IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

FMAT 451 of 2014
with
CAN 2 of 2024

Marjina Sk. & Ors.

Vs

The National Insurance Company Limited & Anr.

For the Appellants	: Mr. Amit Ranjan Roy.
For the Respondent No. 1/ Insurance Company	: Mr. Sanjay Paul, Ms. Jaita Ghosh.
For the Respondent No. 2/ Owner	: None.
Hearing concluded on	: 07.08.2024
Judgment on	: 19.08.2024

Shampa Dutt (Paul), J.:

1. The present appeal has been preferred by the claimants against the Judgment and Award passed on 15th July 2013 by Member, Motor Accident Claims Tribunal and Additional District Judge, 2nd Court, Nadia, Krishnanagar in M.A.C. Case No. 115 of 2011, **under Section 166 of the Motor Vehicles Act, 1988.**

2. **FACTS :-**

> *"On 22.02.2011 at about 11 a.m., Dhula Chand Sk. was coming to his house from Laxmi Gachha. When he came near ATM Brick field, he was dashed by a Tractor bearing no. WB 51A 1350. The Driver of the Tractor was rash and negligent in driving the vehicle on the public road. Dhula Chand was taken to Chapra Hospital. From there, he was sent to Shaktinagar Hospital. Dhula Chand was thereafter taken to Sarada Seba Sadan Nursing Home and from there he was shifted to Titagarh MRC Nursing Home. On 06.03.2011, Dhula Chand succumbed to his injuries. Police was informed. Chapra P.S. Case No. 97/11 was registered. It is further contended that Dhula Chand was 41 years old and a Mason by profession, who used to earn Rs. 4,500/- per month. The claimants further contended that the offending vehicle was insured with O.P./Insurer. They are claiming a sum of Rs. 6 lakhs as compensation."*

3. The O.P./Insurer, National Insurance Co. Ltd. contested the case by filing written objection denying all materials allegations. It is contended that the case is bad for non-joinder of necessary parties. No accident took place near ATM Brick field on 22.02.2011. The driver of the Tractor was not responsible for the accident as alleged. The victim had his contribution in accident caused by a Vehicle, if any. The owner of the Tractor did not follow the terms and conditions of Policy of insurance. Hence, the O.P./Insurer is not under obligation to indemnity the owner.

4. The claimants examined 3 witnesses and relevant documents were marked as Exhibits on proof. The opposite parties did not adduce any evidence.

5. **The tribunal granted compensation as follows :-**

"MAC 115 of 2011

Dated:-15th July, 2013

……………….I have carefully perused the Charge Sheet and the Seizure list. I do not find anything to hold that the Driving licence was issued to a learner driver. From the Charge Sheet also, I find that the victim sustained injuries caused by the offending Tractor and he was taken to Sarada Seba Sadan, Barrackpore, where he died. Thus, I have no hesitation to hold that victim succumbed to injuries caused by motor vehicle in use and the claimants are entitled to compensation. From Post Mortem Report, Report, Ext.5, I find that victim was 32 years old but from the petition itself, I find that victim was 41 years old. P.W.1, being the widow stated that she did not disclose the age of her husband to the Doctor. Hence, I would like to go by the statement made by the legal heirs of the victim regarding age of the deceased and not the age recorded by the Autopsy Surgeon. P.W. 1 has not been able to prove the income of her husband. Hence, I am of the view that the victim used to earn Rs. 3000/- per month and Rs. 36,000/- per annum. I deduct 1/3rd out of the said amount towards his personal expenditure and remaining sum of Rs. 24,000/- was the contribution of the victim to the family, which was lost. Taking multiplier 15, I compute the compensation to the tune of Rs. 3,60,000/- In addition to that, the claimants are entitled to Rs. 4,500/- towards loss of estate and funeral cost. Thus, each of the claimants no. 2, 3, 4 & 5 are entitled to compensation to the tune of Rs. 72,900/- each and claimant no. 1, being the widow is entitled to a sum of Rs. 5000/- towards loss if consortium in addition to Rs. 72,900/-. As the offending vehicle was insured with O.P./Insurer, I am inclined to hold that O.P./Insurers are liable to indemnify the owner and to pay compensation. The evidence of P.W.2 & P.W.3 are not

sufficient to determine the cost of treatment incurred by the family of the victim................

Sd/-
Member,
Motor Accident Claim Tribunal
& Additional District Judge,
2nd Court, Nadia."

6. From the materials and evidence on record, it appears that:-

i) The offending vehicle had valid insurance and **the driver had a licence (learners).**

A Learner's Licence is an official document issued by the Regional Transport Office (RTO) that grants legal permission to learn and practise driving on roads. It serves as a provisional licence and acts as a precursor to obtaining a permanent Driving Licence (DL).

It provides you with the opportunity to learn and familiarise yourself with the rules of the road, traffic regulations, and safe driving practices under the supervision of a driver holding a valid DL.

This, thus was clearly a violation of the Insurance Policy rules.

ii) The tribunal was wrong in taking the age of the victim as 41 years as the Post Mortem report, Charge Sheet and the FIR show the victim's age as 32 years, **So multiplier 16** shall be applicable.

(Sarla Verma (Smt) & Ors. Vs. Delhi Transport Corporation and Anr., (2009) 6 SCC 121)

iii) **Future prospects would be 40%** as he was self employed and aged 32 years. ***(National Insurance Co. Ltd. Vs. Pranay Sethi & Ors., (2017) 16 SCC 680)***

iv) There being no documents in support of income and the accident taking place in 2011, **Rs. 4000/- per month** is taken as income.

v) Number of Claimants being 5, **1/4th** is to be deducted from income, towards personal expense of the deceased.

vi) General damages of Rs. 70,000/- under the conventional heads of loss of estate, loss of the consortium and funeral expenses ***(National Insurance Company Ltd. Vs Pranay Sethi & Ors.,(Supra)).*** General damages to be enhanced at the rate of 10% every three years. So 10% every three year since 2017 on 70,000/- will be Rs. 84,000/-. (Being 20%).

7. So, the **"Just Compensation"** in this case would be as follows :-

Monthly Income	*Rs. 4,000/-*
Annual Income (4,000 x 12)	*Rs. 48,000/-*
*Less : **1/4th** towards personal and living expenses*	*Rs. 12,000/-*
	Rs. 36,000/-
*Add : Future prospects @ **40%** of the annual income of the deceased*	***Rs. 14,400/-***
	Rs. 50,400/-
Multiplier x 16 *(50,400 x 16)*	***Rs. 8,06,400/-***
Add: General damages Loss of estate: Rs.15,000/- Loss of consortium: Rs.40,000/- Funeral expenses: Rs.15,000/. (Rs. 70,000 + 20% = Rs.	***Rs. 84,000/-***

84,000)	
Total amount:-	***Rs. 8, 90, 400/-***

8. The award under challenge is dated 15.06.2013. The appeal was filed in 2014. Application for condonation of delay was filed on 18.12.2023, (CAN 1 of 2024) though the department noted the defect on 05.05.2014. Matter was first moved on 30.01.2024, thus the appellants are not entitled to the interest for the period from 2014 to 2023.

9. Admittedly, the Claimants/Appellants have received the amount of compensation of **Rs.3,69,500/-** together with interest in terms of order of the learned Tribunal. Accordingly, the claimants are now entitled to the **balance amount of compensation of Rs. 5,20,900/- together with interest at the rate of 6% per annum from the date of filing of the claim application to the year 2013 and from the January, 2024 till deposit.**

10. Taking into consideration, the amount already received by the Claimants/Appellants, the Respondent No. 1/Insurance Company shall deposit the balance amount, along with the interest, with the learned Registrar General, High Court, Calcutta, within a period of six weeks, who shall release the amount in favour of the claimants in equal proportion, **after payment** of the amount for loss of consortium to the Appellant/wife, upon satisfaction of their identity and payment of *ad-valorem* Court fees, if not already paid.

11. Admittedly the driver of the tractor had only a **Learner Licence.** There is **no proof that there was a driver with a permanent Driving Licence was supervising the driver (learner) in this case and thus a clear violation of Insurance Policy rules.**

12. The Hon'ble Supreme Court in ***Balu Krishna Chavan vs. The Reliance General Insurance Company Ltd. & Ors., in SLP (C) No. 33638 of 2017, on 3rd November, 2022,*** held as follows **Para 8 to 14**:-

> *"**8.** Hence, the only aspect for our consideration herein, is as to whether in the facts and circumstances of the present case, an order to direct the Insurance Company to "pay and recover", is required to be made. On this aspect, the law is well settled that if the liability of the Insurance Company is decided and they are held not to be liable, ordinarily, there shall be no direction to "pay and recover". However, in the facts and circumstances arising in each case, appropriate orders are required to be made by this Court to meet the ends of justice.*
> ***9.** In the instant case, the appellant has relied on the judgment dated 21.02.2017 passed by this Court in Civil Appeal No.(s). 3047 of 2017 titled as **"Manuara Khatun & Ors. Vs. Rajesh Kr. Singh & Ors.".** In the said case also, a Bench of this Court, having referred to the earlier decisions in Para-15 and 16 of that Judgment, has concluded that normally, there would be no order to "pay and recover". However, in the said facts, this Court, to meet the ends of justice, had taken into consideration the fact situation though, the claimant therein, was a 'gratuitous passenger' and had kept in view that the benevolent object of the Act and had directed the payment by the Insurance Company and to recover the amount.*

> ***10.*** *Therefore, on the legal aspect, it is clear that in all cases such order of "pay and recover" would not arise when the Insurance Company is not liable but would, in the facts and circumstances, be considered by this Court to meet the ends of justice.*
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> ***11.*** *If this aspect of the matter is kept view, in the instant facts, it is noticed that the appellant, as on the date of the accident, was aged about 19 years and due to the injuries suffered in the accident by him, his left leg was amputated below the knee.*
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> ***12.*** *Even, if the contention that the appellant was in the vehicle getting trained to be as a cleaner, is not taken into consideration, the fact remains that any other avocation that is to be undertaken by the appellant would involve physical labour which the appellant will not be able to perform and in such circumstance, if the appellant is not able to realize the amount of compensation awarded in his favour at this stage from the owner of the vehicle, the appellant would be prejudiced. However, the Insurance Company, if ordered to pay to the appellant and recover it from the owner of the vehicle, it would not be prejudiced to that extent.*
>
> ***13.*** *Therefore, keeping all aspects in view, and not making this case as a precedent, but, only to serve the ends of justice in the facts of this case, we direct that respondent no. 1 (Insurance Company) to deposit the compensation amount before the MACT within eight weeks from the date of the receipt of a copy of this judgment, whereupon, the MACT shall disburse the amount of compensation to the appellant.*
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> ***14. The respondent no. 1 (Insurance Company) is reserved the liberty to recover the compensation from the owner of the vehicle."***

13. Thus, in view of the finding in Para 9 of this judgment, the Respondent/Insurance Company in this case shall be at liberty to recover the compensation from the owner of the vehicle ***(Balu Krishna Chavan vs. The Reliance General Insurance Company Ltd. & Ors. (Supra)).***

14. **In the present case,** it has been proved that **the driver was driving the offending vehicle without a valid licence (learners) and thus the Insurance Company is not liable. But considering the helplessness of the claimants, interest of justice requires that the Insurance Company shall pay and then recover the same from the owner of vehicle, by due process of law.**

15. **The appeal being FMAT 451 of 2014 stands disposed of. The impugned judgment and award of the learned Tribunal under appeal is modified to the above extent.**

16. No order as to costs.

17. All connected applications, if any, stand disposed of.

18. Interim order, if any, stands vacated.

19. Copy of this Judgment be sent to the Learned Tribunal, along with the trial court records, if received.

20. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)