

IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction

Present: - Hon'ble Mr. Justice Subhendu Samanta.

F.M.A. No. – 1366 of 2022

with

IA No. CAN 2 of 2023

In the Matter of

National Insurance Co. Ltd

Vs.

Nasira Khan & Ors.

With

COT 39 of 2023

Nasira Khan & Ors.

Vs.

National Insurance Co. Ltd & Ors.

Mr. Parimal Kumar Pahari

..... For the appellant- Insurance Co.

Mr. Amit Ranjan Roy,

Ms. Tapati Saha,

..... For the respondent-claimants.

Mr. Souvik Maji,

Mr. Kaustav Seal

..... For the respondent No. 8

Ms. Gopa Das Mukherjee

..... For the respondent No. 9 Oriental Insurance Company

Heard on

: 11.12.2023

Judgment on

: 21.02.2024

Subhendu Samanta, J.

1. The instant appeal is preferred against a judgment and award dated 30st January 2022 passed by the Learned Judge, Motor Accident Claims Tribunal 4th ADJ Howrah, in MAC Case No. 268 of 2016.

2. The respondent No. 1 to 6 preferred an application before the Learned Tribunal u/s 163A of Motor Vehicles Act. for getting compensation. The claim case was contested by the present appellant as well as another insurer i.e. respondent No. 9 separately. Respondent No. 7 and 8 being the owner of two vehicles filed separate written statement but did not contest the matter ultimately.

3. After hearing the parties the Learned Tribunal has awarded Rs. 1,00,000/- towards compensation together with 6% interest per annum from the date of filing of the case and directed the present appellant to pay the compensation.

4. Being aggrieved and dissatisfied with the said award the National Insurance Company Ltd. has preferred the instant appeal.

5. The claimants also preferred one cross-appeal against the same award being COT 39 of 2023. Both the appeals and the cross-appeals are taken together for uniformity of the decision.

6. The brief fact of the accident is as follows:-

On 30.06.2016 at about 09:30 a.m. the victim Abdul Mabud Khan was driving his vehicle bearing No. WB- 13/6842(Maruti) at Uluberia, Amta, Road and reach near Banibon, Dharmatala and which proceeding from Amta side towards Uluberia side. At the time a Pick up Van bearing No. WB-13/04 33 was proceeding from opposite direction and collided each other. As a result the victim sustained injury on his chest, waste and head which resulted his death at Uluberia SD Hospital on the same day.

7. The appellant is the Insurer of Maruti Van which was driving by the deceased. Respondent No. 9 is the Insurer of

Pick up Van. Respondent No. 7 is the owner of the Pick Up Van and Respondent No. 8 is the owner of the Maruti Van.

8. Learned Advocate for the appellant submits that the Insurer of the Maruti Van was directed by the Learned Tribunal to pay the compensation. The observation of the Learned Tribunal is solely erroneous to the facts and circumstances of this case.

9. Learned Advocate for the appellant Mr. Pahari submits that on the basis of the selfsame accident, Uluberia P.S Case No. 410/16 dated 30.06.2016 was initiated. The investigation of police was ended in charge sheet. The Charge sheet of the said case disclosed that the driver of the Pick up Van was responsible for the accident. The police finally submit the investigation report arraigned the driver of the Pick up Van to be the sole accused of this case. The evidence of PW 1 as well as the statement in the claim application also suggests that the driver of Pick up Van was responsible for the accident. But the Learned Tribunal has erroneously directed the present appellant (insurer of the Maruti Van) to pay the compensation. He argued that the present appellant being the Insurer of Maruti Van, who is not responsible for the accident, cannot be made liable to pay the compensation.

10. Learned Advocate for the Insurer of Pick up Van Mrs. Gopa Das Mukherjee submits that the Oriental Insurance Company Limited has no liability to pay the compensation. The alleged accident happened on 30.06.2016. The policy of the Pick up Van with the Oriental Insurance Company Limited was

valid on 23.03.2015 to till 22.03.2016, in the name of Ramesh Bera thereafter the said vehicle was again insured with the Oriental Insurance Company Limited since 29.07.2016 to 28.07.2017. She argued at the relevant point of time i.e. on 30.06.2016 the offending vehicle (Pick Up Van) was not covered to the policy of the Oriental Insurance Company. So the Oriental Insurance Company cannot be liable to pay the compensation.

11. It is the further case of the Respondent No. 9 that the claimant has not made the original owner of the Pick Up Van i.e. Ramesh Bera as a party to this proceeding.

12. Learned Advocate for the claimant submits that the order passed by the Learned Tribunal is very minimum. This is an application u/s 163 of Motor Vehicles Act. The deceased died due to the involvement of vehicular accident. The rash and negligent driving is not the sine-qua non, in a case filed u/s 163 of MV Act so, in this case, the claimants are entitled to get the proper compensation from any of the Insurer of the offending vehicles. The two vehicles are involved in the alleged accident so any one of the Insurer may be directed to pay the just and proper compensation.

13. Learned Advocate for the appellant submits that from the FIR it would be revealed that the deceased was the driver of the Maruti Van. The owner (OP-4) has filed written objection contending inter alia that the deceased Abdul Mabud Khan was not an employee. OP-4 further stated that the Maruit Car was sold out to one Sk. Siraj, Son of Sk. Jamaluddin on

31.12.2012 and he informed the same to the registering authority Kolkata. The appellant further argued that, the deceased was himself owner or permissive user of the vehicle, so he stepped in the shoe as an owner of the Maruti Van. So, his heirs are actually the 1st party and are not entitled to get any compensation.

14. In support of his contention he has cited two decisions of Hon'ble Apex court passed in **Ram Khiladi Vs. United India Insurance Company Limited and another** reported in **2010 ACJ 617**. Wherein the Hon'ble Apex Court has held:

Motor Vehicles Act, 1988, section 163-A—Claim application—Maintainability of – Owner – Borrower of vehicle –Death of—Deceased while driving a borrowed motor cycle met with fatal accident due to negligence of another motor cycle—Legal heirs of the deceased filed claim application under section 163A against owner and insurance company of borrowed motor cycle—Whether claim application under section 163-A by heirs of owner of vehicle or by heirs of borrower or vehicle who step into the shoes of the owner for the death of owner or borrower is maintainable—Held: no; ultimate liability under section 163-A is on the owner of vehicle and a person cannot be both, a claimant as also a person on whom liability falls; insurance company is liable to pay compensation to third party and not to owner; deceased stepped into the shoes of the owner and he was not a third party.

15. He also cited another decision of Hon'ble Apex Court passed in **New India Assurance Company Limited Vs. Sadanand Mukhi and Ors (2009) 2 SCC 417**

17. The matter came up for consideration yet again in Oriental Insurance Co. Ltd. v. Meena Variyal wherein it was observed:

“13. As we understand Section 147(1) of the Act, an insurance policy thereunder need not cover the liability in respect of death or injury arising out of and in the course of the employment of an employee of the person insured by the policy, unless it be a liability arising under the Workmen's Compensation Act, 1923 in respect of a driver, also the conductor, in the case of a public service vehicle, and the one carried in the vehicle as owner of the goods or his representative, if it is a goods vehicle. It is provided that the policy also shall not be required to cover any contractual liability. Uninfluenced by authorities, we find no difficulty in understanding this provision as one providing that the policy must insure an owner against any liability to a third party caused by or arising out of the use of the vehicle in a public place, and against death or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of vehicle in a public place. The proviso clarifies that the policy shall not be required to cover an employee of the insured in respect of bodily injury or death arising out of and in the course of his employment. Then, an exception is provided to the last foregoing to the effect that the policy must cover a liability arising under the Workmen's Compensation Act, 1923 in respect of the death or bodily injury to an employee who is engaged in driving the vehicle or who serves as a conductor in a public service vehicle or an employee who travels in the vehicle of the employer carrying goods if it is a goods carriage. Section 149(1), which casts an obligation on an insurer to satisfy an award, also speaks only of award in respect of such liability as is required to be covered by a policy under clause (b) of sub-section (1) of Section 147 (being a liability covered by the terms of the policy). This provision cannot therefore be used to enlarge the liability if it does not exist in terms of Section 147 of the Act.

14. The object of the insistence on insurance under Chapter XI of the Act thus seems to be to compulsorily cover the liability relating to their person or properties of third parties and in respect of employees of the insured employer, the liability that may arise under the Workmen's Compensation Act, 1923 in

respect of the driver, the conductor and the one carried in a goods vehicle carrying goods. On this plain understanding of Section 147, we find it difficult to hold that the Insurance Company, in the case on hand, was liable to indemnify the owner, the employer Company, the insured, in respect of the death of one of its employees, who according to the claim, was not the driver. Be it noted that the liability is not one arising under the Workmen's Compensation Act, 1923 and it is doubtful, on the case put forward by the claimant, whether the deceased could be understood as a workman coming within the Workmen's Compensation Act, 1923. Therefore, on a plain reading of Section 147 of the Act, it appears to be clear that the Insurance Company is not liable to indemnify the insured in the case on hand."

16. On the basis of that argument Mr. Pahari submits that the award passed by the Learned Tribunal is required to be set aside.

17. Heard the Learned Advocate.

18. Perused the materials on record and also perused the observation of Learned Tribunal.

19. This is an application u/s 163A of Motor Vehicles Act. In this case, the claimants are required to establish that the death of victim caused due to the involvement of vehicular accident. The claim application u/s 163A of Motor Vehicles Act is allowed on principal of no-fault liability. In deciding the issues Learned Tribunal is of opinion that the investigation of the police is ended in charge sheet against the offending vehicle bearing Registration No. WB-13 0433 (pick up van). The Pick Up Van was not covered under the policy of the Oriental Insurance Company Limited at the time of accident. Thus the

Oriental Insurance Company may not be liable to pay the compensation at the same time the claimant has not made party the original owner of the offending vehicle Pick Up Van namely Ramesh Bera in this proceeding.

20. Learned Tribunal is also of view that the original owner of the Maruti van was also not made party; however, as the present appellant i.e. the National insurance Company Limited had the valid Insurance Policy at the day of accident so the appellant is directed to pay the compensation in this case due to the insurance converge towards of the owner/driver i.e. Rs. 1,00000/- only.

21. Let me consider how far the observation Learned Tribunal is correct. It is true that the driver of the Maruti Van (deceased) was not responsible for the accident. The offending vehicle was the Pick Up Van. Pick Van had no valid Insurance Policy at the time of accident. Rather the Maruti had a valid Insurance Policy. Nothing has been proved before the Learned Tribunal that the deceased namely Abdul Mabud Khan was the owner of the Maruti Van. The owner of the Maruit Van namely Venus Printers Private Limited filed a written objection contending inter alia that he sold the Maruti Van to one Sk Siraj but the Insurance Policy of the appellant shows that the vehicle was insured in the name of M/s. Venus Printers Private Ltd. Thus the written objection filed by the owner of the Maruti Van appears to me not correct.

22. The FIR of the case goes to show that the deceased was the driver of the Maruti Van. The Police Investigation Report never disclosed that the deceased was the owner of the offending vehicle. So considering the same, observations of the Learned Tribunal to the effect that deceased stepped into the shoes of owner of the Maruit Van is not correct. So the observation of Honble Supreme Court in **Ram Khiladi and Ors (supra)** as well as **Sadanand Mukhi (supra)** is not applicable in this case.

23. It appears that the claimants are the third party to the proceeding and the death of the deceased was well proved due to the vehicular accident. Whether death of the deceased was caused by the rash and negligent driving of the driver of the Pick Up Van or Maruti Van is immaterial in this case.

24. However, insurer of a vehicle, which is not responsible for the accident may not ultimately liable for the wrong doing of another, but for purpose of beneficial approach of the Statue, the National Insurance Company Limited be directed to pay the compensation to the third party, with a leave to recover the entire awarded sum from the Owner/Insurer of the offending vehicle (WB-13/0433, Pick up van) through a separate proceeding.

25. In my view the claimants are entitled to get just and proper compensation of this case according to structured formula of 2nd schedule of the Section 163A of MV Act.

26. It would be convenient in this case to assess the income of deceased notionally to Rs. 3,000/- per month. Accordingly, the just and proper compensation of this case is assessed as follows:

Monthly Income	3,000/-
Yearly Income	36,000/-

1/3 is deducted towards his personal living expenses, thus the amount appears to Rs. 24,000/- The deceased was within the age group of 40 years to 45 years. Applicable multiplier is 16. After adopting the multiplier the award comes to Rs. 3,84,000/-

Claimants are entitled to get the general damages of Rs 4,500/-. So after adding of heading the award comes to Rs. 3,88,500/-.

27. It appears that Insurance Company has already deposited the awarded sum of Rs. 1,00,000/- together with interest through the office of the Learned Registrar General Calcutta. Balance amount comes to Rs. (3,88,500- 1,00,000) = 2,88,500/-

28. The Insurance Company/ Appellant is directed to pay the balance compensation together with 6% interest per annum from the date of filing of the claim application i.e from 28.09.2016 within 06 weeks from this date through the Office of Learned Registrar General, High Court, Calcutta.

29. On such deposit the claimants are entitled to get the awarded sum together with interest as well as the already

deposited sum along with accrued interest. The payment of compensation is subject to the ascertainment of payment of deficit court fee if any.

30. The office of the Learned Tribunal shall act upon the certified copy of this order to receive the deficit court fee if any.

31. As it appears that the present appellant is the insurer of the Maruti Van; offending vehicle is the pick-up van (WB 13/0433). Driver of the Pick up van is responsible for the accident, accordingly the National Company Ltd. is at liberty to recover the entire awarded sum from the owner or the insurer of the offending vehicle (Pick Up Van), bearing No. WB 13/0433, through a separate proceeding.

32. On the above observation the award passed by the Learned Tribunal is modified.

33. The FMA 1366 of 2022 along with COT 39 of 2023 and the connected pending applications if any are disposed of.

34. Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)