IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction

24.08.2023
SL No.26
Court No. 551
Ali

FMAT 1105 of 2015
IA No.:CAN/1/2023

Mustakim Sk. @ Mustakin Sk.
Vs.
Md. Jasimuddin Khan & Ors

Mr. Muktakesh Das
……………. for the appellant-claimant.
Ms. Sayanti Santra
…for the respondent No 3- New India assurance insurance Co Ltd.

Mr. Parimal Kumar Pahari
…for the respondent No 4- Oriental insurance Co. Ltd.

IA No. CAN 1 of 2023

Delay in preferring the instant appeal is hereby condoned.

Appeal is formally admitted.

The respondent Nos. 1 and 2 herein never contested the matter before the learned tribunal. Accordingly, the notice of appeal upon the respondent Nos.1 and 2 are dispensed with.

The respondent Nos. 3 and 4, the insurance companies have already made their appearance before this court so the appeal can be heard in presence of respondent Nos. 3 and 4.

Learned advocate for the appellant has submitted that he has prepared the informal paper book alongwith all the documentary evidences after obtaining the certified copy the same from the office of the learned tribunal. He wants to proceed the matter. He files the informal paper book. Let it be kept on record.

The appeal is taken up for hearing.

The instant appeal is preferred against the judgment dated 19th day of February, 2015 passed by learned Judge, Motor Accident Claims Tribunal, 3rd Court, Krishnanagar, Nadia, in M.A.C. Case no. 68 of 2004.

The brief fact of the case is that the instant appellant being the claimant filed one application under Section 166 of the Motor Vehicles Act before the learned tribunal for getting compensation from the insurance company on that ground that the claimant has sustained fatal injuries due to rash and negligent driving of the drivers of the offending vehicle duly insured by the insurance company.

The owners of the vehicle did not contest the matter before the learned tribunal but the insurance companies have contested the matter by filing their written statement.

Learned tribunal has heard the matter in presence of both of the insurance companies and passed an award of Rs. 1,50,000/- in favour of the claimant and directed the respondent No. 4-Oriental Insurance Co. Ltd. to pay the compensation. No compensation amount was paid by the insurance company. Thus, the instant appeal is preferred by the claimant for enhancement.

Learned advocate for the appellant submitted before this court that the compensation assessed by the learned tribunal is on the lump sum basis. The claimant was able bodied person who sustained severe injuries; by such road traffic accident and for sole cause of that accident he sustained disability to the extent of 75%. Learned tribunal has not considered the said disability but allow the compensation in a lump sum amount. He further pointed out that the deceased was a Cultivator cum green vegetable vendor who used to earn Rs.3,000/- per month. But, the learned tribunal has failed to pass any award through the structure formula as enumerated by the Hon'ble Supreme Court in several decisions specially in ***Sarla Verma.*** He also argued that the learned tribunal has committed error for not awarding the compensation alongwith the future prospects. So, he prayed for just and proper compensation.

Learned advocate appearing on behalf of the Oriental Insurance Co. Ltd. submits that the claimant has not produce the policy paper of the Oriental Insurance Co. Ltd. The number of policy which was mentioned in the claim application is not a correct number. The offending vehicle may have covered by the Oriental Insurance Co. but after such long period of accident it is not possible that the insurance company to find out the interest with the owner and the insurance company regarding the alleged offending vehicle. He further argued that the claim applications stated two vehicles are involved in the alleged accident. Both the insurance companies were made party. Charge sheet was filed against the driver of both the offending vehicles. The evidence of PWs of this court has also stated regarding the involvement of the two vehicles in the alleged accident. Thus, the liability to pay the compensation may be fixed equally upon both the insurance companies.

Learned advocate appearing on behalf of the New India Assurance Co. Ltd. submits that from the FIR as well as the fact of the accident mentioned in paragraph 23 of the claim application, it would be revealed that the Tractor was plying on the road by maintaining the speed and line correctly. The offending vehicle (Lorry) which was coming on excessive high speed lost control and dashed the Tractor by which the Tractor was dashed the present claimant. So, the tractor cannot be said to be responsible for the accident. He also argued that the FIR as well as the statement of witnesses also support the case of the New India Assurance Co. Ltd. Thus, in this case, the New India Assurance Co. Ltd is not liable to pay the compensation. Learned tribunal has correctly assessed the entire facts and circumstances of the case and directed the Oriental

Insurance Co. Ltd. to pay the compensation. There is no infirmity for fixing the liability of the Oriental Insurance Co. Ltd. to pay the compensation.

Heard the learned advocate perused the materials on record it appears that on 28.04.2002 the accident was occurred on NH-34. The claim application stated that the Tractor was proceeding towards the Krishnanagar and at that time one Lorry which was proceeding towards the same direction and coming on excessive high speed lost control and dashed the Tractor. The FIR also stated regarding the rash and negligent driving of the driver of the offending vehicle (Lorry). The PW-2 and the PW-4 who was the eye witness in this case stated the involvement of both the vehicles, PW-2, one of the eye witness stated in his chief that the Tractor was also coming in a high speed. PW-4 in his chief also stated that both the vehicles are responsible in the accident.

Considering the same, the fact is proved by filing charge-sheet of the police after investigation of the case. The charge-sheet disclosed the accused person to be two in number i.e. the driver of both the offending vehicles. So, prima facie, both the vehicles are involved in the said accident.

Both the vehicles have contributed the accident. Evidences suggest the Truck is more responsible than the Tractor. Considering the issue, I think it would be proper that the liability to pay the compensation is upon both the vehicles to the ratio of 60%:40%. 60% of the compensation would be paid by the Oriental Insurance Co. Ltd and 40% would be paid by the New India Assurance Co. Ltd.

In considering the just and proper compensation of this case, it appears to me that the learned tribunal has only assessed the compensation of the injured claimant in a lump sum basis. The medical paper specially the discharge certificate of the injured claimant issued by the Nilratan Sircar Medical College & Hospital dated 25.05.2007 disclosed the diagnosis to be the head injury due to the road traffic accident by which he was suffering left side Hemiplagia.

The Doctor i.e. the PW-6 who is one of the member of the Board assessed the disability of the claimant to be 75%. He deposed that the claimant was suffering from the disease of Hemiplagia. However, during the cross-examination he though stated that it was not mentioned in the disability certificate how the claimant was sustained such deceased but from the document i.e. the medical paper and discharge certificate of NRS Medical College proved the connection of the disease/disability of the claimant with the said road traffic accident.

Considering the same, I think it necessary that the learned tribunal should have calculated the compensation in terms of structure formula, according to the direction of the Hon'ble Supreme Court passed in ***Sarla Verma*** . The claimant is also entitled to the future prospects according to the direction of the Hon'ble Supreme Court passed in ***Pranay Sethi***.

In considering the same, the just and proper compensation of this case, the daily income of the claimant cannot be less than 70, as he was a daily labourer cum Cultivator, so the notional income of the deceased per month would be at least Rs.2,000/-. The yearly income comes to Rs. 24,000/-. The age of the claimant was 24 years at the time of accident according to his Aadhar Card. Thus, the applicable multiplier of this case would be 18 according to ***Sarla Verma,*** so after multiplying the multiplier the award comes to Rs. 4,32,000/-. The claimant was suffered Hemiplagia at the left side of her body that is why the disability certificate was issued to the extent of 75% I think the functional disability of the claimant would be 75% in assessing this compensation. So the 75% of this Rs.4,32,000/-appears to Rs.3,24,000/-. According to the judgment of Hon'ble Supreme Court passed in ***Pranay Sethi***. The claimant is also entitled to get 40% upon his establish income towards the future prospects so after adding the future prospects of Rs. 1,23,600/- the award comes to Rs. 4,53,600/-. The claimant is all along admitted to the Government Hospital and treated there. However, considering the pain and suffering and the future amenities to the claimant another amount of Rs. 40,000/- is added towards the head. After adding all the heads the award comes to Rs. 4,93,600/-. The claimant is entitled to get the compensation alongwith interest @ 6% per annum from the date of filing of the claim application.

The insurance companies are directed to pay the compensation as mentioned hereinabove according to the ratio of 60% and 40% respectively. Most specifically the 60% of compensation has to be paid by the Oriental Insurance Co. Ltd. and 40% compensation has to be paid by the New India Assurance Co. Ltd. The insurance companies are directed to pay the compensation within eight weeks from the date of passing of this order through the office of learned Registrar General, High Court, Calcutta. On such deposit the claimant is at liberty to receive the same from the office of the learned Registrar, General, High Court, Calcutta, according to prevalent rules subject to the ascertainment of payment of requisite court fees.

On submission of Mr. Parimal Kumar Pahari, learned advocate for Oriental Insurance Co.

regarding the ascertainment of the insurance policy of the offending vehicle, it is directed that the claimant shall collect the policy paper from the police files i.e. C.D. of Dhubulia Police Station Case No. 39/02 dated 28.04.2002 wherein the charge sheet have been submitted being No. 78/02 dated 28.08.2002 under Sections 279/338/427 I.P.C. in the office of the learned Chief Judicial Magistrate, Krishnanagar, Nadia. The learned Chief Judicial Magistrate, Krishnanagar, Nadia shall provide all sorts of help to the representative of the claimant so that the policy paper may be find out from the police paper which may placed in the GRO Section of the office of learned CJM. After such policy paper would be produced to the office of the Oriental Insurance Co. Ltd.. The insurance company shall disburse the same according to the direction made above within four weeks.

The instant FMAT 1105 of 2015 is disposed of.

All connected applications, if any, stand disposed of.

Interim orders, if any, stand vacated.

Parties to act upon the server copy and urgent certified copy of this order be provided on usual terms and conditions.

(Subhendu Samanta, J.)