

18.01.2023
Item No.27 & 28
Ct. No.237
CHC
(disposed of)

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

F.M.A.T.1509 of 2012
IA NO: CAN/3/2017 (Old No: CAN/11045/2017)
CAN/4/2022

The National Insurance Co. Ltd.
Vs.
Smt. Urmila Singh @ Urmila Maurya & ors.

With
C.O.T. 118 of 2019
Smt. Urmila Singh @ Urmila Maurya & ors.
Vs.
The National Insurance Co. Ltd. & anr.

Mr. Sanjay Paul
...for the Insurance Company/
appellant in FMAT 1509 of 2012 and
respondent in COT 118 of 2019

Sk. Abu Abbas Uddin,
Mrs. Nahid Rahman
...for the respondents
in FMAT.1509 of 2012/appellants
in C.O.T.118 of 2019

This appeal is directed against the judgement and award passed by learned Motor Accident Claims Tribunal, IXth Bench, City Civil Court, Calcutta in connection with M.J.C. 306 of 2008 passed on 31st Day of August, 2012, whereby learned Tribunal awarded compensation to the tune of Rs.39,14,232/- along with

interest @ 8% per annum from date of filing the application on 03.04.2008 till the payment is made.

The application under Section 166 of the M.V. Act was filed on account of death of one Vinod Kumar Maurya in a motor accident by the involvement of one Maruti Van bearing no. WB-02-0572 while travelling from Gangasagar to Kachuberia, and at that time, the vehicle was driven in a rash and negligent manner and dashed on a tree and fell down in Nayanjuli Canal. As a result, deceased sustained injury. He was shifted to Rudranagar Gramin Hospital, where he declared as 'brought dead'. At the time of accident, he was aged about 44 years having income of Rs.5,77,941/- per annum. He was being Assistant Manager of Hindal Industries Co. Ltd. Wife, son and one daughter of the deceased filed this claim application with a prayer for compensation of Rs.52,00,000/- (Rupees Fifty Two Lakhs).

Owner did not contest the claim petition but National Insurance Co. Ltd. contested the claim petition by filing written statement denying all materials averments in the claim petition contending *inter alia*, that claim was excessive and Insurance Company is liable to pay any compensation in terms of policy.

To prove the case, wife of the deceased was examined as P.W.1 and one Amalendu Mondal claimed himself as eye witness was examined as P.W.2, and one Senior Officer (Purchase) of Hindulco Industries Limited, Calcutta Branch was examined as P.W.3.

P.W.1, wife of the deceased corroborated the entire averments of the claim petition. P.W.2 testified in his evidence that he witnessed accident happened on 29.12.2007 at 3;45 p.m. At that time he was waiting for a bus at Kuntala Bus Stand when he saw one Maruti Van bearing no. WB-02A-0572 coming with high speed in a rash and negligent manner dashed a roadside tree and fell down in the Nayanjuli Canal.

P.W.3 proved the income of the deceased.

On careful perusal of the evidence of P.W.2 together with certified copy of the F.I.R., charge-sheet and seizure list, I do not find any reason to disbelieve the accident and death of deceased Vinod Kumar Maurya due to that accident by the involvement of offending Maruti Van bearing no. WB-02A-0572.

In course of hearing of the appeal, Mr. Sanjay Paul, learned advocate, appearing on behalf of the Insurance Company strenuously contended that Insurance Company is not liable to pay any compensation as policy was not a package police and that too it was of

the coverage for private car and deceased was passenger of the car which was hired for travelling.

In support of his contention he relied on a case of ***National Insurance Co. Ltd. vs. Balakrishnan & another*** reported in **(2013) 1 Supreme Court Cases 731**, wherein Hon'ble Apex Court discussed elaborately regarding different types of Insurance Policy including the package police and act policy.

Mr. Paul, learned advocate appearing for the Insurance Company, thereby has contended that in this case the offending vehicle was under act policy, and only coverage for third party risk not for any occupants of the car and accordingly, Mr. Paul reiterated that Insurance Company was not liable to pay any compensation.

Mr. Paul did not press about the quantum of compensation assessed by the learned Tribunal.

On behalf of the claimants, Sk. Abu Abbas Uddin, learned advocate submitted that learned Tribunal has rightly passed the order directing the Insurance Company to pay compensation and recover it from the owner of the vehicle.

In support of his contention he relied on a case of ***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**, wherein Hon'ble Apex Court observed that in case of accident by the involvement of any motor vehicle duly insured with the Insurance Company compensation assessed should be paid by the insurance police and to recover the same from the owner of the vehicle directly through execution proceeding.

After careful perusal of the impugned judgement, I do not find any necessity to interfere with the award assessed by the learned Tribunal.

In the aforesaid view of the matter, to eschew prolixity, I refrain myself from going into any other issues in this appeal but to affirm the judgement passed by the learned Tribunal giving a liberty to the appellant/Insurance Company to recover the entire awarded sum with interest from the owner of the offending Maruti Van bearing registration no.WB-02A-0572, through execution proceeding in terms of the observation of the Hon'ble Apex Court in case of **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**.

It is reported that Insurance Company has already deposited the entire awarded amount with the office the Registrar General, High Court at Calcutta and that was invested in fixed deposit scheme.

The claimants are entitled to withdraw the said awarded amount from the office of the learned Registrar General along with all accrued interest thereon.

Learned Registrar General of this Court is requested to disburse the amount along with accrued interest to the claimants in equal share on proper identification and proof.

With the aforesaid observation, the appeal being FMAT 1509 of 2012 stands disposed of.

Learned advocate appearing for the appellants in C.O.T.118 of 2019, respondents in FMAT 1509 of 2012 does not press this application.

The application being C.O.T.118 of 2019 stands dismissed.

Connected applications, if there be any, stand disposed of.

Let copy of this order along with the tribunal record be transmitted back immediately.

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

(Bibhas Ranjan De, J.)