

25.09. 2023
item No.57
n.b.
ct. no. 551

FMA 224 of 2023

Tajema Bewa & Ors.

Vs.

M/s. Bajaj Allianz General Insurance Co. Ltd. & Ors.

Mr. Sima Ghosh,
..... appellants.
Mr. Rajesh Singh,
..... the respondent.

The instant appeal has been preferred against the judgment and award dated March 30, 2015 passed by the learned Tribunal, 1st Court. Berhampur, in M.A. C. case No. 422 of 2009 being an application under Section 163A of the Motor Vehicles Act, 1988.

The brief fact of the case is that the present petitioner being the claimant preferred an application before the learned Tribunal under Section 163A of the Motor Vehicles Act for getting compensation from the Insurance Company on the ground that their predecessor 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. The Insurance Company contested the matter before the learned Tribunal.

After hearing the parties the learned Tribunal has awarded a sum of Rs.3,93,500/- in faour of the claimants directing the owner of the offending vehicle being number WB 57A 1821 to pay the compensation.

Being aggrieved by and dissatisfied with the impugned award, the present appeal is preferred by the claimants only on the ground that the Insurance Company may be directed to pay the compensation in stead of owner.

Learned advocate for the appellant submits that the learned Tribunal has directed the owner to pay the compensation only on the ground that the driver of the offending vehicle had no valid licence at the time of accident. However, he submits that by virtue of the order of the Division Bench passed in FMA 1162 of 2016 in respect of self-same accident where the other person was died. The Hon'ble Division Bench has directed the Insurance Company to pay the compensation.

Learned advocate for the appellant submits that they did not receive any amount towards the compensation from the owner of the offending vehicle by virtue of direction of the learned Tribunal.

Learned advocate for the Insurance Company has submitted that the entire case filed by the claimant before the learned Tribunal is erroneous. Initially, the amount claimed was more than that which was permitted to be claimed under Section 163A of the M.V. Act. However, the learned Tribunal wrongly awarded the compensation. The claim application has to be dismissed on the sole ground. He further argued that the award passed by the learned Tribunal suffers no illegality. It cannot be said set aside.

Heard the learned advocates and perused the materials on record. By virtue of direction Hon'ble Division Bench in respect of self-same accident and by virtue of direction Hon'ble Supreme Court passed in **Samanna**, it appears to be that if the driving licence may found vague, but the owner cannot be made liable to pay the compensation. In this case, I think it is necessary that the principle laid down for the Hon'ble Supreme Court in **Samanna** is to be followed and in that score, the impugned award passed by the learned Tribunal directing the owner of the vehicle to pay the compensation appears to me not justified. Accordingly, in this case, the Insurance Company is directed to pay the compensation and they are at liberty to recover the same from the owner by virtue of the law laid down by the Supreme Court in **Swaran Singh**.

This appeal has not been preferred for enhancing the compensation. Thus, it appears that amount of compensation i.e. 3,93,500/- is to be paid by the Insurance Company.

Insurance Company is directed to pay the above mentioned award amount to the claimant through the office of Learned Registrar General, High Court, Calcutta along with 6% interest per annum from the date of filing of the claim application i. e. from 4.9.2009 within eight weeks from the date of passing of the order.

On such deposit, the claimants are at liberty to receive the same according to the prelevant rules

Accordingly, FMA 224 of 2023 is disposed of.

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.)