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Ct. No.237
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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURICTION
APPELLATE SIDE

FMA 831 of 2012

Iffco Tokio General Insurance Company Limited
Vs.
Dipa Sarkar & Ors.

Mr. Rajesh Singh
... For the appellant/Insurance Co.

Mr. Amit Ranjan Roy
... For the respondents/claimants

This appeal is directed against the judgment and award dated 30th January, 2012 passed by the learned Judge, Motor Accident Claims Tribunal, Additional District Judge, 3rd Court, Howrah, in connection with MAC Case No.17 of 2005 whereby the learned Judge awarded compensation to the tune of Rs.2,89,500/-.

The claim petition under Section 166 of the Motor Vehicles Act, 1988 was filed on account of death of one Gora Chand Sarkar in a motor accident occurred on 7th September, 2004 at about 21.50 hours by the involvement of one motor cycle, bearing registration no.WB-01-P/2505, due to rash and negligent driving. At the time of accident, said Gora Chand Sarkar was aged about 62 years and having income of Rs.2,18,294/- per annum from his pension after retirement from civil defence.

Both the owner of the vehicle and the Insurance Company contested the case by filing their respective written statements denying all material averments in the claim petition It is contended on behalf of the Insurance Company in the written statement that no policy of insurance was issued against the cover note, bearing no.31337029, as the cover note was cancelled because of non-payment of premium and, therefore, Insurance Company is not liable to pay any compensation.

To prove the case, the claimants examined as many as two witnesses, namely, Dipa Sarkar, widow of the deceased, as PW-1 and one Satyajit Banerjee was examined as PW-2 who witnessed the accident occurred on 7th September, 2004 at about 21.50 hours by the involvement of one motor cycle, bearing registration no.WB-01-P/2505, due to rash and negligent driving. In course of their evidence, a good number of documents were admitted in evidence, including certified copy of the First Information Report, charge sheet, seizure list, post-mortem report, insurance policy, income tax return, voter identity card etc.

Learned Judge of the Tribunal after analyzing the evidence together with documents on record and came to his finding that the claimants are entitled to compensation in spite of plea of cancellation of cover note not substantiated by any cogent evidence. Learned Judge awarded Rs.2,89,500/- as compensation.

Mr. Rajesh Singh, learned advocate, appearing on behalf of the appellant/Insurance Company has tried to make this Court understand that the cover note relied on by the learned Judge of the Tribunal was cancelled by the Insurance Company due to non-payment of premium and this only ground has been taken in this appeal. Mr. Singh has submitted that at the time of issuance of cover note, premium was paid by a cheque which was bounced subsequently and that is why the insurance policy was not issued and, accordingly, the Insurance Company is not liable to pay any compensation.

Mr. Amit Ranjan Roy, learned advocate, appearing on behalf of the respondents/claimants has submitted that the plea taken by the Insurance Company in the written statement has not been substantiated by any evidence whatsoever during trial.

None of the learned advocates appearing on behalf of the parties to this appeal has argued on the point of accidental death of one Gora Chand Sarkar by the involvement of a motor cycle, bearing registration no.WB-01-P/2505, due to rash and negligent driving. However, after careful perusal of the entire evidence on record together with the certified copy of the FIR and charge sheet, I do not find any reason to re-enter into that particular issue. However, the ground of appeal taken by the appellant/Insurance Company, in my opinion, has no merit as the plea of cancellation of policy has not been substantiated by any evidence/single scrap of paper during trial. On the other hand, from the cover note itself it is seen that there was insurance coverage in respect of motor cycle at the time of accident.

In that view of the matter, I do not find any reason to interfere with the judgment passed by the learned Tribunal.

In the aforesaid view of the matter, this appeal is liable to be dismissed and is accordingly dismissed.

However, the appellant/Iffco Tokio General Insurance Company Limited is at liberty to recover the amount subject to proof of the fact of no insurance policy before the appropriate forum.

It is reported that the appellant/Insurance Company has already deposited the entire awarded amount along with interest before the office of the learned Registrar General of this Court.

It is also reported that the respondents/claimants have already withdrawn 50% of the total compensation amount i.e., Rs.1,44,750/-.

Therefore, the respondents/claimants are entitled to the balance compensation amount of Rs.1,44,750/- along with interest and accrued interest.

The learned Registrar General is requested to disburse the amount along with all interest to the respondents/claimants in equal share on proper identification and proof.

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

Records of the learned Tribunal along with a copy of this order be transmitted back 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.)