IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

F.M.A 221 of 2019
With
CAN 1 of 2018 (Old CAN 7019 of 2018)

HDFC Ergo General Insurance Co. Ltd.
-Vs-
Deta Hansda & Ors.

For the Appellant/ Insurance Company	: Mr. Rajesh Singh
Heard on	: 14.06.2024, 21.06.2024
Judgment on	: 07.11.2024

<u>Ananya Bandyopadhyay, J.:-</u>

1. Two legal claimants of deceased Badiram Saren filed an application under Section 163A of the M.V. Act in the Court of Motor Accident Claims Tribunal, Additional District and Sessions Judge, 2nd Court, Raiganj, Uttar Dinajpur being MAC Case No.1074/2014, claiming an award of Rs.2 lakhs along with interest whereby the aforesaid deceased expired due to a road traffic accident on 09.02.2014.

2. The offending vehicle, a tractor bearing Registration No. WB-59A/6076 along with trailer bearing Registration No. WB-59A/6879 capsized due to rash and negligent driving by the driver. The victim who was riding the vehicle got trapped under the tractor and expired on the spot. The location of the accident was Badnagar.

3. Consequently, the victim was declared dead on the spot and was taken to Malda Medical College and Hospital.
4. Subsequently, based on a written complaint, Gajole P.S. Case No. 59/2014 dated 10.02.2014 under Sections 279/338/304A of the Indian Penal Code was instituted against the driver of the offending tractor as aforesaid.
5. The owner of the offending vehicle appeared before Additional District and Sessions Judge, 2nd Court, Raiganj, Uttar Dinajpur on 11.03.2015 and filed a written statement. In his written statement the owner of the vehicle in Paragraph – 6 that his tractor no. WB-59A/6076 was duly insured with the L&T General Insurance Company Ltd. vide his Policy No. 915106002123560002 with a validity period from 01.07.2013 to 30.06.2014 and his claim was allowed by the Learned Trial Court and the same shall be satisfied by the Insurance Company.
6. The respondent, L&T General Insurance Company Ltd. (now HDFC Ergo General Insurance Co. Ltd.) contested the aforesaid MAC case.
7. The Learned Tribunal as aforesaid disposed of the issues framed considering the oral as well as documentary evidences and awarded a sum of Rs.3,54,000/- as compensation. L&T General Insurance Company Ltd. was directed to pay award amount within 30 days on receipt of the judgment along with interest at the rate of 6 per cent per annum from the date of institution being 20.09.2014 and till its realization by two account payee cheques of equal amount.
8. The Learned Advocate representing the Appellant submitted as follows:-

a. The Tractor' and Trailer' involved in the accident were insured to be used only for 'agricultural purpose', but admittedly, the accident took place when the said Tractor and the Trailer attached to the Tractor, were carrying passengers, and therefore it was proved beyond doubt that the insured Tractor and Trailer were not engaged in any agricultural work and accordingly, the insurer of the said Tractor could not be held responsible to pay any compensation at all.

b. At the time of accident a Trailer/Trolley was attached to the Tractor involved in the accident, was carrying 16-17 passengers. Since the owner of the Tractor/Trailer violated the terms and conditions of insurance policy, the insurance company, being the appellant herein, should not be held responsible to pay the compensation to the claimants.

c. Moreover, it was erroneously decided since deceased was travelling therein as a labourer, policy conditions were not violated, and on such wrongful assumption, the appellant insurance company was made responsible to pay the compensation to the claimants.

d. At the time of accident it was proved that those were carrying unauthorized persons and for such violations of policy conditions the appellant insurer should not have been held liable to satisfy the award.

e. The Charge-sheet, being exhibit 3, confirmed the fact that the deceased along with eight others, *"while returning to their respective homes boarded on a Tractor bearing no. WB-59A/6076 and on way said tractor capsized on the road...".* One of the claimants, being the mother of the deceased, deposed as PW-1 admitted that her son was going on the Tractor -Trailer. PW-2, the eye- witness to the accident confirmed that the victim, along with several other persons, boarded the Tractor-Trailer at the time of accident.

f. On behalf of the Insurance Company, its Assistant Manager adduced evidence as DW-1 and denied the liability of payment of compensation on the ground that the deceased was travelling as a gratuitous passenger in the Tractor-Trailer.

g. A "Tractor" has a seating capacity of only 1 (one) person, i.e. the "driver". Similarly, 'Trailer" is meant for carrying goods and not for carrying passengers. Thus, from the admitted facts it was proved that the victim was a "gratuitous passenger" of the said Tractor-Trailer.

9. The Learned Advocate representing the appellant relied on the following decisions reported in:-

a. ***2004(1) TAC 366 (SC) (National Insurance Company Limited- Vs- Baljit Kaur - Para 21)*** where a larger Bench of Hon'ble Supreme Court, while dealing with the above point of "gratuitous passengers", held that *"... We, therefore, are of the opinion that* *interest of justice will be subserved if the appellant herein is directed to satisfy the awarded amount in favour of the claimant if not already satisfied and recover the same from the owner of the vehicle".* Accordingly, the direction of "pay & recover" was issued in the case of ***Baljit Kaur (supra).***

b. ***Oriental Insurance Co. Ltd. -Vs- Brij Mohan & Others (Paras 2, 3, 9, 15, 16)*** where while dealing with the case of "gratuitous passenger" in a Tractor-Trolley, the Hon'ble Supreme Court also followed the principle of "pay & recover" as decided in the case of ***Baljit Kaur (supra*).**

10. None appeared to represent the respondents.

11. The Hon'ble Supreme Court held the following in ***Shivaraj v. Rajendra[1]:-***

> ***"10.*** *The High Court, however, found in favour of Respondent 2 (insurer) that the appellant travelled in the tractor as a passenger which was in breach of the policy condition, for the tractor was insured for agriculture purposes and not for carrying goods. The evidence on record unambiguously pointed out that neither was any trailer insured nor was any trailer attached to the tractor. Thus, it would follow that the appellant travelled in the tractor as a passenger, even though the tractor could accommodate only one person, namely, the driver. As a result, the Insurance Company (Respondent 2) was not liable for the loss or injuries suffered by the appellant or to indemnify the owner of the tractor. That conclusion reached by the High Court, in our opinion, is unexceptionable in the fact situation of the present case.*
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> ***11.*** *At the same time, however, in the facts of the present case the High Court ought to have directed the insurance company to pay the compensation amount to the appellant claimant with liberty to recover*

[1] (2018) 10 SCC 432

the same from the tractor owner, in view of the consistent view taken in that regard by this Court in National Insurance Co. Ltd. v. Swaran Singh [National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 : 2004 SCC (Cri) 733] , Mangla Ram v. Oriental Insurance Co. Ltd. [Mangla Ram v. Oriental Insurance Co. Ltd., (2018) 5 SCC 656 : (2018) 3 SCC (Civ) 335 : (2018) 2 SCC (Cri) 819] , Rani v. National Insurance Co. Ltd. [Rani v. National Insurance Co. Ltd., (2018) 8 SCC 492 : (2018) 3 SCC (Cri) 599] and including Manuara Khatun v. Rajesh Kumar Singh [Manuara Khatun v. Rajesh Kumar Singh, (2017) 4 SCC 796 : (2017) 2 SCC (Civ) 710 : (2017) 2 SCC (Cri) 492] . In other words, the High Court should have partly allowed the appeal preferred by Respondent 2. The appellant may, therefore, succeed in getting relief of direction to Respondent 2 insurance company to pay the compensation amount to the appellant with liberty to recover the same from the tractor owner, Respondent 1."

12. The following was held by the Hon'ble Supreme Court in ***National Insurance Co. Ltd. v. Baljit Kaur***[2]**:-**

> *"21. The upshot of the aforementioned discussions is that instead and in place of the insurer the owner of the vehicle shall be liable to satisfy the decree. The question, however, would be as to whether keeping in view the fact that the law was not clear so long such a direction would be fair and equitable. We do not think so. We, therefore, clarify the legal position which shall have prospective effect. The Tribunal as also the High Court had proceeded in terms of the decision of this Court in Satpal Singh [(2000) 1 SCC 237 : 2000 SCC (Cri) 130] . The said decision has been overruled only in Asha Rani [(2003) 2 SCC 223 : 2003 SCC (Cri) 493] . We, therefore, are of the opinion that the interest of justice will be subserved if the appellant herein is directed to satisfy the awarded amount in favour of the claimant, if not already satisfied, and recover the same from*

[2] (2004) 2 SCC 1

the owner of the vehicle. For the purpose of such recovery, it would not be necessary for the insurer to file a separate suit but it may initiate a proceeding before the executing court as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. We have issued the aforementioned directions having regard to the scope and purport of Section 168 of the Motor Vehicles Act, 1988, in terms whereof, it is not only entitled to determine the amount of claim as put forth by the claimant for recovery thereof from the insurer, owner or driver of the vehicle jointly or severally but also the dispute between the insurer on the one hand and the owner or driver of the vehicle involved in the accident inasmuch as can be resolved by the Tribunal in such a proceeding."

13. In view of the decisions citied above, a third party boarding a tractor -trailer can be designated as a gratuitous passenger.
14. The occurrence of the accident involving the offending vehicle has been proved. The driving license, route permit, insurance police etc. have not been disputed.
15. In view of the judgment of the Hon'ble High Court in ***Urmila Halder v. The New India Assurance Company Ltd.*** and the same being affirmed by the Supreme Court on 08.02.2024 and the notification dated 22nd May, 2018, the appellants/claimants are entitled to Rs.5,00,000/- of just compensation with regard to second schedule 1(a) and notification dated 22nd May, 2018 and also the aforesaid observations of the High Court at Calcutta and the Hon'ble Supreme Court.

16. Schedule 1(a) of the Second Schedule of the notification no. S.O. 2022(E) dated 22nd May, 2018, published by the Ministry of Road Transport and Highways is as follows: -

"Fatal Accidents:

Compensation payable in case of Death shall be five lakh rupees."

17. The Learned Advocate for the appellant /insurance company is to pay a sum of 5,00,000/- along with an interest at the rate of 6% per annum from the date of filing of the application under Section 163A of the Motor Vehicles Act till the date of realization by the appellant/insurance company at the office of the Learned Registrar General, High Court Calcutta within six weeks from the date of passing of this order as well as deposit a balance sum of Rs.5,00,000/-, along with interest at the rate of 6 per cent per annum from the date of filing the claim application, if not deposited, before the office of the Learned Registrar General, High Court Calcutta within six weeks from the date of passing of this order.

18. The office of the Registrar General, High Court, Calcutta shall encash the said cheque and thereafter disburse the same to the present appellants/claimants in equal proportion as mentioned in the award granted by the learned Motor Accident Claim Tribunal & Additional District & Sessions Judge, 2nd Court, Raiganj, Uttar Dinajpur in M.A.C. Case No. 1074 of 2014 on proof of proper identification of the appellants/claimants subject to payment of *ad valorem* Courts fees.

19. The appellant/insurance company is to pay the compensation amount to the respondent claimants and recover the said amount from the owner of the offending vehicle.
20. The instant appeal being FMA 221 of 2019 along with CAN 1 of 2018 (old CAN 7019 of 2018) is disposed of.
21. Trial Court records shall be sent down to the concerned Tribunal forthwith.
22. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)