

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

PRESENT: - THE HON'BLE JUSTICE SUBHENDU SAMANTA

FMA 47 of 2008
The Oriental Insurance Co. Ltd.
versus
Sumitra Mondal & Ors.
with

COT 36 of 2023
Sumitra Mondal & Ors.
versus

Oriental Insurance Co. Ltd. & Anr.

For the Appellants	: Mr. Sanjay Paul, Advocate.
For the Respondents	: Mr. Jayanta Kr. Mondal, Advocate
	: Ms. Sima Ghosh, Advocate
	: Mr. Sayantan Rakshit, Advocate

Hearing on : **25.01.2024**

Judgment on : **29.07.2023**

Subhendu Samanta, J.:-

1. The instant appeal has been preferred against the judgment and awarded dated 7th March, 2007 passed by the learned Judge, Motor Accident Claims Tribunal, 1st Court, Suri, Birbhum in MAC Case No. 68 of 2005.

2. The brief facts of the case is that the present respondents being the claimants have preferred an application before the learned tribunal under Section 163-A of M.V. Act for getting compensation on the ground that their predecessor was 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 case was contested by the Insurance Company by filling written statement.
3. After hearing the parties and after receiving the evidences the learned tribunal has awarded a sum of Rs. 3,17,840/- towards compensation in favour of the claimants.

Being aggrieved by and dissatisfied with the said award, the Insurance Company has preferred the instant appeal.
4. The learned advocate for the Insurance Company submits that the award passed by the learned tribunal is not at all justified because of the fact that the deceased was a pillion rider of Moped which suffered accident and was not covered under the policy of the Insurance Company. The learned tribunal has not considered the pleadings (WS) of the Insurance Company and passed that erroneous order. He argued that the Insurance Policy does not cover the gratuitous passenger or Pillion rider. So, at this stage, the Insurance Company may not be directed to pay the compensation, on the other hand the owner of the offending vehicle may be directed to pay the compensation.

5. He further argued that the income of the deceased was stated in the claim application to be more than Rs.40,000/- so the instant application under Section 163-A of M.V. Act is not maintainable.
6. The claimants/respondents submit that the Insurance Company has not pleaded the fact of pillion rider or the gratuitous passenger in his WS. The matter has just placed before the appellant Court for the first time. When the Insurance Company not raised the specific ground, they are debarred to take such ground at the stage of appeal. He further argued that the policy of the Insurance Company was exhibited and it is a package policy so the pillion rider is well covered under such policy.
7. In support of his contentions, learned advocate for the appellant submits that the Hon'ble Supreme Court in ***Deepal Girishbhai Soni & Ors. V. United India Assurance Co. Ltd., Baroda*** reported in ***(2004) 54 SCC 385***, has held that the proceeding under Section 163-A of M.V. Act being a social security provision, providing for a distinct scheme, only those yearly income is upto Rs.40,000/- can take the benefit thereof whereas Sections 140 and 166 cater to all sections of society. He also submits that in ***Kanai manna V. United India Insurance Co. Ltd. & Ors.*** reported in ***2009 ACJ 544***, the Hon'ble Division Bench of this Court has held that:

"....it is now settled law that a claim application under Section 163-A of the Act can be maintained only at the instance of the victim whose yearly income did not exceed

Rs.40,000/- therefore, in the present case, the tribunal ought to have dismissed the application as not maintainable on the basis of the averments made by the applicant in the claim application.”

8. Mr. Paul, learned advocate appearing on behalf of the Insurance Company submits that the claim application of this case stated the income of the deceased to be more than Rs.40,000/- per year. Thus, the instant claim application is not maintainable and liable to be rejected; the award passed by the learned tribunal is bad in law.
9. Refuting the contention of the learned advocate for the appellant, learned advocate for the claimant submits that the Hon'ble Supreme Court in ***Ram Murti and Others V. Punjab State Electricity Board reported in 2022 (4) TAC 438 (SC)*** has held that:

“7. The provisions of Section 140 which formed a part of Chapter 10 of the Motor Vehicles Act, 1988 were omitted by Act 32 of 2019. Simultaneously, Chapter 11 was substituted of which Section 164 provides for payment of compensation in the case of death in the amount of Rs. 5 lakhs and in the case of grievous hurt of Rs.2.5 lakhs”.

Citing those principle learned advocate for the claimant submits that the present Law has been changed. So, at this juncture, the present claim application is not barred by law.

Heard the learned advocates perused the citation also perused the judgment passed by a Co-ordinate bench of this Court in FMA 1588 of 2008. I have perused the body of the claim application wherein the income of the deceased was stated to be more than Rs. 40,000/-. In assessing the compensation the learned tribunal has adopted the income of the deceased to be Rs. 40,000/-. By virtue of the recent amendment of Motor Vehicles Act, more relief has been provided to the claimants. It appears that the application under Section 163-A of M.V. Act is enacted to accommodate the needy claimants promptly without taking the procedure required under Section 166 M.V. Act for proving negligence. Section 163-A of M.V. Act has set out its specific schedule on the basis of which the compensation can be provided. In my view, technical matter which was raised before this appellate Court has never been raised before the learned tribunal specifically. Moreover, the learned tribunal has not considered the income of the deceased more than Rs. 40,000/-. To award just and proper compensation, the claim of the claimants is immaterial, the tribunal has to assess the same. It has never been proved before the learned tribunal that deceased belonged to the section of people for whom the provision of Section-163-A of M.V. Act is not applicable. If the claim case is dismissed merely due to the exorbitant prayer made in the claim petition, the sole purpose of the legislature to enact Section 163-A of M.V. Act would be frustrated. So, in this case, I am of the view that the claim case is not barred by Law.

10. To consider whether the Insurance policy of the offending vehicle is covered to indemnify a pillion rider, it appears to me that the Insurance policy was marked before the learned tribunal as exhibit-6. The exhibit-6 discloses that the policy type is **“liability only policy/or zone-B”** under the heading of liability i.e. Zone-B basic liability is covered is Rs. 160 and additional any extra loading is taken Rs.16.

Learned advocate for the respondents submits that the observation of Hon’ble Supreme Court in ***National Insurance Company Ltd. Versus Balakrishnan and Another*** has set out the guideline regarding applicability of different Motor Vehicles Policy as follows:- ***“in view of the aforesaid, it is clear that the comprehensive/package policy of a two wheeler covers a pillion rider and comprehensive/package policy of a private car covers the occupants and where the vehicle is covered under a comprehensive/package policy, there is no need for Motor Accident Claims Tribunal to go into the question whether the Insurance Company is liable to compensate for the death or injury of a pillion rider on a two wheeler or the occupants in a private car”***.

11. Learned advocate for the claimant argued that in this case, the policy covers extra loading so the instant policy is a package policy.

12. Learned advocate for the Insurance Company submits that policy itself stated “liability only policy”. So, it cannot be said to be

a package policy. Thus, the pillion rider is not liable to be indemnified.

Heard the learned advocates perused the observation of the Hon'ble Apex Court in **National Insurance Company Ltd. Versus Balakrishnan and Another**. It appears that the learned tribunal has not gone through merit of this point whether it is a package policy of nos. I have gone through the Exhibit-6. It is a "liability one policy". Extra loading mentioned in the policy does not cover any gratuitous passenger or pillion rider. Thus, the present deceased being the pillion rider is not covered under the policy.

It appears that the offending vehicle was well covered under the policy at the time of accident and the owner has violated the terms. Thus, in view of observation of Hon'ble apex Court in **Swaran Singh** as well as **Challa Bharathamma** the principle of pay and recovery may be application in this case.

13. The compensation of this case has already been awarded to the tune of Rs. 3,17,840/- I find no justification to interfere with the quantum of compensation passed by the learned tribunal.
14. However, the learned tribunal has not awarded interest upon the compensation statute dictates that all compensation must coupled with interest, hence it is ordered that the award shall carry interest @ 6% per annum from the date of filling of the claim application i.e. from 1.4.2005.

Insurance Company is directed to deposit the award as directed above through the office of the learned Registrar General

High Court, Calcutta within six weeks from date. After such deposit, the office of the learned Registrar General High Court, Calcutta shall disburse the amount in the name of the claimants as per direction of the learned tribunal. Statutory amount deposited by the Insurance Company be allowed to withdrawn along with accrued interest. The payment of compensation is subject to the ascertainment of payment of deficit Court fees, if any.

After such deposit being made, the Insurance Company is at liberty to recover the awarded amount for the owner of the offending vehicle by virtue of the law laid down by the Hon'ble Apex Court in **Swaran Singh** and **Challa Bharathamma**.

15. The instant **FMA 47 of 2008** along with COT 36 of 2023 is disposed of with the above observation.
16. Let a copy of this order along with LCR be sent down to the learned tribunal immediately for compliance. The office of the learned tribunal is to act upon the certified copy of this order to receive the DCF.
17. All connected applications, if any, stand disposed of.
18. Interim orders, if any, stand vacated.
19. Parties to act upon the server copy and urgent certified copy of this order be provided on usual terms and conditions.

(Subhendu Samanta, J.)

