

District: Uttar Dinajpur

IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction

Appellate Side

Present :

The Hon'ble Justice Ananya Bandyopadhyay

FMA 57 of 2022

THE NEW INDIA ASSURANCE CO. LTD.

VS.

SARITA KUMARI & ORS

Mr. Rajesh Singh

: for the appellant/Insurance Company

Mr. Niladri Sekhar Ghosh,

Mr. N. Nazar Chowdhury : for the respondent Nos.1 to 3
/claimants

Heard on & Judgment on : 11.06.2024

Ananya Bandyopadhyay J.

1. The Learned Advocates for the appellant/insurance company as well as respondent Nos. 1 to 3/claimants are present in Court.
2. The instant appeal had been filed against the judgment dated 21st November, 2016 passed by the Learned Additional District Judge, Motor Accident Claims Tribunal, Islampur, Uttar Dinajpur in M.A.C. Case No. 19 of 2011.
3. An application under Section 166 of the Motor Vehicle Act, had been filed by the claimants on account of death of a person in an accident which occurred on 04.12.2010 at about 7 a.m. near Ramganj More

at NH-31 under Islampur Police Station with the involvement of offending vehicle being a Tata Safari bearing registration No.BR-11-G-3600 which negligently and rashly collided with an unknown truck approaching at an excessive speed resulting in the death of the victim and the minor son. The victim succumbed to his injury on the same day at Islampur S.D Hospital.

4. The Learned Advocate representing the appellant/Insurance Company submitted that the offending vehicle was used for commuting from one place to another on hire and rental basis beyond terms and conditions of the Insurance policy and the Appellant/Insurance Company was not liable to pay the compensation awarded. Moreover, the report submitted by the private investigator being a person appointed by the appellant/Insurance Company to conduct the investigation narrated the offending vehicle to have been reserved on hire/rental basis and accordingly, the Appellant/Insurance Company was not liable to pay compensation awarded. The Learned Tribunal had discarded the claim of the Insurance Company concerning the hiring issue since the Insurance Company could not prove that the vehicle was used on hire for plying from one place to another.

5. Learned Advocate representing the appellant/Insurance Company further submitted in absence of proper evidence failed to have been adduced by the appellant/Insurance Company before the Learned Tribunal, a scope may be given to the same to prove its claim before an appropriate forum.

6. The Learned Advocate representing the respondent Nos. 1 to 3/claimants submitted that in the same accident, a minor son of the victim had also expired and a separate Motor Accident Claim case was instituted before the concerned Tribunal at Islampur which had granted the compensation which had been paid by the appellant/Insurance Company on account of the death of the minor son in the year 2014 obliterating any further scope of the appellant Insurance Company to contradict and controvert the evidence on record as well as the finding of the learned Tribunal to absolve itself from the liability of paying the compensation.

7. Since, the occurrence of the accident, involvement of the offending vehicle, driving licence, route permit and insurance policy etc. have not been disputed by the Learned Advocate representing the appellant/insurance company, this Court restricts itself only to the extent of issues agitated by the respective parties.

8. Considered the rival contention of the Learned Advocates representing for both the parties, the cross examination of PW-1, inter alia, stated as follows :

“ Accident took place at 7 a.m in the place known as Ramganj more, Uttar Dinajpur, West Bengal. In this accident i lost my husband and child Yash. I filed two separate case on account of death of my child namely, Yash Kumar and for my husband namely Santosh Kumar in the Motor Accident Claims Tribunal at Islampur. I already received the compehnsation from the Insurance Company namely the New India Assurance Co. Ltd. from

this Tribunal in the year 2014 on account of death of son Yash.”

9. The charge sheet marked as exhibit-3 mentioned the seizure of the offending vehicle along with papers which however, did not mention the offending vehicle to have been utilized on hire or rental basis.

10. Learned Advocate representing the appellant/Insurance Company indicated an order to have been passed by the District Consumer Redressal Forum, District-Purnia in consumer case No.020 of 2013 which was filed being a part of the investigation report of the private investigator which, inter alia, stated that the offending vehicle was utilized for private purposes. However, the said investigation report quoting the observations of the aforesaid Consumer Redressal Forum without concrete evidence and also order sheets was out of context, therefore, could not to be considered.

11. Moreover, the issues raised at the appellate stage was beyond the jurisdiction of this court to consider since the same had not been agitated before the Learned Tribunal either through oral or documentary evidence since the MACC Tribunal at Islampur had disposed of the motor accident claim case pertaining to the death of the minor son of the victim as per the evidence of PW-1 which was not controverted by the Insurance Company, the claim of the appellant, therefore, was figmentary. This court is not inclined to

interfere with the observation of the learned tribunal as well as the assessment of the compensation.

12. The Learned Advocate representing the appellant/Insurance Company submits to have deposited a sum of Rs. 98,74,538/=(Rs. 25,000 + 98,49,538) through two separate cheques as per challan filed by the learned advocate representing the appellant/insurance company.

13. The Respondent Nos. 1 to 3/claimants are entitled to receive the amount of Rs. 70,07,440/- along with interest at the rate of 6% per cent per annum from the date of filing of the claim application till the date of 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 3/claimants is to provide the details of Bank Accounts held in the name of the respondent Nos. 1 to 3/claimants at the office of the learned Registrar General, High Court at Calcutta for disbursal of the compensation amount.

14. The office of the learned Registrar General High Court at Calcutta, shall encash the cheques and thereafter disburse the entire awarded amount so deposited along with accrued interest to the present respondent Nos. 1 to 3/claimants as mentioned in the impugned judgment and order passed by the Learned Additional District Judge, Motor Accident Claims Tribunal, Islampur, Uttar Dinajpur in M.A.C. Case No. 19 of 2011 on proof of proper identification of the respondent No.1 to 3/claimants subject to

payment of ad valorem Court fees within two months and refund the differential amount, if any, through a cheque to the learned advocate for the appellant/insurance company for the accounts of the insurance company.

15. 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 disbursement as aforesaid.

16. The instant appeal is dismissed accordingly.

17. The pending applications, if any, stands disposed of.

18. The TCR be sent down to the concerned Tribunal forthwith.

19. Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

(**Ananya Bandyopadhyay, J.)**