the FIR that the FIR was lodged with the explanation due to treatment for the claimant. The FIR was lodged in delay. I find no infirmity in such explanations. Naturally, treatment of an injured is only the priority after accident.

Thus, after considering the entire paper book as well as the LCR also after considering the judgment of the learned Tribunal, it appears to me that the learned Tribunal has committed no error in awarding the compensation to Rs.3,00,000/- in favour of the claimant/respondent. The offending vehicle was covered under the policy of the OP. Thus, the OP is liable to pay the compensation. However, the instant case is pending since 2013 and accident was happened in the year 2006.

Considering the aspect, I order that the award was actually 6% per annum from the date of filing of the claim case. It appears that the Insurance Company has already been deposited the entire award amount with the office of the learned Registrar General, High Court, Calcutta.

The claimant is at liberty to withdraw the principle amount i.e. 3 lacks from the office of the learned Registrar General.

The Insurance Company is further directed to calculate the interest from the date of filing of the claim application till today and they shall pay the same through learned Registrar General, High Court, Calcutta within eight weeks.

The accrued interest upon the principal of Rs.3,00,000/- shall be refund to the Insurance Company from the office of the learned Registrar General, High Court Calcutta.

With the above observations, FMA 3354 of 2013 is 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.)