19.04. 2024
item No.82
Sws.M
Ct. no. 551

FMA 1375 of 2021
with
IA No. CAN 2 of 2022

The Oriental Insurance Co. Ltd.
vs.
Tumpa Sarkar & Ors

Mrs. Sucharita Paul

.....for the appellant.

Mr. Subhankar Mondal

.... For the Insurance Company.

The instant appeal has been preferred against the Judgment and award dated 23rd August, 2021 passed by the learned Additional District & Sessions Judge, Motor Accident Claims Tribunal, 4th Court, Malda in M.A.C. Case no. 166 of 2019.

The brief fact of the case is that the victim of the present case, namely, one Sanjoy Sarkar while returning home on 02.07.2019 at about 22:00 hours from Hatimari, at the time an ambassador bearing No. WB-24C 5798 coming from Hatimari side towards Eklakhi in excessive speed and in rash and negligent manner dashed the victim near Hajra More under Gazole P.S. Out of the said accident the victim sustained severe multiple injuries and succumbed to his injuries on 03.07.2019.

The widow, parents and the children of the victim preferred an application under Section 166 of the M.V. Act before the learned Tribunal for getting compensation on the ground that the accident happened solely due to rash and negligent driving of the driver of the offending vehicle duly insured under the policy of the insurance company.

The claim was contested by the insurance company by filing written statement.

After hearing the parties and after receiving the evidences, the learned Tribunal has awarded a sum of Rs. 19,60,000/- towards the compensation in favour of the claimants and directed the insurance company to pay the compensation.

Being aggrieved by and dissatisfied with the said award of compensation the insurance company has preferred the instant appeal.

Ms. Sucharita Paul, learned advocate appearing on behalf of the insurance company submits that there are only 3 grounds with the insurance company to challenge the instant award.

1. Non-involvement of the vehicle
2. Error in calculation of quantum of compensation
3. No liability of the insurance company to pay compensation due to the violation of the policy by the owner.

Ms. Paul submits that the alleged accident happened on 02.07.2019 and the victim succumbed to his injuries on 03.07.2019. The FIR was filed on 05.07.2019. She submits that there was delay in filing FIR and the delay was never explained properly by the claimants. She further submits that the offending vehicle was not at all involved in the alleged accident. She further submits that the inquest was conducted upon the dead body of the victim. From the said inquest report it would be revealed that the victim was dashed by an unknown vehicle.

Mr. Mondal, learned advocate appearing on behalf of the claimants submits that the ground for non-involvement of the offending vehicle was not properly proved by the insurance company. He further submits that the FIR was lodged just after 2 days of the death of the victim. So it is quite reasonable that the defacto complainant, who is one of the brother of the deceased must have engaged to the final rituals of the victim. He further directed that there is no evidence to substantiate the plea of the insurance company regarding the non-involvement of the offending vehicle. He further submits that the inquest report was not exhibited before the learned Tribunal. Thus there is no justification to entertain the ground.

Heard the learned advocates.

Perused the FIR.

It appears that the FIR was lodged by one of the brothers of the deceased on 4th September, 2019, though the police case was started on 5th September, 2019. It further appears from the FIR that the de-facto complainant was engaged due to the final rituals of his brother. Thus he lodged the FIR after 2 days of death of his brother. I find justification to doubt on that. It further appears that the inquest report was not placed on record before the learned Tribunal and the insurance company also not produced any specific evidence either oral or documentary to prove the non-involvement of the offending vehicle. However, considering the fact that the offending vehicle was seized by the police authority on 21.07.2019 and police has submitted charge-sheet accusing driver of the offending vehicle, I find no justification regarding the argument of insurance company for non-involvement of the offending vehicle. Thus the same point is turned down.

In considering the quantum of compensation as awarded by the learned Tribunal, it appears to me that the learned Tribunal has awarded a sum of Rs.19,60,000/- as compensation of this case. In fixing the compensation the learned Tribunal has adopted a structure formula. The monthly income of the deceased was calculated Rs.10,000/- per month, 40% future prospect was added with his income and $1/4^{th}$ was deducted towards the personal expenses of the deceased.

Ms. Paul submits that the deduction of $1/4^{th}$ towards the personal expenses is erroneous. In this particular case the widow, minor son, mother and father of the deceased were made claimants. Father, claimant No. 4 (father of the deceased) was not dependent upon the income of the deceased. However, no evidences were produced by the claimants to prove that that father was dependent upon the income of the deceased. She argued that in this case considering the observation of the Apex Court in ***Sarala Verma***, the correct deduction would be 1/3rd instead of 1/4th.

Heard the learned advocates.

Perused the claim application. In the claim application the father of the deceased is placed as claimant No. 4. Father is not a legal heir of the deceased to get any compensation. However, there is no evidence on record to show that the old father was dependent upon the income of the deceased. Considering the same, I find justification in the submission advanced by the insurance company. Accordingly, in this case deduction towards the personal living expenses of the deceased would be 1/3rd instead of 1/4th. Thus this point is decided in favour of the insurance company.

Ms. Paul submits that the offending vehicle was covered under the policy of the insurance company. The policy is “private car liability one” policy. She submits that the police seized several documents including the general power of attorney issued by the owner of the offending vehicle in favour of one Md. Firoj Momin. She pointed out that the vehicle was given in power of attorney to the transferee for the purpose of transport business. The policy of the insurance company has some limitations. The limitation clause has been specified wherein it has been stated that the policy does cover for the purpose others then “hire or reward”. Ms. Paul further submits that the car was used for business purposes. Thus the insurance company has no liability to pay compensation as the owner has willfully violated the terms of the policy.

Mr. Mondal submits that the argument advanced on behalf of the insurance company is not correct. The policy was issued correctly for the private purpose of the owner. The owner may have transferred the vehicle to the power of attorney holder but it was not proved that such vehicle was used for business purpose. He further argued that the insurance company has not submitted any oral or documentary evidences to substantiate such fact. Thus only on the basis of the argument of the insurance company, the insurance company cannot be exonerated from its liability.

Heard learned advocate, perused the policy. The policy was marked as exhibit -9. The policy is titled as “private car liability one” policy. The policy does not cover “hire and reward” purpose. The general power of attorney issued by the owner of the offending vehicle in favour of one Md. Firoj Momin discloses that has he was engaged in another business, so he handed over the possession of the vehicle to the power of attorney holder to manage the vehicle properly at his own choice and will. It is true that the owner of the offending vehicle may be a business man but it is not clear whether at the time of accident the vehicle was used for particular business purposes. Moreover, no evidence is forthcoming to substantiate the argument on behalf of the insurance company.

Considering the same, I find no justification to hold that the insurance company may be exonerated from his liability to pay the compensation. Accordingly, the point no. 3 is decided against the insurance company.

Considering the entire facts and circumstances, the award passed by the learned Tribunal require modification.

The just and proper compensation of this case be calculated as follows:-

Particulars	**Amount (Rs.)**
Income (p.m.)	10,000/-
Add: 40% future prospect (p.m.)	4,000/-
Annual income	14,000/-
	X 12
	1,68,000/-
Multiplier '15'	X 15
	25,20,000/-
Less: 1/3rd for personal Expenses	- 8,40,000/-
	16,80,000/-
Added general damages	+ 70,000/-
	17,50,000/-

After calculation the award comes to Rs.17,50,000/. The insurance company is directed to pay the balance award together with 6% interest per annum from the date of filing of the claim application that is from 24.07.2019 till payment.

It appears that the insurance company has deposited the statutory sum of Rs.25,000/- on 01.12.2021 and thereafter also deposited a sum of Rs.19,60,000/- on 17.05.2022. So in total the insurance company has deposited a sum of Rs. 19,85,000/- through the office of the learned Registrar General, High Court, Calcutta. The same amount must have accrued some interest. The learned Registrar General, High Court, Calcutta is directed to disburse the amount in favour of the claimants equally along with the accrued interest within four weeks from the date of passing of this order.

The claimants are further directed to inform the insurance company regarding the amount they received from the office of the learned Registrar General, High Court, Calcutta along with their bank particulars; on receiving such information the insurance company is directed to pay the balance of the compensation equally in the name of the claimants directly to their bank accounts to be provided by the claimants within six weeks after receiving the information from the claimants.

FMA 1375 of 2021 along with pending connected applications, if any, are also disposed of.

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

(Subhendu Samanta, J.)