14.3. 2024
item No.30
n.b.
ct. no. 551

FMA 132 of 2019

Minarul Hoque.
Vs.
HDFC Egro General Insurance Co. Ltd. & Anr.

Mr. Saidur Rahaman,
…..for the appellant.
Mr. Rajesh Singh,
…. For the respondents.

The instant appeal has been preferred against the judgment and award dated January 1, 2018 passed by the learned Tribunal, Additional District Judge, 4th Court, Malda, in M.A.C. case No. 272 of 2015.

The brief fact of the case is that the present appellant preferred an application before the learned Tribunal under Section 166 of the Motor Vehicles Act for getting compensation from the Insurance Company on the ground that his wife 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 claim was contested by the Insurance Company by filing written statement. Owner has not contested the matter.

After hearing the parties and after receiving the evidence, the learned Tribunal has awarded a sum of Rs.4,78,000/- towards the compensation and directed the owner of the offending vehicle to pay the compensation.

The owner has not satisfied with the award. The appellant preferred this appeal for enhancement of the award as well as for necessary direction that the compensation may be directed to be paid by the Insurance Company.

Mr. Rahaman, learned advocate appearing on behalf of the claimant submits that the learned Tribunal has committed an error in passing the impugned award wherein he directed the owner of the offending vehicle to pay the compensation. He submits that there are sufficient materials to substantiate the fact that at the alleged date of accident, the offending vehicle was well-covered under the policy of the Insurance Company. He submits that the Insurance Company cannot deny its liability to pay the compensation. The learned Tribunal has mis-read and mis-construed the evidence on record and passed the impugned award directing the owner to pay the compensation.

Mr. Rahaman further submits that the Insurance Company has called one officer of the Insurance Company as O.P.W.1. During his cross examination-in-chief he has stated that that policy of the offending vehicle was covered with the HDFC Ergo General Insurance Co. Ltd. from the period of 18.9.2014 to 17.9.2015 and thereafter, 16.10.2015 to 15.10.2016. Mr Rahaman submits that the alleged accident happened on 4.10.2015. Prior to the said accident, one proposal form was executed by the owner of the offending vehicle on September 30, 2015 for renewal of the policy. But the Insurance Company has only renewed the policy from 16.10.2015 to 15.10.2016. He submits that the offending vehicle was well-covered under the policy of the Insurance Company during all the period from 17.9.2015 to 16.10.2015, but due to the conduct of the Insurance Company in writing the proposal form, the date proposed to be covered was written as 5.10.2015 to 4.10.2016. He submits that when the proposal form was issued, the owner must have issued the necessary cheque for renewal of the policy. He further argued that the Insurance Company cannot deny this liability after receiving the proposal form on 30.9.2015. So, it can be presumed that the offending vehicle was covered under the policy of the Insurance Company on the date of accident i.e. 4.10.2015. In that score, the Insurance Company may be directed to pay the compensation. However, liberty may be given to the Insurance Company to pay the entire compensation from the owner of the offending vehicle.

Learned advocate Mr. Rajesh Singh appearing on behalf of the Insurance Company submits that the two policies of the Insurance Company were exhibited before the learned Tribunal. The first policy was covering for the period from 18.9.2014 to 17.9.2015. Thereafter, the same vehicle was again insured by the Insurance Company from 16.10.2015 to 15.10.2016. He argued that the evidence goes to show on the date of accident i.e. 4.10.2015 the offending vehicle was not covered under the policy of the Insurance Company. So, the Insurance Company cannot held liable to pay the compensation. He argued that the proposal form, if taken to be true, then also the owner himself proposed to cover the policy from the date 5.10.2015 to 4.10.2016. Admittedly, the accident happened on 4.10.2015, thus, from the proposal of the owner; the insurance policy is not covered on the date of alleged accident. He submits that the observation of the learned Tribunal is quite justified and it cannot be correct.

Heard the learned advocates and perused the materials on record also perused the policy papers. There is no dispute that, initially the offending vehicle was covered under the policy of the Insurance Company covering from the period 18.9.2014 to 17.9.2015 (Ext. III). Thereafter, the offending vehicle was again insured by the same insurance Company from 16.10.2015 to 15.10.2016(Ext. IV). It has cleared in the policy(Ext. IV) that the date of issuance of policy is 16.10.2015. The said policy also mentioned the previous policy number and date as it was earlier valid from 18.9.2014 to 17.9.2015. So, the policy covering period from 16.10.2015 to 15.10.2015 make it clear that the policy was only issued on the date of 16.10.2015.

Let me consider whether the proposal form issued on September 30, 2015 can be taken to be the date of initiation of the policy. It has been already noted that the date of issuance of the policy is 16.10.2015. Moreover, the proposal form was valid up to September 30, 2015. So, after the said date, the proposal form was not valid. Moreover, the appellant also not filed any document to substantiate the fact that the money or cheque has been issued to the Insurance Company on September 30, 2015.

Considering all aspect, I find no justification to entertain the ground of the appeal regarding the fixing liability of compensation upon the Insurance Company. Hence, it is turned down.

In considering the quantum of compensation in this case, it appears to me that the learned Tribunal has awarded the compensation fixing the monthly income of the deceased to be Rs.3,000/- per month. On several occasions, this court has adopted the view that in absence of any valid document of income when the deceased died in the year 2015, the notional income would be Rs.5,000/-. The same principle can be applied in this case; the monthly income of the deceased would be Rs.5,000/-. The claimant is also entitled to get the future prospect of 40% upon established income of the deceased according to the observation of the Hon'ble Supreme Court passed in **National Insurance Co. Ltd. Vs. Pranay Shetti.** The multiplier adopted by the learned Tribunal according to second schedule is 17 but as per view of the Hon'ble Supreme Court passed in **Sarala Verma Vs. Delhi Transport Corp. & Anr.** followed by **Pranay**

Shetti(Supra), the applicable multiplier would be 18, considering the age of the deceased to be 24 years. However, claimant being the husband of the deceased is entitled to get the consortium of Rs.40,000/- according to the observation of the Hon'ble Supreme Court in **Pranay Shetti(spura).**

The total compensation is requested below:

1.Monthly income	: Rs.5000/-
2. Annual income	: Rs.60,000/-
3. Less 1/3rd personal exp.	: Rs.20,000/-
	: Rs.40,000/-
4. Add 40% Future prospect	: Rs.16,000/-
Set out	: Rs. 56,000/-
5. Multiplier 18	: Rs.10,08,000/-
6. Add General Damages	: Rs. 70,000/-
Total	**: Rs.10,78,000/-**

After calculation, the just and proper compensation of this case, the award comes to Rs. 10,78,000/. The award shall carry 6% interest per annum from the date of filing of the claim application. Owner of the offending vehicle is directed to pay the compensation to the claimant within a month from the date of passing of this order failing which the appellant is at liberty to execute the award through the office of the learned Tribunal.

Accordingly, FMA 132 of 2019 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.)