IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction

24.05.2024
SL No.65 & 66
Court No.25
Ali

F.M.A. 450 of 2017
With
IA No.:CAN/3/2018 (Old No.:CAN/7540/2018)
With
Cholamandalam General Insurance Company Ltd.
Vs.
Sri Pinaki Chakraborty & Ors.
With
COT 80 of 2018
Sri Pinaki Chakraborty
Vs.
Cholamandalam General Insurance Company Ltd. & Ors.

Mr. Rajesh Singh
…for the appellant/Insurance Co.
Ms. Sucharita Paul
…for the respondent No. 4/Insurance Co.

Mr. Krishanu Banik
……..for the respondent claimants.

Affidavit of service filed on behalf of the claimants is taken on record.

Delay condoned.

The instant appeal has been preferred against the judgment and award dated 22nd day of July, 2016, passed by the learned Judge, Motor Accident Claims Tribunal, Additional District & Sessions Judge, 1st Court, Hooghly, in MAC Case No. 235 of 2010.

The brief facts of the case is that on 19.05.2010 at about 7.15 A.M. the victim of this case, namely, Subhashree Chakraborty along with her husband and parents were proceeding by a Maruti Suzuki vehicle towards Burdwan side and reached at Musunda village under Jamalpur P.S., District Burdwan at that time another vehicle bearing No. WB-38w/8281 (Scorpio) which was coming from opposite side in a rash and negligent manner dashed the Maruti Suzuki as a result the victim Subhashree Chakraborty along with her husband and parents received serious injuries. The victim Subhashree Chakraborty died on spot other passengers also received injuries.

The husband of the deceased preferred an application before the learned tribunal under Section 163-A of M.V. Act for getting compensation.

The claim case was contested by the insurer of both the vehicles.

After hearing the parties and after receiving the evidences the learned tribunal has awarded a sum of Rs. 4,17,500/- towards compensation and directed the present appellant to pay the compensation together with interest @ 6 % per annum.

Being aggrieved by and dissatisfied with the said award the Insurance Company (insurer of the Scorpio) preferred the instant appeal against the award.

The claimants also preferred one cross appeal against the said award being COT 80 of 2018 for enhancement of the compensation.

Let both the appeals and the Cross Appeal be taken up together for uniformity of the judgment.

Learned advocate, Mr. Singh appearing on behalf of the Insurance Company submits that the instant appeal was preferred by the present appellant i.e. insurer of the Scorpio vehicle on the ground that two vehicles were involved in the alleged accident. There are head on collision between two vehicles. The other vehicle i.e. Maruti Suzuki van is also responsible for the said accident. He also pointed out that the FIR was lodged against both the vehicles and the investigation of the police which ended in charge-sheet also disclosed the involvement of both the vehicles to be responsible for the accident.

Mr. Singh submits that the learned tribunal has misread the evidence and passed the impugned award directing the only insurer of Scorpio vehicle to pay the entire compensation. He submits that the learned tribunal should have apportioned the compensation between two insurers.

Mr. Banik, learned advocate appearing on behalf of the claimants submits that the claimants have preferred the instant cross appeal only on the ground that the Hon'ble Apex Court in ***New India Assurance Company Ltd. Versus Urmila Halder Halder*** has fixed the Law that in a case under

Section 163-A of M.V. Act, wherein the death has been occurred in a road traffic accident the fixed compensation would be Rs.5,00,000/-.In this case, The learned tribunal has only awarded Rs.4,17,500/-. In this case the correct compensation would be Rs.5,00,000/-.

Mr. Banik further submits in a case under Section 163-A of M.V. Act, the rash and negligent driving of the driver is not the issue. So, the issue cannot be decided in this case.

In support of his contentions, he cited a decision of Hon'ble Supreme Court in ***United India Insurance Co. Ltd. Versus Sunil Kumar & Anr.*** reported in ***2018 ACJ (1) TAC 3 (S.C.)..***

Mr. Singh, learned advocate submits that the principle of Law as enumerated in Sunil Kumar (supra) is well accepted but any order determining the merit of rash and negligence in the accident may affect the Insurance Company in other proceeding.

Heard the learned advocates perused the memo of appeal. It appears that the positive fact of the present appellant (insurer of the Scorpio van) is that, the Scorpio vehicle was not solely liable for the accident. However, it appears that this is a proceeding under Section 163-A of M.V. Act wherein rash and negligent driving and the reason for whose default the accident has been occurred is not the issue involved in an application under Section 166 of M.V. Act. The issue may be very well deal with in a proceeding under Section 166 of M.V. Act. The observation of ***Sunil Kumar (supra)*** in paragraph 8 (eight) to be set out in this case on the said principle:

> ***"8. From the above discussion, it is clear that grant of compensation under Section 163-A of the Act on the basis of the structured formula is in the nature of a final award and the adjudication thereunder is required to be made without any requirement of any proof of negligence of the driver/owner of the vehicle(s) involved in the accident. This is made explicit by Section 163A(2). Though the aforesaid section of the Act does not specifically exclude a possible defence of the Insurer based on the negligence of the claimant as contemplated by Section 140(4), to permit such defence to be introduced by the Insurer and/or understand the provisions of Section 163A of the Act to be contemplating any such situation would go contrary to the very legislative object behind introduction of Section 163A of the Act, namely, final compensation within a limited time frame on the basis of the structured formula to overcome situations where the claims***

> ***of compensation on the basis of fault liability was taking an unduly long time. In fact, to understand Section 163A of the Act to permit the Insurer to raise the defence of negligence would be to bring a proceeding under Section 163A of the Act at par with the proceeding under Section 166 of the Act which would not only be self-contradictory but also defeat the very legislative intention".***

Considering the observation of Hon'ble Apex Court in Sunil Kumar (supra) this Court refrain itself to entertain into the merit of rash and negligent driving and it is not required by this Court in a proceeding under Section 163-A of M.V. Act to find out which vehicle is actually involved or responsible for the accident.

It appears that the Hon'ble Apex Court in ***New India Assurance Company Ltd. Versus Urmila Halder Halder*** has decided the issue of fixed compensation of Rs. 5,00,000/- in a case under Section 163-A of M.V. Act as follows:

> ***"9. Having considered the matter, we do not find any reason to interfere with the judgment impugned. With regard to the judgments of this Court relied upon by learned counsel for the appellant, having gone through the same we find that they are distinguishable from the facts of***

the present case and thus, the ratio of those cases would not apply in the present case.

10. The order of the High Court is well discussed and we agree with the view taken. We may, however, add that a beneficial legislation would necessarily entail the benefit to be passed on to the claimant in the absence of any specific bar to the same. In the present case, the liability of the appellant-Insurance Company has not been interfered with. Only the computational mode and the modality have been further clarified, which rightly has been noted by the High Court and accordingly, the claim has been enhanced to Rs. 5,00,000/- (Rupees Five Lakhs). As 50% of the compensation amount was stayed by this Court, the same be paid to the respondent in terms of the impugned judgment within eight weeks".

Considering the above observation the award passed by the learned tribunal requires modification.

The just and proper compensation of this case would be Rs. 5,00,000/- together with interest @ 6% per annum from the date of filing of claim application till actual realization. It appears that the Insurance Company has already deposited a sum of

Rs. 25,000/- with the office of the learned Registrar General, High Court, Calcutta on 21.11.2016; the statutory deposit must have accrued some interest. The office of the learned Registrar General, High Court, Calcutta is directed to disburse the same in favour of the claimants. The Insurance Company is further directed to deposit the balance amount of Rs.4,75,000/- together with interest @ 6 % per annum from the date of filing of the claim application till its actual realization through the office of the learned Registrar General, High Court, Calcutta within (8) eight weeks after vacation. I make it clear that the Insurance Company shall also deposit the left over interest on an upon Rs. 25,000/-. On such deposit the office of the learned Registrar General, High Court, Calcutta shall disburse the same in favour of the claimants according to the regular norms of identification and certification

The payment of compensation is subject to ascertainment of payment of deficit Court Fees.

The office of the learned tribunal shall act upon the certified copy of this order to receive the deficit court fees, if any.

LCR be sent down at once through a Special Messenger, cost to be borne by the appellant. The appellant is directed to deposit the Special

Messenger cost to the department within a week after vacation.

The applications being **FMA 450 of 2017** along with **COT 80 of 2018** are disposed of.

All connected applications, if any, stand disposed of.

Interim orders, if any, stand vacated.

Parties to act upon the server copy and urgent certified copy of this order be provided on usual terms and conditions.

(Subhendu Samanta, J.)