4.3. 2024
item No.208 & 209
n.b.
ct. no. 551

FMAT 1174 of 2017
with
IA No. CAN 1 of 2017(Old No. CAN 10573 of 2017)
+
CAN 2 of 2017(Old No. CAN 10611 of 2017)

HDFC ERGO General Insurance Co. Ltd.
Vs.
Tithilata Das & Ors.
With
COT 5 of 2019
Tithilata Das & Ors.
Vs.
HDFC ERGO General Insurance Co. Ltd.

Mr. Rajesh Singh,
.....for the appellant.
Mr. Jayanta Kr. Mondal,
Mr. Sayantan Rakshit,
.... For the respondents.

The instant appeal has been preferred against the judgment and award dated April 28, 2017 passed by the Motor Accident Claims Tribunal, Rampurhat, Birbhum, in M.A.C. case No. 07 of 2014.

The brief fact of the case is that the present respondents being claimants preferred an application before the learned Tribunal under Section 163A of the Motor Vehicles Act for getting compensation from the Insurance Company on the ground that their predecessor 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 was contested by the Insurance Company by filing written statement.

After hearing the parties, the learned Tribunal has awarded a sum of Rs.3,21,500/- and directed the Insurance Company to pay the compensation

Being aggrieved by and dissatisfied with the impugned award, the present appeal preferred by the Insurance Company. The claimant has preferred one cross appeal against the said award.

Both the appeal and cross appeal are taken up for just and proper decision of this matter.

Learned advocate Mr. Singh appearing on behalf of the Insurance Company submits that the learned Tribunal has not considered the pleadings and evidences submitted before the learned Tribunal by the Insurance Company. He submits that the driver of the offending vehicle had no valid driving licence at the time of alleged accident. To substantiate such plea, the Insurance Company has produced one witness as OPW 1, who is one of the employee of the concerned RTO. The OPW1 deposed before the learned Tribunal that the driving lience bearing No.WB 152005142744 was not issued in the name of the Laltu Sk Son of Jamu Sk. Mr. Singh further argued that the learned Tribunal through noted the evidence of OPW 1 in the impugned judgment, but ultimately has opined that as OPW 1 has not produced the concerned registrar of licensing authority, so, his evidence cannot be considered.

Mr. Singh, further argued that opinion of the learned Tribunal is erroneous in this case. The learned Tribunal should have held that the driver had no valid license. So, the Insurance Company may have no liberty to pay the compensation. He further submits on behalf of the decision of Hon'ble Supreme Court in ***National Insurance Co. Ltd. Vs. Swaran Singh & Ors.*** as well as ***Pappu***, ***& Ors. Vs. Vinod Kumar Lamba*** the Insurance Company may be directed to pay the compensation, thereafter, they may be at liberty to recover the same from the owner of the offending vehicle.

Heard the learned advocates for the parties; perused the impugned judgment passed by the learned Tribunal. It appears that OPW 1 is one of the employee of the RTO, Hooghly, who deposed that the no driving license was issued in favour of the Laltu Sk. i.e. driver of the offending vehicle. It appears that the Insurance Company by filing of the written statement has pleaded the fact specifically. The pleadings of the Insurance Company has substantiated by evidence of OPW 1. So, at this juncture, it appears to me that the learned Tribunal has committed an error in not deciding the matter on the basis of the evidence on record. The OPW 1 is appeared by virtue of summons of this Court from a Government office, whose evidence cannot be disbelieved.

Considering the fact, the observation of the learned Tribunal appears to me erroneous. In this case, the

Insurance Company may initially pay the compensation, thereafter, by virtue of decision of the Hon'ble Supreme Court in ***Swaran Singh(supra),*** they are at liberty to recover the same from the owner.

In considering the cross objection, it is the submission of Mr. Mondal, learned advocate appearing on behalf of the claimant that by virtue of decision of Hon'ble Supreme Court in **Urmila Halder,** in a case under Section 163A of the M.V. Act pending before the Motor Accident Claims Tribunal as well as the appeal arising out of award delivered thereunder prior to May 22, 2018, the lumpsum compensation for the fatal accident would be Rs.5,00,000/-. He further submits that the observation of Division Bench of this Court in **Urmila Halder Vs. New India Assurance Co. Ltd.** has been affirmed by the Hon'ble Supreme Court. So, in this case, the claimants are entitled to get the lumpsum amount according to the amendment.

Heard the learned advocates and perused the decision of Hon'ble Division Bench of this Court passed in **Urmila Halder Vs. New India Assurance Co. Ltd.** I have also perused the order of the Hon'ble Supreme Court in the same matter dated February 8, 2024.

On May 22, 2018, the amendment has been passed under Section 163A of the M.V. Act as follows:

"1. Fatal accidents – Rs.5,00,000.00 is payable as compensation in case of death;

2. Accidents resulting in permanent disability – Rs.5,00,000.00 x percentage of disability as per Schedule I of the Employee's Compensation Act, 1923(8 of 1923), provided that the minimum compensation in case of permanent disability of any kind shall not be less than Rs.50,000.00;

3.. Accidents resulting in minor injury – A fixed compensation of Rs.25,000.00."

In case of in **Urmila Halder Vs. New India Assurance Co. Ltd.,** the question was raised before the Hon'ble Division Bench of this Court that **"whether, after amendment brought about by the said notification, the new Schedule would be applicable to pending claim application under Section 163A before the Motor Accident Claims Tribunal as well as the appeals arising out of an award delivered thereunder prior to May 22, 2018."**

The Hon'ble Division Bench has decided the issue as follows:

"117. Now if such a claim application comes up before a tribunal for commiseration post May 22, 2018 here all the five conditions as in the preceding paragraph are fulfilled, proceeding by our reasoning it can award only a lump-sum amount of Rs.5,00,000.00, which would obviously be lesser than what could have been determined under the old schedule. Considering the language in which sub-Section (1) of Section 163A is couched, the Second Schedule as on date of the award invariably has to be looked into and a lesser sum, if required, would have to be determined as payable to the legal heirs of such a victim. It is, therefore, not correct to contend that since the new schedule intends to provide greater relief compared to the

relief available under the old schedule, following the new schedule wold be onerous for the insurance companies in all cases. Conclusion.

118. Therefore, the conclusion seems to be inescapable that while deciding pending claim applications/appeals post May 22, 2018, the new schedule ought to be applied by the tribunals/this Court for determining compensation payable to the legal heirs of an accident victim or to the victim himself regardless of whether the new schedule is beneficial to them or not. The issue framed in paragraph 12 is, accordingly, answered.

119. In view of the aforesaid discussion, there cannot be any doubt that the appellant is entitled to compensation of a fixed sum of Rs.5,00,000.00 on account of accidental death of the victim, being her daughter, in a road accident involving the use of a motor vehicle."

The New India Assurance Co. Ltd. has preferred an appeal before the Hon'ble Supreme Court against the said order of the Hon'ble Division Bench. The Hon'ble Supreme Court has decided as follows:-

"10. The order of the High Court is well discussed and we agree with the view taken. We may, however, add that a beneficial legislation would necessarily entail the benefit to be passed on to the claimant in the absence of any specific bar to the same. In the present case, the liability of the appellant-Insurance Company has not been interfered with. Only the computational mode and the modality have been further clarified, which rightly has been noted by the High Court and accordingly, the claim has been enhanced to Rs.5,00,000/- (Rupees Five Lakhs). As 50% of the compensation amount was stayed by this Court, the same be paid to the respondent in terms of the impugned judgment within eight weeks."

Now, the Apex Court settled the law that in the claim case filed under Section 163A of the M.V. Act, wherein the fatal accident has taken place, Rs.5,00,000/- is payable as compensation.

In the present case, the victim died due to road traffic accident and the application was filed under Section 163A of the M. V. Act. Thus, the observation of the Hon'ble Supreme Court has to be followed and the compensation of this case would be Rs.5,00,000/-. However, the award shall carry 6% interest per annum from the date of filing of the claim application.

It appears that the insurance company has deposited the statutory amount of Rs.25,000/- on June 4, 2018 and thereafter they have deposited Rs.4,51,589/- on 23.07.2018. The total amount comes to Rs.4,76,589/-. The amount must have carried some interests. The claimants are at liberty to receive the same in equal shares from the office of the learned Registrar General, High Court, Calcutta within four weeks from date. After receiving such amount, the claimants shall intimate the office of the insurance company regarding the amount that they have received along with their bank particulars.

After receiving such information, the insurance company is directed to pay the rest amount of compensation along with interests directly to the bank accounts of the claimants within six weeks in equal shares.

After such exercise, the insurance company is at liberty to recover the entire awarded sum from the owner of the offending vehicle according to law laid down by the Hon'ble Supreme Court in ***Swaran Singh(supra)***.

Accordingly, F.M.A.T. 1174 of 2017 along with COT 5 of 2019 stand disposed of.

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.)