16.1.2024
SL No. 8 & 9
Court No. 551
Ali

IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction

F.M.A. 66 of 2023
With
IA No: CAN/3/2023

United India Insurance Co. Ltd.
Versus
Smt. Maninee Chakraborty & Ors.
With

COT 7 of 2023
Smt. Maninee Chakraborty & Ors.
Versus
United India Insurance Co. Ltd.

Ms. Sucharita Paul
…for the appellant.
Ms. Gopa Das Mukherjee
….for the respondent No.5.

Mr. Amit Ranjan Roy
...for the claimants/Cross Objector.

The instant appeal has been preferred against the judgment and award dated 9th September, 2022 passed by learned Judge, Motor Accident Claims Tribunal, 1st Track, 1st Court, Asansol, in MAC Case no. 18 of 2017/2016.

The brief facts of the case is that the present respondent Nos. 1 and 2 being the claimants have preferred an application before the learned tribunal under Section 166 of the M.V. Act for getting compensation on the ground that the predecessor of the claimant was died in a road traffic accident due to rash and negligent driving of the driver of the offending vehicle duly insured under the policy of the Insurance Company.

The claim case was contested by two insurance companies before the learned tribunal.

After hearing the parties and after receiving the evidences the learned tribunal has awarded a sum of Rs. 1,06,38,922/- in favour of the claimants and directed both the Insurance Companies to pay the 50% of the said compensation.

The respondent No. 5 Future Generali India Insurance Company Limited has satisfied the claim but the present Insurance Company being the United India Insurance Company Limited has preferred the instant appeal against the said award.

Ms. Sucharita Paul appearing on behalf of the United India Insurance Company Limited submits that the sole point is involved in the instant appeal to the fact that the driver of the offending vehicle had no valid driving licence at the time of alleged accident. The same fact has been pleaded before the learned tribunal. The Insurance Company has adduced sufficient evidence to substantiate the pleadings. DW-1 i.e. one of the investigator of the Insurance Company has deposed before this Court and some documents were exhibited on his behest. The document includes the RTI report issued by the concerned licence issuing department of Bokaro which reflects that the alleged driving licence is not tally with the name of the driver of the offending vehicle. The same document was marked as exhibit-B. The learned tribunal after considering the entire materials on records has observed that the plea of Insurance Company regarding the use of fake driving licence of the driver of the offending vehicle is not justified. She argued that the learned tribunal has failed to appreciate the facts and circumstances of this case and his observation on the documentary evidences filed by the Insurance Company is erroneous. She further argued that the learned tribunal should have held that the driver of the offending vehicle, namely, Jalil Ansari had no valid licence at the time of driving of the offending vehicle.

On that score, he submits that the owner of the offending vehicle has violated the terms of the policy. This, the Insurance Company is not liable to pay the compensation .

Learned advocate appearing on behalf of the claimants Mr. Roy submits that the learned tribunal has considered the materials on records. The learned tribunal has considered the Xerox copy of driving licence of the driver of the offending vehicle and in comparing the driving licence as well as the report submitted by the concerned authority, he is of the view that the driving licence containing the number is not the same to the driving licnce number issued by the concerned authority. He argued that there are no error apparent in the observation of the learned tribunal so the instant appeal has no merit to entertain. Learned advocate for the claimants also filed one cross objection against the same award on the quantum of compensation. He argued that the learned tribunal has not properly considered the income of the deceased. Accordingly, the just and proper compensation was not awarded. So, he prayed for enhancement of the compensation.

Heard the learned advocates I have also perused the impugned judgment passed by the learned tribunal. It appears that the learned tribunal has considered the plea of the Insurance Company regarding the use of fake driving licence by the driver, namely, Jalil Ansari. In comparing both the documents i.e. the Xerox copy of the driving licence as well as the document issued by the concerned authority i.e. Jila Parivahan Padadhikari, Bokaro, he is of opinion that the driving licence number appearing in the Xerox copy of the DL is not matching the DL Number as mentioned in the report. I have perused the Xerox copy of the driving licnece submitted at the time of evidence on the side of the claimants. It appears that the Xerox copy of the driving licence contained two driving licnece numbers. The 1st page the driving licence number if 4737B/1B but the reverse page that DL No. is 76/04/PE. It is surprising how a single driving licence conttained two DL numbers. Moreover, it was mentioned as in the reverse page of the said Xerox copy of driving licence that, date of 1st issue of driving licence is No. 27/4/2004 from Bokaro bearing No. 76/04/PE. The authority has opined that the name appearing under the DL No. 7604/PE Bokaro dated 27.04.2004 is not the same.

Considering the same, it appears that the argument submitted on behalf of the Insurance Company before the learned tribunal was not correctly considered by the learned tribunal and there is error in observing that the DL is valid. It appears that the DL is a fake DL. Considering the same the Insurance Company is not actually be liable the compensation. However, in considering the observation of Hon'ble Supreme Court in **Swaren Singh** as the offending vehicle was well covered under the policy of the Insurance Company at the time of accident. The Insurance Company is to pay the compensation to the claimants who are the third party; in turn they are at liberty to recover the same compensation from the owner of the offending vehicle. So, I am of the view that that the grounds of instant appeal appears to be justified.

The Insurance Company is directed to pay the compensation to the claimants and in turn they are at liberty to recover the same from the owner of the offending vehicle according to the procedure laid down by the Hon'ble Supreme Court in **Swaren Singh**.

In considering the cross appeal, it appears to me that the learned tribunal has considered the monthly income of the deceased to be Rs. 1,11,875/- so the yearly income comes to Rs.13,42,500/-, after deduction of P-Tax the gross income comes to Rs. 13,40,100/-, after deduction of the Tax component, the yearly annual income comes to Rs.9,38,070/-. The learned tribunal has also awarded the future prospects to the tune of 30% of actual salary income of the deceased according to the observation of **Pranay Sethi**. The 1/3rd was deducted towards the personal expenses. Considering the number of claimants is 2. Considering the age of the deceased 49 years, the applicable multiplier has been correctly adopted to be 13. The learned tribunal has also awarded Rs. 70,000/- towards the general damages under the heading of funeral expenses, loss of estate and loss of consortium. So, after adding all heads the learned tribunal has correctly awarded the sum of Rs.

1,06,38,922/-. Learned tribunal has also ordered that the award shall carry interest @ 7% per annum.

Learned advocate for the Insurance Company submits that in all cases this appellate Court has adopted a view of interest of 6% per annum from the date of filing of this case. But, in this case, the learned tribunal has awarded 7% per annum interest which shall be run from the date of filing of the claim application. As I have not entered into the any finding of compensation passed by the learned tribunal I refrain myself to interfere with the said finding as it appears to be not perverse. So, the award shall carry 7% per annum. The Insurance Company has already deposited the statutory amount of Rs. 25,000/- vide OD Challan No. 3016 OD dated 19.12.2022 and further Rs. 75,58,220/- vide OD Challan No. 3731 dated 7.2.2023 the total amount comes to Rs. 75,83,220/- The deposit amount must have carried some interest. The office of the Learned Registrar General, High Court, Calcutta is directed to disburse the amount in the name of the claimants according to the prevalent Rules in equal shares by two equal account payee cheques alongwith accrued interest in the name of the claimants.

United India Insurance Company is at liberty to recover the same amount from the owner of the offending vehicle according to the procedure laid down by the Hon'ble Supreme Court in **Swaren Singh**.

Learned advocate for the appellants submits that he has already filed one application which was not listed being No. CAN 2 of 2023 for the recording the attainment of majority of appellant No. 2. It appears that the CAN application is not listed today. However, considering the material on records and as the appeal is taken up for hearing, the CAN 2 of 2023 is also taken up for hearing alongwith this appeal.

Heard the learned advocate perused the body of the CAN 2 of 2023. It appears that the respondent No. 2 has attained the majority during the pendency of the instant appeal.

Accordingly, department is directed to record in the memo of the cause title of the appeal that the respondent No. 2 has attained majority. The correction be made within a fortnight.

The instant FMA 66 of 2023 alongwith COT 7 of 2023 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.)