Bm/cm

Form No. J(2)

District: Nadia

IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction

Appellate Side

Present :

The Hon'ble Justice Ananya Bandyopadhyay

FMA 1447 of 2014

THE NEW INDIA ASSURANCE CO. LTD.
VS.
TUNI SARKAR & ORS

Mr. Parimal Kumar Pahari
… for the appellant/Insurance Company
Mr. Amit Ranjan Roy
… for the respondent Nos. 1 to 4/claimants
Heard on & Judgment on : 11.06.2024

Ananya Bandyopadhyay J.

1. The Learned Advocates representing both the parties are present.

2. The instant appeal had been filed against judgment and order 27th July, 2007 passed by the learned Judge, Motor Accident Claims Tribunal cum Additional District Judge, 4th Court, Nadia, Krishnagar in M.A.C. Case No. 31 of 2005.

3. An application under Section 163A of the Motor Vehicle Act, had been filed by the claimants on account of death of the victim in an accident which occurred on 29.10.20004 at N.H 34 at Bistunagar Dhal at about 14.30 hours with the involvement of the offending

vehicle being a bus bearing registration No. WB-51/3126 which had proceeded at an excessive speed on its route. The victim boarded the bus on top of it as a "roof top passenger." The speed of the bus occasioned the victim to lose his balance and fall there from beyond his control resulting in his death on the spot.

4. The Learned Advocate representing the Appellant/Insurance Company submitted to have filed the instant appeal exclusively on the point of violation of terms and conditions of the insurance policy whereby the Appellant/Insurance Company was not liable to pay compensation to the claimants since the victim was a passenger on the roof top of the bus contrary to the definition of the phrase "third party".

5. The Learned Advocate representing the respondent Nos. 1 to 4/claimants submitted that the provision under Section 147 of the Motor Vehicle Act enumerated the liability covered by the terms of the Insurance policy including the third party risk.

6. Learned Advocate representing the respondent Nos. 1 to 4/claimants relied upon on a decision of three Judges Bench reported in **III(2005) ACC 559, Giriraj Prasad Agrawal & Ors. Vs. Parwati Devi & Ors. And Kali Paharin**.

7. Considered the rival contention of the Learned Advocates representing both the parties, the three Judges Bench in Giriraj Prasad Agrawal(supra) had observed as follows :-

> *"**12. Section 146 of the Act(old Section 94) makes the insurance of vehicle mandatory against third party risk. The object of Section 146 is to ensure insurance of all***

vehicles which are to be sued in public peace so that if a third party suffers any damage due to use of the said vehicle in public place, he would be able to get damage for the same straightaway from the Insurance Company. The statutory compulsion is made with a view to give benefit to a large number of persons who loss their lives in automobile accidents or who are injured and disabled as a result of such accident. The owner of the vehicle would not be able to meet the claims of the victims of the accident. It is with the above object that the compulsory insurance is made under the M.V. Act. The Insurance Companies are nationalized with a view to see that they toe the line of the directive principles of State policy under Article 39 of the Constitution of India and also fulfill the obligations under the M.V Act.

13. The expression 'third party' as defined in this Chapter means and includes everyone, be it a person traveling in another vehicle, one walking on the road or a passenger in the vehicle. Every insured takes out an Insurance policy against a third party risk only with the motive and purpose of covering the risk which may arise in relation to claim lodged against him by a third party. By agreeing to issue Insurance Policy, the insurer undertakes to insure the insured and indemnify him against all risks and in relation to all claims lodged against him by third parties.

14. Section 147 of the said Act deals with requirement of policies and limits of liability. This section is quite comprehensive in scope and meaning. It has to be given wider, effective and practical meaning so that the object of legislature hwich was faced with divergent views of various Courts of the country giving different interpretation to the provision of Section 95(old) causing immense harm to may categories of persons by diseentitling them from claiming compensation either from the insurer or the insured or both. The Legislature clearly intended that every policy of insurance is statutorily required to cover the risk of liability in respect of classes of persons relating to all types of vehicles without exception and with no defence to the Insurance Company disowning the liability with respect to particular class of persons or particular kind of vehicles.

15. The legal effect of omission of Clause(ii) of the provision of Section 95(1) of the old Act from the corresponding Section 147 of the new Act brings about a sweeping change in the extent of insurer's liability to pay

> ***compensation to the injured victims or the defendant of the deceased victim of a victim of motor accident, whether or not he victim was a gratutious passenger in any insured vehicle."***

8. In view of the aforesaid observations, the appellant Insurance Company is liable to pay the compensation to the victim being a passenger of the bus though on roof top, however, is covered by the definition of a third party being entitled to the benefit of the beneficial legislative of the Motor Vehicle Act.

9. In view of the Notification dated 22nd May, 2018 and as also the decision of the Hon'ble High Court in Urmila Halder v. The New India Assurance Company Ltd and the same being affirmed by the Supreme Court in Special Leave Petition, the appellants/claimants are entitled to Rs.5,00,000/- of just compensation with regard to the Second Schedule 1(a) as aforesaid which is replicated as follows: -

> "Fatal Accidents:
> Compensation payable in case of Death shall be five lakh rupees."

10. The impugned judgment passed by the aforesaid tribunal is modified to the extent of Rs. Rs.5,00,000/ along with interest to be paid at the rate of 6 % per annum from the date of filing of the application till the date of its actual realization. In view of the observation of the Hon'ble Supreme Court in Parminder Singh Vs. Honey Goyal & Ors.[1] the Respondent Nos. 1 to 4/claimants is to provide the details of Bank Accounts held in the name of the respondent Nos. 1 to 4/claimants at the office of the learned

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Registrar General, High Court at Calcutta for disbursal of the compensation amount

10. The learned Advocate representing the appellant/Insurance Company submits to have deposited a sum of Rs. 3,22,500/=(Rs. 25,000 + 2,97,500) through two separate cheques as per challan filed by the learned advocate representing the appellant/insurance company. The Learned Advocate representing the appellant/insurance company is directed to the deposit the remaining balance amount along with interest as aforesaid within twelve weeks from the date of passing of this order.

11. The office of the learned Registrar General High Court at Calcutta, shall encash the cheques and thereafter disburse the entire awarded amount so deposited to the respondent Nos. 1 to 4/claimants as mentioned by learned Judge, Motor Accident Claims Tribunal cum Additional District Judge, 4th Court, Nadia, Krishnagar in M.A.C. Case No. 31 of 2005 on proof of proper identification of the respondent No.1 to 4/claimants subject to payment of ad valorem Court fees.

12. The office of the learned Registrar General, High Court at Calcutta will instruct the claimants to provide details of their bank accounts with relevant documentary proof, prior to such disbursal as aforesaid.

13. The instant appeal is disposed of accordingly.

14. The application, if any, stands disposed of.

15. The interim order if any stand vacated.

16. The Learned Advocate representing the respondent Nos.1 to 4/claimants be deposited the Special Messenger cost as expeditiously as possible. The Department on such deposition of cost is directed to transmit the TCR from the concerned tribunal forthwith.
17. Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

(Ananya Bandyopadhyay, J.)