5.2. 2024
item No.171
n.b.
ct. no. 551

FMA 360 of 2019
with
IA No. CAN 1 of 2018(Old No. CAN 8998 of 2018)
+
CAN 2 of 2024

United India Insurance Co. Ltd.
Vs.
Smt. Jamuna Maity & Ors.

Ms. Sucharita Paul,
.....for the appellant.
Mr. Purna Chandra Maiti,
Mr. Mansaran Mondal,
Ms. Raj Lakshmi Shaw,
.... For the claimant.

In pursuance to the order of this Court dated 15.3.2019, the Insurance Company has deposited the entire awarded sum of Rs.31,26,911/- vide OD challan no.65 dated 9.4.2019.

Considering the compliance made on behalf of the Insurance Company the CAN 1 of 2018(Old No. CAN 8998 of 2018) is disposed of with a direction that the interim order of stay passed by this court on the earlier occasion be made absolute and be extended till the disposal of the instant appeal.

In Re. FMA 360 of 2019

The matter is otherwise ready for hearing. LCR has reached to this Court. The single point is involved in this appeal to determine. Accordingly, the matter is taken up for hearing.

The learned Tribunal has awarded a sum of Rs.22,79,820 in favour of the claimant and directed the Insurance Company to pay compensation. It is the only ground of the Insurance Compnay that the learned Tribunal has not considered the ratio of the judgment of the Hon'ble Supreme Court passed in **National Insurance Co. Ltd. VS. Swaran Singh.**

Ms. Paul, learned advocate appearing on behalf of the Insurance Company/appellant submits that the owner of the offending vehicle who was O.P. no.1 in the learned Tribunal chose not to appear after receiving summons.

The Insurance Company has pleaded the fact of fake licnece used by the driver of the offending vehicle at the time of accident at their written statement (paragraph 15 and 16). She further argued that to prove the plea, the Insurance Company has called for one officer of the concerned M. V. department who deposed as O.P.W. 1 and the letter issued by the Regional Transport Officer marked as exhibit B. On perusal of the exhibit B, it would be revealed that the driving licnece used by the driver at the time of alleged accident bearing no.WB 41358418 was not at all issued by the concerned M.V. department. She further argued that the learned Tribunal has not considered the fact is issued and directed the Insurance Company to pay the compensation. She further submits that the Insurance Company is not liable to pay the compensation rather the owner of the offending vehicle may be directed to pay the compensation.

Learned advocate appearing on behalf of the claimants submits that the award passed by the learned Tribunal is not bad in law. The learned Tribunal has observed the ratio of law laid down by the Hon'ble Supreme Court in **Swaran Singh(supra).** The learned Tribunal has considered the factum of notice upon the registered owner of the offending vehicle, so he submits that the award passed by the learned Tribunal cannot be set aside.

Heard the learned advocates and perused the materials on record, it appears that the learned Tribunal has considered the entire facts in question and by virtue of decision of Hon'ble Supreme Court in **Swaran Singh(supra).** He is of opinion that it is not specifically proved before the Tribunal regarding the guilty of the owner of the offending vehicle to allow his vehicle to drive by a driver having fake driving licence.

On perusal of the LCR, it appears that the seizure was effected in connection with the Mahisadal P.S. case 190 of 2012 dated 9.8.2012(which was stated by police regarding the accident). The owner of the offending vehicle i.e. O.P. no.1 of this case himself produced the offending vehicle along with the connected documents of the offending vehicle including the Blue Book, registration certificate, the driving licence of the driver of the offending vehicle etc. These documents were seized by the proper seizure list on 16.8.2012. From exhibit B, it appears that the Regional Transport Authority (Purba Burdwan) has issued a letter contending, inter alia, licence no. WB 358418 was not issued from the office of the Regional Transport Authority, Purba Burdwan. So, it is true that the driving licence used by the driver of the offending vehicle at the time of accident is fake driving licence. The owner of the offending vehicle himself produced the document before the learned Tribunal. The owner i.e O.P. no.1 has received the summons from the office of the learned Tribunal. He was aware about the fact that the accident in question would be raised before this learned Tribunal and to evade his liability the owner chose not to appear or file any written statement.

Considering the same, the owner have active knowledge of the said driving licence. Thus, I am of the view the owner has conciously violated the terms of the policy between the Insurance Company and himself. Accordingly, in this case, the Insurance Company may not be liable to pay the compensation. Hon'ble Supreme Court in **Swaran Singh(supra)** has adopted a view that in the similar fact and circumstances of the case where the driving licence is fake. The Insurance Company may be directed to pay the compensation and in turn there are At liberty to recover the same from the owner of the offending vehicle according to the procedure laid down by the Hon'ble Supreme Court.

Thus, I am of the view considering the facts and circumstances of the case, the law laid down by the Hon'ble Supreme Court in **Swaran Singh(Supra**) should have been followed in this case. Hence, the appeal filed by the Insurance Company is considered and allowed.

The award passed by the learned Tribunal amounting to Rs.22,79920 along with 6% interest per annum from the date of filing of the claim application, is directed to be paid by the Insurance Company.

It appears from the order dated 15.3.2019 passed by this Court that the Insurance Company has already deposited the entire awarded sum together with interest through the office of the learned General, High Court, Calcutta, the same amount must have carried some interest.

The office of the learned Registrar General, High Court, Calcutta is directed to disburse the amount along with accrued interest thereon in favour of the claimants in equal shares within four weeks from this date.

It further appears that the appellant/Insurance Company has deposited the statutory amount of Rs.25,000/- vide OD challan 2478 dated 2.1.2019 over and above the awarded amount.

The office of the learned Registrar General, High Court, Calcutta is directed to allow the Insurance

Company to return back the statutory amount along with accrued interest according to the terms and conditions.

Accordingly, FMA 360 of 2019 is disposed of.

The LCR be sent down immediately.

The payment of compensation is subject to the ascertainment of payment of deficit court fees, if any.

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

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Subhendu Samanta, J.)