07 & 08
16.05.2023
Ct. No.237
pg.

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMAT 1490 of 2013
with
IA No. CAN 1 of 2014 (CAN 4937 of 2014)
with
CAN 2 of 2014 (CAN 494 of 2014)
with
CAN 3 of 2014 (CAN 495 of 2014)

The New India Assurance Company Limited
Vs.
Malati Marik & Ors.

with

COT 75 of 2014

Malati Marik & Ors.
Vs.
The New India Assurance Company Limited & Anr.

Mr. Rajesh Singh
... For the appellant/Insurance Co. in FMAT 1490 of 2013 & respondent no.1/ Insurance Co. in COT 75 of 2014

Mr. Krishanu Banik
... For the respondents/claimants in FMAT 1490 of 2013 & Cross Appellants/ Claimants in COT 75 of 2014

In re: CAN 3 of 2014 (CAN 495 of 2014)

This application has been filed by the appellant/ New India Assurance Company Limited for condonation of delay in filing the Motor Accident Claim Appeal after 135 days.

Mr. Rajesh Singh, learned advocate, on behalf of the applicant/appellant/Insurance Company submits that delay of 135 days in preferring the appeal may be condoned for the reasons assigned in the application itself.

Heard learned advocates appearing on behalf of the parties.

The reason assigned in the application for delay of 135 days being satisfactory, I am inclined to condone the delay of 135 days in filing the appeal. Thus, the prayer for condonation of delay is allowed.

The application, being CAN 3 of 2014 (CAN 495 of 2014) stands disposed of.

The Department is directed to register the appeal, if the same is otherwise in form.

Since the claimants/cross-objectors have entered appearance through learned counsel, service on the claimants stands dispensed with.

In re: CAN 2 of 2014 (CAN 494 of 2014)

This application was filed to adduce additional evidence with regard to the fake driving licence of the driver of the vehicle involved in this case.

Heard both sides.

The prayer is allowed.

The documents filed on behalf of the appellant/ New India Assurance Company Limited be taken on record.

The application, being CAN 2 of 2014 (CAN 494 of 2014) stands disposed of.

<u>In re: FMAT 1490 of 2014 with COT 75 of 2014</u>

This appeal is directed against the judgment and award dated 30th April, 2013 passed by the learned Judge, XIth Bench, City Civil Court, Calcutta, in connection with MAC Case No.626 of 2008 under Section 166 of the Motor Vehicles Act, 1988 whereby the learned Judge awarded compensation to the tune of Rs.3,91,500/- along with interest @ 6% per annum from the date of filing of the application till recovery.

Being aggrieved by and dissatisfied with the said judgment, New India Assurance Company Limited preferred this appeal on the ground that the driving licence of the driver of the lorry, bearing registration no.WB-03/2197, was fake and, therefore, the Insurance Company is not liable to pay any compensation.

On the other hand, on behalf of the claimants, one cross appeal, being COT 75 of 2014, was filed for the enhancement of the amount of compensation on account of future prospect and general damages in terms of principle laid down in **National Insurance Co. Ltd. v. Pranay Sethi & Ors.** reported in **(2017) 16 SCC 680 = 2017 ACJ 2700**.

The claim under Section 166 of the Motor Vehicles Act, 1988 was filed on account of death of one Bablu Marik who was driving an Auto Rickshaw, bearing registration no.WB-11/4054, on 11th March, 2008 at about 23.05 hours towards Amta Road from Ranihati Nabaghara More of NH-6. Near Ranihati, one Lorry, bearing registration no.WB-03/2197, coming from opposite direction in reckless manner, dashed the Auto Rickshaw. In effect, the Bablu Marik sustained severe injury and succumbed on the spot. The accident took place due to rash and negligent driving of the lorry which was duly insured with the New India Assurance Company Limited. That is why the claim petition was filed by the claimants with a prayer for compensation to the tune of Rs.4,00,000/-.

New India Assurance Company Limited contested the case by filing written objection denying all material averments of the claim petition contending, inter alia, that claimants are not entitled to any compensation, as prayed for.

To prove the case, the claimants examined as many as two witnesses, namely, widow of the deceased as PW-1 who corroborated the entire averments of the claim petition and in course of her evidence, certified copy of First Information Report, seizure list, charge sheet, insurance policy, post-mortem report, driving licence of the deceased, voter identity card, school certificate, driving licence of the driver of the lorry were admitted in evidence.

One Ujjal Baran Ghosh was examined as PW-2 who testified that he saw the accident which took place on 11th March, 2008 at about 23.05 hours over NH-6 at

Ranihati More. He further testified that the accident took place due to rash and negligent driving of the lorry, bearing registration no.WB-03/2197.

The learned Judge after evaluation of the evidence together with the documents recorded her finding that the accident occurred due to rash and negligent driving of the lorry, bearing registration no.WB-03/2197, and assessed the compensation on the notional income of Rs.3,000/- per month.

Mr. Rajesh Singh, learned advocate, on behalf of the appellant/New India Assurance Company Limited has assailed the driving licence of the driver of the lorry, bearing registration no.WB-03/2197, and tried to convince this Court that the driving licence was fake. In support of his contention, he relied on the document filed along with the application under Order 41 Rule 27_of the Code of Civil Procedure.

On careful perusal of the documents, it appears that the driving licence, bearing no.WB-19-102977, stands in the name of Susanta Mallick originally. But after careful perusal of the seizure list and charge sheet, I find that the driving licence was seized from the offending vehicle against the same number of WB-19-102977. Therefore, it can be easily presumed that the driver of the offending vehicle was possessing a fake licence at the time of driving the said vehicle.

From the entire evidence on record, I find hardly any scope to discuss on the issue of accidental death of Bablu Marik due to rash and negligent driving of the lorry, bearing registration no.WB-03/2197. This appeal was preferred assailing the fake driving licence possessed by the driver at the relevant point of time. Therefore, the Insurance Company is not liable to pay any compensation.

In view of the settled principle laid down by the Hon'ble Apex Court in **Shamanna & Ors. v. The Divisional Manager, The Oriental Insurance Co. Ltd. & Ors.** reported in **AIR 2018 SC 3726** and **Oriental Insurance Co. Ltd. v. Nanjappan & Ors.** reported in **AIR 2004 SC 1630 : (2004) 13 SCC 244**, the Insurance Company is liable to pay the compensation but to recover the amount from the owner of the vehicle through filing an execution case directly.

So far as the compensation is concerned, I find that the learned Judge could not consider the future prospect and general damages at the time of computing compensation. The claimants are entitled to the future prospect as well as general damages in terms of **Pranay Sethi** (supra).

Therefore, I propose to re-assess the compensation as follows:-

Monthly Income	Rs. 3,000/-
Annual Income (Rs.3,000/- x 12)	Rs. 36,000/-

Add: Future prospect 40%	Rs. 14,400/-
	Rs. 50,400/-
Less: 1/4th Deduction (personal expenses)	Rs. 12,600/-
	Rs. 37,800/-
Multiplier by 15 (as per age of the victim)	X 15
	Rs.5,67,000/-
Add: General Damages	Rs. 70,000/-
Total Compensation	Rs.6,37,000/-
Less: Awarded by ld. Tribunal	Rs.3,91,500/-
ENHANCEMENT	Rs.2,45,500/-

For the reasons, it is seen that the claimants/cross appellants are entitled to the total compensation to the tune of Rs.6,37,000/-.

It appears from the records that the appellant/New India Assurance Company Limited has already deposited Rs.3,91,500/- along with interest as awarded by the learned Tribunal before the office of the learned Registrar General of this Court.

Therefore, the claimants/cross appellants are entitled to the amount of Rs.3,91,500/- along with interest and accrued interest as awarded by the learned Court below which was already deposited before the office of the learned Registrar General of this Court.

The claimants/cross appellants are also entitled to the enhanced compensation amount of Rs.2,45,500/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e., on 7th August, 2008 till the deposit of the amount.

Accordingly, the appellant/New India Assurance Company Limited is directed to deposit the enhanced compensation amount of Rs.2,45,500/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e., on 7th August, 2008 till the actual deposit of the amount before the office of the learned Registrar General of this Court, within six weeks from the date of this order.

The appellant/New India Assurance Company Limited is at liberty to recover the entire awarded sum along with interest from the owner of the vehicle, bearing registration no.WB-03/2197 (lorry), through execution proceeding in terms of the observations of the Hon'ble Apex Court in **Shamanna & Ors. v. The Divisional Manager, The Oriental Insurance Co. Ltd. & Ors.** reported in **AIR 2018 SC 3726** and **Oriental Insurance Co. Ltd. v. Nanjappan & Ors.** reported in **AIR 2004 SC 1630 : (2004) 13 SCC 244**.

The claimants/cross-appellants are entitled to withdraw the entire awarded amount with interest, subject to payment of additional *ad valorem* court fees on the amount of Rs.2,37,000/- (Rs.6,37,000/- – Rs.4,00,000/-) before the learned Tribunal.

The learned Registrar General is requested to disburse the entire amount with interest and accrued interest to the claimants/cross-appellants in equal share on proper identification and proof as the minors have already attained majority by lapse of time.

With the aforesaid observations, the appeal, being FMAT 1490 of 2013, and the cross-appeal, being COT 75 of 2014, stand disposed of.

All pending applications, if there be any, stand disposed of.

In re: CAN 1 of 2014 (CAN 493 of 2014)

The stay granted in the appeal stands vacated.

The application, being **CAN 1 of 2014 (CAN 493 of 2014),** stands disposed of accordingly.

A copy of this order be forwarded to the learned Court immediately.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Bibhas Ranjan De, J.)