14.07.2023
SL No. 15

(RD)

IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI

Civil Appellate Jurisdiction

F.M.A 3 of 2019

With

CAN 1 of 2019

Khayrul Islam

Vs.

Oriental Insurance Co.Ltd. & Anr.

Mr. Gobinda Saha, Advocate
Mr. Tamal Kr. Sen
Mr. Milan Ch. Laskar
Ms. Priyanka Dey
Mr. Sanghai Chowdhury
.......Appellant

Mr. Hirak Barman, Advocate
.....Insurance Company

This appeal has been preferred by the injured/claimant Khayrul Islam under Section 166 of the Motor Vehicles Act, on account of injury sustained by himself on 3.10.2013 at about 12 noon when injured was proceeding towards his residence from Maynaguri side travelling by a Motor Cycle bearing no.WB-72-G-8892 as a pillion rider. Near Maynaguri College suddenly injured fell down from the said motor cycle due to rash and negligent driving. He sustained injury and he was taken to Jalpaiguri Sadar Hospital wherefrom shifted to Shanti Swasthalaya & Anusandhan Kendra Private Limited, Nursing Home, Siliguri and there he remained admitted till 27.10.2013 incurring expenditure for a sum of Rs. 2,10,000/- towards medical treatment. That is why, the claim petition was filed with a prayer for compensation to the tune of Rs. 2,50,000/-.

The owner of vehicle contested the claim petition by filing written objection denying rash and negligent driving of the said motor cycle which was duly insured with the Oriental Insurance Company Limited at the relevant point of time.

Respondent/ Insurance Company also contested the case by filing written objection denying all material averments of the claim petition contending, *inter alia*, that there was no proximity between the alleged accident and the involvement of the two-wheeler bearing reg. no. WB-72-G-8892 and therefore claimant is not entitled to any compensation as prayed for.

In support of claim, injured himself examined as PW1, one Samadul Islam, happens to be the eye-witness, as PW2, and one Ranjan Sarkar, summoned witness, as PW3.

In course of their evidence seizure list, FIR, Insurance Policy, Charge sheet and Medical bills were all admitted in evidence as exhibit 1 to 12.

Ld. Tribunal only concentrated his evaluation on the issue of pillion rider in terms of package policy and after being satisfied as to the entitlement of claim, awarded compensation Rs. 25,000/- as a personal accident claim.

Ld. Advocate, Mr. Gobinda Saha, appearing on behalf of the claimant has submitted that policy in respect of the vehicle in question was a 'package policy' and under that policy pillion rider is also covered by the policy. Mr. Saha has further submitted that Ld. Tribunal neither allowed any compensation towards reimbursement of the expenditure incurred by the injured himself during his admission in the Nursing Home. Mr. Saha has submitted that all the documents showing medical expenditure were admitted in evidence but those were ignored. Mr. Saha further advanced his prayer claiming compensation towards pain and suffering.

Mr. Saha, in support of his contention, on the issue of package policy, Mr. Saha relied on a decision of ***National Insurance Company Ltd. Vs Balakrishanan and Another*** reported in ***2013 (1) T.A.C. 1 (S.C).***

In opposition to that, Ld. Advocate, Mr. Hirak Barman, appearing on behalf of the Insurance Company, by referring to evidence of PW1/ injured, submits that on the alleged date of accident, injured was travelling the motor cycle with his close relative as a pillion rider but the FIR was lodged by the injured on 10.12.2013 while accident alleged to have been taken place on

3.10.2013. Such delay, according to Mr. Barman, is fatal to the claim as delay has not been explained as to what prevented him to lodge the complaint in spite of knowledge of the number of the vehicle owned by his close relative.

Mr. Barman has, next, submitted that the claim petition was filed implanting the vehicle number and for which claimant is not entitled to any compensation. With regard to package policy, Mr. Barman, only submitted that pillion rider of the two-wheeler is not covered under the policy.

Mr. Barman has relied on a case of ***Surinder Kumar Arora and another Vs. Dr. Manoj Bishla*** reported in ***AIR 2012 Supreme Court 1918*** wherein Hon'ble Apex Court observed that in a case under Section 166 of the Motor Vehicles Act, 1899 it is incumbent upon the claimant to prove the accident due to rash and negligent driving of the vehicle. Here in our case, rash and negligent driving of the motor cycle was proved by the injured himself (PW1).

Mr. Barman, in support of his argument on the issue of delay in lodging FIR, has further relied on a case of ***Dharam Dev Vs Mohinder Singh and Others*** reported in ***2008 (3) T.A.C. 232 (H.P.)*** where Hon'ble Apex Court dealt with an application under Section 166 of Motor Vehicles Act, 1988 in an injury case where injured suffered disability and in that case FIR was lodged after 6 months and that too without any explanation of delay. But, in our case FIR clearly shows that injured could not file FIR immediately after the accident due to his prolonged treatment in the Nursing Home as well as deteriorating condition of his health.

To eschew the prolixity, I refrain myself to go into the issue regarding accidental injury sustained by Khayrul Islam after the accident, according to evidence of injured, he was taken to Jalpaiguri Hospital and thereafter to Shanti Swasthalaya & Anusandhan Kendra Private Limited, Nursing Home, Siliguri where he was admitted till 27.10. 2013 for more than 20 days and after discharged he remained under medical supervision.

PW1/ injured corroborate all averments of the claim petition and specifically testified and he had to spend a sum of Rs. 2,10,000/- towards medical treatments at Shanti Swasthalaya & Anusandhan Kendra Private Limited, Nursing Home, Siliguri. Regarding expenditure towards medical treatment was further supported by evidence of Manager of the Nursing Home (PW3), who proved all the medical bills marked as exhibit 10, exhibit 11 collectively and exhibit 12. Towards treatment, I do not find any substantive cross- examination with a view to create confusion in any manner. I am sorry to opine that, Ld. Tribunal ignored to evaluate the oral and documentary evidence towards expenditure for treatment.

Coming to the issue of delay in lodging FIR, I find from the evidence that immediately after the accident injured was shifted to Jalpaiguri Hospital and thereafter to Shanti Swasthalaya & Anusandhan Kendra Private Limited, Nursing Home, Siliguri where he was admitted till 27.10.2013 i.e. more than 20 days. Therefore, injury sustained in the accident and admission in a nursing home for more than 20 days clearly show the reasons for delay in lodging information to police. Charge sheet filed in this case clearly speaks that after receiving FIR Maynaguri Police Station Case No. 418 of 2013 dated 10.12.2013 was started and after investigation charge sheet was submitted against the driver of the motor cycle bearing no.WB-72-G-8892 under Section 279/338 of the Indian Penal Code for the accident alleged in the claim petition. Therefore, considering the facts and circumstances of this particular case, I am unable to hold that delay in lodging FIR is fatal.

In ***Balakrishanan*** (supra) as Hon'ble Supreme Court observed as follows:-

"16. Thus, it is quite vivid that the Bench had made a distinction between the "Act policy" and "comprehensive policy/package policy". We respectfully concur with the said distinction. The crux of the matter is what would be the liability of the insurer if the policy is a "comprehensive/package policy". We are absolutely conscious that the matter has been referred to a larger Bench, but, as is evident, the Bench has also observed that it would depend upon the view of the Tariff Advisory Committee pertaining to enforcement of its decision to cover the liability of an occupant in a vehicle in a "comprehensive/package policy" regard being had to the contract of insurance.

19. It is extremely important to note here that till 31st December, 2006 the Tariff Advisory Committee and, thereafter, from 1st January, 2007, IRDA functioned as the statutory regulatory authorities and they are entitled to fix the tariff as well as the terms and conditions of the policies by all insurance companies. The High Court had issued notice to the Tariff Advisory Committee and the IRDA to explain the factual position as regards the liability of the insurance companies in respect of an occupant in a private car under the "comprehensive/package policy". Before the High Court, the Competent Authority of IRDA had stated that on 2nd June, 1986, the Tariff Advisory Committee had issued instructions to all the insurance companies to cover the pillion rider of a scooter/motorcycle under the "comprehensive policy" and the said position continues to be in vogue till date. It had also admitted that the "comprehensive policy" is presently called a "package policy". It is the admitted position, as the decision would show, the earlier circulars dated 18th March, 1978 and 2nd June, 1986 continue to be valid and effective and all insurance companies are bound to pay the compensation in respect of the liability towards an occupant in a car under the "comprehensive/package policy" irrespective of the terms and conditions contained in the policy. The competent authority of the IRDA was also examined before the High Court who stated that the circulars dated 18th March, 1978 and 2nd

June, 1986 of the Tariff Advisory Committee were incorporated in the Indian Motor Tariff effective from 1st July, 2002 and they continue to be operative and binding on the insurance companies. Because of the aforesaid factual position, the circulars dated 16th November 2009 and 3rd December, 2009, that have been reproduced hereinabove, were issued.

20. It is also worthy to note that the High Court, after referring to individual circulars issued by various insurance companies, eventually stated thus:

In view of the aforesaid, it is clear that the comprehensive/package policy of a two wheeler covers a pillion rider and comprehensive/package policy of a private car covers the occupants and where the vehicle is covered under a comprehensive/package policy, there is no need for Motor Accident Claims Tribunal to go into the question whether the Insurance Company is liable to compensate for the death or injury of a pillion rider on a two-wheeler or the occupants in a private car. In fact, in view of the TAC's directives and those of the IRDA, such a plea was not permissible and ought not to have been raised as, for instance, it was done in the present case.

21. In view of the aforesaid factual position, there is no scintilla of doubt that a "comprehensive/package policy" would cover the liability of the insurer for payment of compensation for the occupant in a car. There is no cavil that an "Act Policy" stands on a different footing from a "Comprehensive/Package Policy". As the circulars have made the position very clear and the IRDA, which is presently the statutory authority, has commanded the insurance companies stating that a "Comprehensive/Package Policy" covers the liability, there cannot be any dispute in that regard. We may hasten to clarify that the earlier pronouncements were rendered in respect of the "Act Policy" which admittedly cannot cover a third party risk of an occupant in a car. But, if the policy is a "Comprehensive/Package Policy", the liability would be covered. These aspects *were not noticed in the case of Bhagyalakshmi (supra) and, therefore, the matter was referred to a larger Bench. We are disposed to think that there is no necessity to refer the present matter to a larger Bench as the IRDA, which is presently the statutory authority, has clarified the position by issuing circulars which have been reproduced in the judgment by the Delhi High Court and we have also reproduced the same.*

22. In view of the aforesaid legal position, the question that emerges for consideration is whether in the case at hand, the policy is an "Act Policy" or "Comprehensive/Package Policy". There has been no discussion either by the tribunal or the High Court in this regard. True it is, before us, Annexure P-1 has been filed which is a policy issued by the insurer. It only mentions the policy to be a "comprehensive policy" but we are inclined to think that there has to be a scanning of the terms of the entire policy to arrive at the conclusion whether it is really a "package policy" to cover the liability of an occupant in a car.

23. In view of the aforesaid analysis, we think it apposite to set aside the finding of the High Court and the tribunal as regards the liability of the insurer and remit the matter to the tribunal to scrutinize the policy in a proper perspective and, if necessary, by taking additional evidence and if the conclusion is arrived at that the policy in question is a "Comprehensive/Package Policy", the liability would be fastened on the insurer. As far as other findings recorded by the tribunal and affirmed by the High Court are concerned, they remain undisturbed."

Clarity of the ratio mentioned above does not require further discussion but to come to conclusion that pillion rider of two-wheeler is covered under package policy which is squarely identical to that of ours.

In the aforesaid view of the matter, I find no other option but to modify the amount of award in absence of any specific case of disability.

From the documents exhibited in this case, I find from the documents that the injured incurred a sum of Rs. 2,10,000/- and he had to undertake pain and sufferings during his treatment in the hospital/ nursing home.

Accordingly, award is modified as follows:-

Medical expenses	Rs. 2,10,000/-
Pain and suffering	Rs. 50,000/-
Total	Rs. 2,60,000/-

Injured is entitled to award to the tune of Rs. 2,60,000/-along with interest @ 6% per annum from the date of filing of the claim application till the deposit of the same before the Ld. Tribunal.

Respondent/ Oriental Insurance Company is directed to pay the compensation along with interest after deducting the amount awarded by the

Tribunal, if already paid, within 6 weeks from date, before the Ld. Tribunal by issuing cheque.

Ld. Tribunal is requested to disburse the amount accordingly on proper identification and proof.

With the aforesaid observation this appeal being FMA 3 of 2019 stands disposed of.

Let the records of Tribunal along with copy of the order be transmitted back immediately.

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

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(BIBHAS RANJAN DE, J.)