IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction

30.08.2023
SL No.14
Court No. 551
Ali

F.M.A.T. 1072 of 2013

Smt. Sunita Ghosh & Anr.
Versus
The National Insurance Co. Ltd. & Anr.

Mr. Jayanta Banerjee,
Mr. Sandip Bandyopadhyay
...for the appellant-claimant.

Mr. Deb Narayan Roy
....for the insurance Co.

Affidavit of service upon the owner of the offending vehicle is taken on record. It appears from the report of Registered consignment that the Registered consignment was refused by the owner; the refusal of the Registered consignment alongwith the A/D appears to be a good service.

The instant appeal is preferred against the judgment and award dated 14th September, 2012 passed by the learned Judge, Motor Accident Claims Tribunal, 2nd Court, Krishnagar, Nadia in MAC Case No. 353 of 2010 under Section 166 of the M.V. Act.

The brief fact of the case is that the present appellant being the parents preferred an application under Section 166 of the M.V. Act before the learned tribunal on the ground that their bachelor son was died in a road traffic accident due to rash and negligent driving of the driver of the offending vehicle duly insured under the policy of the insurance company-respondent.

The brief fact of the accident is that the son of the present appellant was going to join his assignment as a soldier to a military camp on 17.09.2009; on the way to his joining he boarded a Maruti Van which was suffered accident by such the deceased died in such road traffic accident.

The claim case was contested by the insurance company.

The learned tribunal after hearing both the parties and after considering the evidences on record has awarded a sum of Rs. 15,00,896/- in favour of the claimant and directed the owner of the offending vehicle to pay the compensation.

Being aggrieved by and dissatisfied with the impugned award the present appeal has been preferred.

Learned advocate for the appellant submitted before this court that a very innocuous prayer was made by preferring the instant appeal. He submitted by virtue of several decisions of Hon'ble Supreme Court the ratio of law is well settled to the effect that when there is a breach of policy by the insurance company, the insurance company may have not solely liable to pay the compensation but as the vehicle was covered under the policy of insurance company; thus, it is the observation of the Hon'ble Supreme Court that the insurance company may be directed to pay the compensation and on the same way they are at liberty to recover the said compensation from the owner of the offending vehicle. In support of his submission of learned advocate for the claimant has cited a decision of Hon'ble Supreme Court of **Shamanna and Another Vs. Divisional Manager, Oriental Insurance Company Limited and Others** reported in **(2018) 9 SCC 650.**

Learned advocate for the insurance company submitted that the offending vehicle was well covered under the policy of the insurance company at the day of accident but the terms of the policy has been specifically mentioned in the policy itself. He has cited the policy certificate placed in the paper book. He argued that policy was not covered for the use of hire. The evidence of case goes to show that the deceased was going to join the duty by hiring the motor van. So, the conduct of the owner of the vehicle is not covered under the policy as agreed between the owner and the insurance company. He submitted that the impugned award passed by the learned tribunal suffered no perversity. Learned advocate for the insurance company however agreed to the principle "pay and recovery" enunciated by the Hon'ble Supreme Court in several decisions.

Heard the learned advocate perused the materials on record. On perusal of the decisions of ***Shamanna (Supra)*** which was passed following the ***Nanjappan (2004) 13 SCC 224*** *it* appears to me that the principle of pay and recovery has been well settled and the Hon'ble Supreme Court has specifically guided the tribunal to pass the order of pay and recovery and the procedure of recovery has been specifically enumerated in the decisions of Hon'ble Supreme Court passed in ***Challa Bharathamma.***

Considering the entire materials and after considering the submissions of the learned advocate for the parties the award passed by the learned tribunal need be modified to the effect that the multiplier adopted by the tribunal is not correct it should be 18 instead of 16 considering the age of the victim to be within 20 years . The claimants are also entitled to get the future prospects it would be 50% of the actual salary of the deceased. The deceased was considered in permanent job so the 50% of his actual salary would be added towards future prospects. It further appears by virtue of the decision of the Hon'ble Supreme Court passed in ***Pranay Sethi*** the fateful parents are entitled to get the general damages to Rs. 30,000/-

On that score, the just and proper compensation of this case is as follows:-

Calculation of compensation

1. Monthly Income Rs.15,426/-

2. 50% future prospect..............................Rs.7,713/-

Total Rs. 23,139/-

3. Deduction 50% as parents..................Rs.11,570/-

Total Rs.11,569/-

4. Annual Income..................................Rs.1,38,828/-

5. Multiplier apply 18
(Rs.1,38,828/-X 18)................................Rs.24,98,904/-

6. General damages..................................Rs.30,000/-

Total compensation.................Rs. 25,28,904/-

The insurance company is directed to pay the compensation as mentioned above alongwith interest @ 6% per annum from the date of filing of the claim application 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 at liberty to recover the same subject to ascertainment of payment of requisite court fees. The office of the learned Register General, High Court, Calcutta is directed to disburse the same vide two equal account payee cheques in the name of the claimants.

The insurance company is hereby at liberty to recover the entire amount of compensation from the owner of the offending vehicle according to the procedure laid down by the Hon'ble Supreme court in ***Challa Bharathamma.***

The instant FMAT 1072 of 2013 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.)