10.05.2024
SL No.61
Court No.25
Ali

IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction

F.M.A. 1405 of 2018

The National Insurance Co. Ltd.
Vs.
Molina Ghosh & Anr.

Mr. Deb Narayan Ray
……for the Insurance Co.

The instant appeal has been preferred against the judgment and award dated 29th day of November, 2017, passed by the learned Judge, Motor Accident Claims Tribunal, ADJ, 7th Court, Paschim Medinipur, in MAC Case no. 443 of 2014.

One Molina Ghosh being a claimant preferred an application under Section 166 of the M.V. Act before the learned Tribunal for getting compensation on the ground that his son, namely, one Krishnendu Ghosh sustained severe injury in a road traffic accident on 15.08.2013 while he was driving by a motorcycle bearing registration No. WB 34 AD/7663 as a pillion rider. It is the fact of the claim case that on the fateful day the driver of the motorcycle was driving the motorcycle in a very high speed and rash and negligent manner and thereafter dashed one pedestrian viz. Kalipada Mahato and capsized on the left side of the road the pedestrian sustained severe injuries also the pillion rider suffered heavy injury. The pedestrian succumbed to his injuries on the way to the hospital but the pillion rider i.e. the son of the present claimant admitted to the different hospitals and incurred huge cost due to such accident. The claimant i.e. the mother of the injured filed the claim case against the owner and the insurer of the offending vehicle (motorcycle) for getting compensation.

The owner did not contest the case but the Insurance Company contest the case by filling written statement.

The learned Tribunal after hearing the parties and after receiving the evidences has awarded a sum of Rs.4,44,264/- towards the compensation in favour of the claimant and directed the Insurance Company to pay the compensation.

Being aggrieved by and dissatisfied with the said award the Insurance Company has preferred the instant appeal for enhancement of the award.

In terms of the notice of the appeal the owner as well as the claimants have made their appearance before this Court.

Mr. Ray learned advocate appearing on behalf of the Insurance Company submits that the award passed by the learned Tribunal is erroneous. Mr. Ray submits that the amount of Rs. 4,26,264/-

was awarded which was only incurred by the injured regarding his medical expenses.

Mr. Ray firstly submits that the Insurance Company has no liability to pay the compensation. He referred the policy of the offending vehicle and submits that it is an "Act Policy" and the pillion rider was not covered. So, the Insurance Company cannot be liable to pay the compensation.

Heard the learned advocate it appears that the photo copy of the Insurance policy was marked as exhibit-5. The learned Tribunal has made no comment regarding the applicability of the policy in the instant case. It appears from the policy certificate that it is a two wheeler policy certificate covering from the period of 16.04.2013 to 15.04.2014. The cover liability for owner was mentioned as Rs. 50/- as compulsory pay cover towards the owner/driver; but no amount has been paid as "optional pay cover for pillion rider".

It further appears that the Insurance Company filed the written statement placing the specific plea that the Insurance Company had no liability to pay the compensation. The learned Tribunal has failed to assess the said fact in the impugned judgment.

In deciding the issue Nos. 4 and 5, the learned Tribunal has considered the applicability of

Sections 128 and 129 of the M.V. Act but has not considered the effect of the policy in the instant case.

Mr. Ray submits that the Hon'ble Apex Court in ***General Manager, United India Insurance Co. Ltd. Versus M. Laxmi and Others*** reported in ***2009 (1) T.A.C. 6 (S.C.)*** has observed that in case of Act Policy, the Insurance Company has no liability to pay the compensation towards the death of a pillion rider. He also cited the decision of Hon'ble Division Bench of this Court in ***Menoka Mondal and Others Versus oriental Insurance Co. Ltd. and Another*** reported in ***2015 93) T.A.C. 621 (Cal.)*** wherein the Division Bench of this Court is of opinion that for the violation of the provision under Sections 128 and 129 of the M.V. Act, the claim petition is liable to be dismissed.

Heard Mr. Ray also perused the observation of Hon'ble Division Bench of this Court as well as the Hon'ble Apex Court. It appears that in ***M. Laxmi (supra)*** one pillion rider was died in a road traffic accident. The learned Tribunal has dismissed the claim case on the ground that it is not a "Comprehensive Policy" but "Act Policy", so, the Insurance Company is not liable to pay the compensation for the death of a pillion rider.

The Single Bench of Allahabad High Court allowed the appeal of the claimants and directed the Insurance Company to pay the compensation against which the Insurer went up to the Hon'ble Apex Court wherein the Hon'ble Apex Court has held that the order of High Court is unsustainable and the order of Tribunal was restored. The paragraph 7 of ***M. Laxmi*** is herby set out as follows:-

"7. In New India Assurance Co. Ltd. v. Asha Rani and others, 2003 (2) S.C.C. 223:2003 (1) T.A.C. 1, it has been noted as follows:

"Section 147 of the 1988 Act, inter alia, prescribes compulsory coverage against the death of or bodily injury to any passenger of "public service vehicle". Proviso appended thereto categorically states that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in a goods vehicle would be limited to the liability under the Workmen's Compensation Act. It does not speak of any passenger in a "goods carriage".

In view of the changes in the relevant provisions in the 1988 Act vis-à-vis the 1939 Act, we are of the opinion that the meaning of the words "any person" must also be attributed having regard to the contest in which they have been used i.e. "a third party". Keeping

in view the provisions thereof do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods vehicle, the insurers would not be liable therefor.

Furthermore, sub-clause (i) of Clause (b) of sub-section (1) of Section 147 speaks of liability which may be incurred by the owner of a vehicle in respect of death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place, whereas sub-clause (ii0 thereof deals with liability which may be incurred by the owner of a vehicle against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place."

So, considering the observation of Hon'ble Apex Court it is the settled law that the "Act Policy" which does not cover the pillion rider, cannot made liable, the Insurance Company to pay the compensation in this case. The Exhibit-5 i.e. the certificate of Insurance policy shows that the pillion rider was not covered under the policy. Accordingly, in this case the compensation awarded by the learned Tribunal cannot be payable by the Insurance Company.

Considering the same, it appears to me that the fact suggests the son of the claimant was the pillion rider of the offending vehicle. So, the owner of the offending vehicle is liable to pay the compensation.

Accordingly, the instant appeal is considered and allowed. The award passed by the learned Tribunal is hereby modified. I make it clear that the award passed by the learned Tribunal is herby modified that the amount of compensation shall be payable by the owner of the offending vehicle i.e. respondent No. 2.

It appears that the Insurance Company has deposited the entire awarded amount of Rs. 5,71,506/- with office of the learned Registrar General, High Court, Calcutta, the amount has been invested. The same must have accrued some interest. The office of the learned Registrar General, High Court, Calcutta is directed to refund the same amount to the Insurance Company along with accrued interest on usual prayer.

The application being **FMA 1773 of 2018** is 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.)