IN THE HIGH COURT AT CALCUTTA
(Civil Appellate Jurisdiction)
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

FMA 315 of 2016

(FMAT 977 of 2014)

with

CAN 3 of 2024

with

CAN 4 of 2024

National Insurance Company Ltd.
Vs
Tapati Singh & Ors.

With

COT 103 of 2019

Tapati Singh & Ors.
Vs
National Insurance Company Ltd. & Anr.

For the Appellant	: Mr. Afroze Alam.
For the Respondent No.1	: Mr. Jayanta Banerjee, Mr. Sandip Bandhopadhyay, Ms. Ruxmini B. Roy, Mr. Argha Bhattacharya.
For the Respondent No. 2/ Owner	: None.
Hearing Concluded on	: 09.07.2024
Judgment on	: 01.08.2024

Shampa Dutt (Paul), J.:

1. The present **appeal** has been preferred by the Insurance Company against the Judgment and Award dated 26.02.2014, passed by Learned Judge, Motor Accident Claims Tribunal, Additional District Judge, Re-designated Court, Paschim Medinipur in MAC Case No. 189 of 2012, **under Section 166 of the Motor Vehicles Act. A cross appeal** has preferred by the claimants.

2. THE FACTS:-

> *"On 30.03.12 at 10.30/11 pm while the deceased was standing by the side of his motorcycle on Midnapore-Keshpur road near Kolsanda Kali temple, the offending truck came at a high speed in rash and negligent manner and dashed the motorcycle along with the deceased. As a result of such accident, Panchanan sustained severe injuries all over his person and died instantly. The motorcycle of the deceased was badly damaged. It is stated that the accident occurred due to fault on the part of the driver of the offending truck. The present petitioners being the wife and sons and daughter of the deceased sustained mental pain, agony and financial loss due to the premature, accidental unfortunate death of the deceased and accordingly they approached before tribunal claiming compensation of Rs. 35,00,000/- from the owner as well as insurer of the offending truck u/sec. 166 of M.V. Act on the ground of rash and negligent driving."*

3. O.P./Insurer/National Insurance Company Ltd. was the sole contestant in the claim case, challenging the maintainability of the case on various technical grounds and denying the allegation of the claim petition. O.P./Insurer contended that it has no liability to pay compensation as the accident occurred due to contributory negligence on the part of deceased himself.

4. The claimant examined two witnesses and proved relevant documents, which were marked Ext.1 to 7.

5. No evidence was adduced by the opposite parties.

6. The tribunal finally held as follows:-

> *"That net salary of the deceased at the time of accident after all statutory deduction is to the extent of Rs. 23,302/-. So, after deducting 1/3rd amount towards personal expenses of the deceased had he been alive quantum of total annual loss of the petitioners is calculated at Rs. 1,86,416/-. As the deceased was aged 55 years plus following averment of his Service Book the tribunal intends to multiply 8 of the annual loss of income of the petitioners. So, after applying multiplier 8 of the annual loss of income of the petitioners the tribunal calculated the total loss of income of the petitioners is at Rs, 14,91,328/-. Besides this P.W.1 being the wife of the deceased is entitled to have further sum of Rs. 9500/- towards funeral expenses, loss of estate and loss of consortium. From the pleadings as well as evidence on record it appears that in respect of the self same accident the present petitioners had not approached before any tribunal for having any compensation u/sec. 140 of M.V. Act. So, in the instant claim case petitioners are entitled to have total sum of Rs. 15,00,828/- along with interest as award of compensation u/sec.166 of M.V. Act and O.P./National Insurance Com. Ltd. is liable to make payment of the aforesaid amount as award of compensation to the petitioners leaving an option left open to them for realization of the entire amount from O.P./owner* ***in case of no D.L.*** *of the driver on the date and time of accident."*

7. Being aggrieved, both parties have preferred the appeal and cross appeal on the following grounds:-

a) The Insurance Company has stated that the Learned Tribunal did not consider that the driver of the offending vehicle did not have a valid licence at time of accident and that the victim also did not have a licence to ride his motorcycle, and thus there was contributory negligence and as such 50% of the compensation granted is to be deducted and the balance amount is to be recovered from the owner by the Insurance Company.

b) The Claimants have stated that the Learned Tribunal did not consider the proper multiplier and other relevant factors in granting compensation to the claimants to which they are entitled under the law.

8. From the materials and evidence on record, it is evident that :-

i) As held by the tribunal, the victim/deceased was aged about 55 years on the date of accident, thus **multiplier 11** would be applicable. ***(Sarla Verma (Smt) & Ors. Vs. Delhi Transport Corporation and Anr., (2009) 6 SCC 121)***

ii) Exhibit 6, is the pay slip for the month of January, 2012 of the victim, who was an Inspector under the establishment of District Controller of Food and Supplies, Purba Medinipur. His Income is to be taken as

Rs. 24,972/- -(minus) P. Tax of Rs. 130. The Income Tax paid by him to the extent of Rs. 9,378/- (February, 2012) is also to be deducted from the annual Income.

iii) **Future prospects would be 30%** of income as the deceased had a permanent job and the age of the deceased being 47 years. ***(National Insurance Co. Ltd. Vs. Pranay Sethi & Ors., (2017) 16 SCC 680)***

iv) The number of the claimants being 5, **1/4th** shall be deducted towards the deceased personal expenses. ***(Sarla Verma (Smt) & Ors. Vs. Delhi Transport Corporation and Anr., (Supra))***

v) 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%).

9. Accordingly, the 'Just Compensation' in this case would be:-

Monthly Income	*Rs. 24,842/-*
Annual Income (Rs.24,842/- x 12)	*Rs. 2,98,104/-*
Deduct Income Tax (Rs.9,378/-) deducted from the annual income.	*(Rs.2,98,104 -(minus) Rs. 9,378) =Rs. 2,88,726/-*
Less : ***1/4th*** *towards personal and living expenses*	*Rs. 72,181.5/-*
	Rs. 2,16,544.5/-
Add : Future prospects @ ***30%*** *of the annual income of the deceased*	***Rs. 64,963.35/-***
	Rs. 2,81,507.85/-
Multiplier x 11 *(2,81,507.85/- x 11)*	***Rs. 30,96,586.35/-***

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. 84,000)	***Rs. 84,000/-***
Total Amount	***Rs. 31,80,586.35/-***
Round off total amount	***Rs. 31,80,587/-***

10. Admittedly, the Appellant/Insurance Company has deposited the amount of compensation of **Rs. 1761870/-** on 03.12.2014 and statutory deposit of **Rs. 25000/-** on 04.09.2014 which **totals to Rs. 17,86,870/-** in terms of the order of the learned Tribunal. Accordingly, the claimants are now entitled to the **total amount of compensation of Rs. 31,80,587/- together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit, on the total compensation amount.**

11. Taking into consideration, **the amount already deposited** by the Appellant/Insurance Company, the Insurance Company shall now deposit the **balance amount of Rs. 13,93,717/- along with the interest on the total compensation amount,** 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 Claimant/Wife, upon satisfaction of their identity and payment of *ad-valorem* Court fees, if not already paid.

12. Next point to be considered is the prayer of the Appellant/Insurance Company to **recover the compensation to be paid from the owner** on the ground that the driver of the vehicle did not have a valid licence.

13. The police in this case did not seize any licence. The tribunal thus did not consider the same.

14. **The opposite party/owner did not contest the case** and as such the licence was not produced to be proved in Court. As this is a claim for insurance, the onus was on the owner to prove the same.

15. *One of the important documents that needs to be quoted and/or submitted at the time of filing a car insurance claim is the Driving Licence. According to the guidelines of the Insurance Regulatory Development Authority (IRDAI), the driver of a car must have a Permanent Driving Licence issued by the relevant Regional Transport Office (RTO) in order to file a claim on their car insurance policy.*

If you do not have a valid Driving Licence in place, then your car insurance claim, however minor, shall be considered incomplete and invalid.

16. The Hon'ble Supreme Court in ***Balu Krishna Chavan vs. The Reliance General Insurance Company Ltd. & Ors., in Civil Appeal No. __________ of 2022 (arising out of 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.*

***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.*

***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.*
> ***14. The respondent no. 1 (Insurance Company) is reserved the liberty to recover the compensation from the owner of the vehicle."***

17. Thus, in view of the finding in Para 12,13 and 14 of this judgment, the Appellant/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)).***

18. **In the present case,** it is seen that **the driving licence has not been produced thus not proved and as such 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.**

19. **The appeal being FMA 315 of 2016/ FMAT 977 of 2014 along with COT 103 of 2019 stand disposed of. The impugned judgment and award of the learned Tribunal under appeal is modified to the above extent.**

20. No order as to costs.

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

22. Interim order, if any, stands vacated.

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

24. Urgent Photostat certified copy of this Judgment, if applied for, be given to the parties on usual undertaking.

(Shampa Dutt (Paul), J.)