

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

PRESENT: - THE HON'BLE JUSTICE SUBHENDU SAMANTA

FMA 1084 of 2012

Manmatya @ manamatiya & Ors.

versus

The Oriental Insurance Company Ltd.

For the Appellants/Claimants : Mr. Uday Sankar Chattopadhyay Adv.
Mr. Suman Sankar chatterjee, Adv.
Ms. Trisha Rakshit, Adv.
Ms. Rajarsi Tah, Adv.

For the Respondent : Ms. Sucharita Paul

Hearing on : 22.01.2024

Judgment on : 24.01.2024

Subhendu Samanta, J.:-

1. The instant appeal has been preferred against the judgment and order dated 23rd May, 2011 passed by the learned Judge, Motor Accident Claims Tribunal, 3rd Court, Burdwan in MAC Case No. 77/95 of 2007.
2. The present claimants being the appellants have preferred the claim application under Section 166 of the M.V. Act before the learned tribunal. The claim case was contested by the Insurance Company before the learned tribunal by filling written statement.
3. After hearing the parties and after receiving the evidences the learned tribunal has awarded a sum of Rs. 3,93,500/-towards the compensation and directed the owner i.e. the owner of the

offending vehicle i.e. the respondent No. 2 herein to pay the compensation. Being aggrieved by and dissatisfied with the said award the present claimants/appellants have been preferred this instant appeal.

1. It is the contention of the learned advocate for the appellants that the learned tribunal has erroneously directed the owner of the offending vehicle to pay the compensation on the ground that the deceased was a gratuitous passenger, consequently Insurance Company had no liability to pay. He argued that by virtue of the decision of ***National Insurance Co. Ltd. Versus Baljit Kaur and Others*** reported in ***(2004) SCC 1*** and ***Singh Ram Versus Nirmala and Others*** reported in ***(2018) SCC 800***. The Insurance Company cannot be absolved from his liability to pay the third party. The Insurance Company may be directed to pay the compensation and in turn they are at liberty to recover the same from the owner.
2. Learned advocate appearing on behalf of the Insurance Company submits that the learned tribunal has committed no error in passing the impugned judgment. The impugned judgement has categorically stated about the status of the deceased who was actually a gratuitous passenger. The Insurance Company under the contract with the owner of the offending vehicle is duty bound to indemnify the compensation towards the third party. The gratuitous passenger is not come under the purview of the contract, so the learned tribunal has committed no error.
4. Heard the learned advocates.

5. The Hon'ble Supreme Court in **Baljit Kaur (Supra)** has held that:

“A. Motor Vehicles-Insurance-Policy in respect of goods vehicle-Liability of insurer, held, does not cover gratuitous passengers carried in such vehicle-Amendment of S. 147(1)(b), MV Act in 1994 does not alter this position-Expression “any person”, occurring therein-Scope- Explained-As the law was not clear so long, the legal position as clarified herein directed to have prospective effect-Therefore, while allowing the insurer’s appeal, in the interest of justice the insurer directed to satisfy the awarded amount and recover the same from the owner of the vehicle simply by initiating a proceeding before the executing court without filing a separate suit-motor Vehicles Act, 1988, S. 147(1)(b) (as amended in 1994)”.

6. The Hon'ble Supreme Court in **Singh Ram (Supra)** has followed the principle laid down in **Swaren Singh** reported in **(2004)3 SCC 297** and had held that in case of fake driving licence as well as in case of gratuitous passengers, the Insurance Company may be directed to pay the compensation to the third party and in turn they are at liberty to recover the same from the owner.

7. Considering the principles laid down by the Hon'ble Supreme Court in **Baljit Kaur** and **Singh Ram** it appears to me that the observation of the learned tribunal is derogatory to the Law laid down by the Hon'ble Apex Court. Accordingly, the award passed by the learned tribunal need be modified. The appellants/claimants are also entitled to get the future prospects as well as the general

damages according to the observation of Hon'ble Supreme Court passed in **Pranay Sethi**.

8. The just and proper compensation of this case is calculated as hereunder:-

Calculation of Compensation

i) Income	:Rs.3,000/-
ii) Add: 25% future prospects	:Rs.750/-
	:Rs.3,750/-
iii) Annual Income	:45,000/-
(Rs.3,750 X 12)	
iv) Multiplier 14	:Rs.6,30,000/-
(Rs.45,000 X 14)	
v) Less: 1/4 th for personal Exp.	:Rs.1,57,500/-
	:Rs.4,72,500/-
vi) Add: General Damages	:Rs.70,000/-
	:Rs.5,42,500/-

9. The award comes to Rs. 5,42,500/-. The award shall carry interest @ 6% per annum from the date of filing of the claim application i.e. from 26.07.2007.

10. The Insurance Company is directed to pay the compensation together with the interest as directed above through the office of the learned Registrar General High Court, Calcutta within six weeks from this date.

11. After such deposit the office of the learned Registrar General High Court, Calcutta shall disburse the award in favour of the claimants according to the prevalent rules. The office of the learned Registrar General High Court, Calcutta shall disburse the amount through equal six account payee cheques in the name of the

claimants. The claimant No. 1 shall receive the cheque in the name of the minor claimants as their natural guardian mother. The claimant No. 1 is directed to deposit the cheque amount of the minor in the name of the minor in a nationalised Bank under fixed deposit scheme so that the amount may be utilized by the minors after attaining their majority.

12. The Insurance Company is at liberty to recover the awarded amount from the owner of the offending vehicle according to the procedure laid down by the Hon'ble Supreme Court in **Swaran Singh**.
13. The payment of compensation is subject to the ascertainment of payment of deficit Court Fees, if any.
14. The instant **FMA 1084 of 2012** is disposed of
15. All connected applications, if any, stand disposed of.
16. Interim orders, if any, stand vacated.
17. Parties to act upon the server copy and urgent certified copy of this order be provided on usual terms and conditions.

(Subhendu Samanta, J.)