IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction

Present: - Hon'ble Mr. Justice Subhendu Samanta.

F.M.A. 405 of 2022
With
IA No.:CAN/1/2019 (Old No.: CAN/12740/2019)

United India Insurance Co. Ltd.
Vs.
Nurjan Bibi & Ors.
With
COT 3 of 2022
Nurjan Bibi
Vs.
United India Insurance Co. Ltd. & Anr.

For the Insurance Company : Mr. Parimal Kumar Pahari, Adv.

For the Respondent / claimant : Mr. Jayanta Kumar Mondal, Adv.
Mr. Sayantan Rakshit Adv.

Reserved on : 22.05.2024

Judgment on : 29.07.2024

Subhendu Samanta, J.

1. The instant appeal is preferred against the judgment and award dated 30st August 2019 passed by the Learned Motor Accident Claim Tribunal, ADJ 2nd Court Contai, Purba Medinipur in MAC Case no. 06 of 2012.

2. The brief fact of the case is that claimants have preferred an application u/s 163A of MV Act before the Learned Tribunal for getting compensation on the ground that their predecessor died in a vehicular accident due to rash and

negligent driving of the driver of the offending vehicle duly insued under the policy of the Insurance Company.

3. The claim case was contested by the Insurance company by filing the written statement.

4. After hearing the parties and after receiving evidences the Learned Tribunal has awarded a sum of Rs. 3,41,100/- towards the compensation together with 8% interest per annum from the date of the filing of the claim application and directed the Insurance Company to pay the compensation.

5. Being aggrieved by and dissatisfied with the said award the instant appeal has been preferred by the Insurance Company.

6. The claimants have been preferred a cross-appeal being COT 3 of 2022 against the same award.

7. Let both the appeals and cross-appeals be taken up together for brevity of discussion.

8. Mr. Parimal Kumar Pahari Learned Counsel, appearing on behalf of the Insurance Company submits that the award passed by the Learned Tribunal is erroneous. The Insurance Company have no liability to pay the compensation. The owner of the offending vehicle has violated the terms of the policy thus the owner is responsible to pay the compensation.

9. Learned Counsel appearing on behalf of the claimants submits that the vehicle was while covered under the policy of the Insurance Company so, they are liable to pay the compensation.

10. Mr. Mandal Learned Counsel appearing on behalf of the claimants submits that the learned Tribunal has failed to appreciate the amended of 2nd Schedule of Section 163A of MV Act has been amended, and in case of death fixed compensation amounting to Rs. 5,00,000/- has to be paid.

11. Heard the Learned Advocate. Perused the observation of the Learned Tribunal it appears that the Insurance Company has only challenged the award to the effect that the owner of the offending vehicle has violated terms of the policy. It appears from the written statement filed by the Insurance Company that the Insurance Company has taken the plea in the written statement. It is the specific pleadings of the Insurance Company that the offending vehicle being a tractor, the owner was using the said vehicle, at the time of accident, other than the agricultural purposes. The policy limits the using of the offending vehicle only for agricultural purpose.

12. The facts of FIR suggests that the accident was happened on 23.05.2008 in jetty, at Balubasti, Champin village, under P.S.- Nancourie, District Nicobar, while the offending tractor was engaged by KEC Company to carry metal (Iron wore) from jetty. At the time the tractor capsized due to rash and negligent driving of the driver and consequently the victim who was standing beside the tractor suffers severe injuries and succumbed to his injuries at hospitals.

13. The fact of the FIR proves that the offending vehicle was engaged other than the agricultural purposes. The

Insurance policy was marks as Exhibit-A. The policy of Insurance Company has mentioned the limitation as to use of the said offending vehicle. It has been mentioned the limitation Clause that "use only for agricultural and forestry purposes". It has been sufficiently proved before this court that the owner of the offending vehicle used the tractor for a job other than the agricultural purposes. Thus, the owner of the offending vehicle had definitely violated of the terms of the policy, on that score the Insurance Company is not liable to pay the compensation.

14. Mr. Mandal Learned Counsel, cited a decision of Hon'ble Apex Court in **Mata Ram Vs. National Insurance Company and Ors. (2018) 2 SCC 106** and submits that the Hon'ble Apex Court has held when the Insurance Company has charges the premium, Insurance company cannot be absolved from its liability on the death of a person.

15. Perused the observation of Hon'ble Apex Court it appears that the terms of the policy was not challenged before the Hon'ble Apex Court in the case of **Mata Ram (Supra)** thus the fact of **Mata Ram** is distinguishable. However by virtue of decision of Hon'ble Apex Court in **Oriental Insurance Company Vs. Brij Mohan reported in 2002 ACJ 1909** as well as **National Insurance Company Vs. Swaran Singh**, the insurance Company is directed to pay the compensation and they are at liberty to recover the same from the owner of the offending vehicle.

16. In considering the cross-appeal, it is the fact that schedule u/s 163A of MV Act has been amended on May 22, 2018; by such amendment of the second schedule the lumpsom compensation for fatal accident was fixed to be Rs. 5,00,000/-. The instant claim case is pending since 2012. But the award passed in the year 2019. The issue as to whether the amendment would applicable in a pending claim case, the matter was specifically considered by a Division Bench of this Court in **Urmila Halder Vs. New India Assurance Company Ltd. and Ors. (2019) 2 TAC 143** Calcutta. In deciding the issue of Hon'ble Division Bench of this court has formulated the question as follows:

> **Whether, after the amendment brought about by the said notification, the new schedule would be applicable to pending claim applications under Section 163-A before the motor accident claim tribunals as well as the appeals arising out of awards delivered thereunder prior to May 22, 2018?**

17. The Hon'ble Division Bench has answered the said issue as follows:-

> **118. Therefore, the conclusion seems to be inescapable that while deciding pending claim applications/appeals post May 22, 2018, the new schedule ought to be applied by the tribunals/this Court for determining compensation payable to the legal heirs of an accident victim or to the victim himself regardless of whether the new schedule is beneficial to them or not. The issue framed in paragraph 12 is, accordingly, answered.**
>
> **Relief**

> **119. In view of the aforesaid discussion, there cannot be any doubt that the appellant is entitled to compensation of a fixed sum of Rs.5,00,000.00 on account of accidental death of the victim, being her daughter, in a road accident involving the use of a motor vehicle.**

18. The decision of the Division Bench was challenged by the Insurance Company before Hon'ble Supreme Court in Special Leave Petition (C) 6260 of 2019 before the Hon'ble Supreme Court. The Hon'ble Apex Court by virtue of its judgment dated February 8, 2024 has held that:

> **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 ₹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.**

19. From the above observation of the Hon'ble Apex Court it appears that in the present case the claimants are entitled to get the fixed amount of compensation of Rs. 5,00,000/-.

20. Under the above observation the instant FMA as well as the COT is disposed of. The order passed by the Learned Tribunal is hereby modified.

21. The Insurance Company is directed to pay fix amount of compensation amounting to Rs. 5,00,000/- to the claimant together with 6% interest per annum from the date of filing of the claim application.

22. The Insurance Company is further directed to pay the compensation through the office of the Learned Registrar, High Court, Calcutta within 06 weeks from the date of passing of this order. On such deposit the office of Learned Registrar, General, High Court, Calcutta shall the disburse the amount to the claimants equally. The payment of compensation is subject to ascertainment of payment of deficit Court Fee.

23. Learned Tribunal shall act upon certified copy of this order to receive the deficit Court Fee, if any.

24. LCR be sent down immediately through the Special messenger, cost to be borne by the claimants/ respondents.

25. After the payment being made the Insurance Company is at liberty to recover the amount of compensation from the owner of the offending Vehicle, according to the law laid down by the Hon'ble Apex Court in **Swaran Sing (Supra).**

26. FMA along with connected applications if pending are also disposed of.

27. Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)