23.02.2026
Court No.9
D/L No.2-3
S. Gayen

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate side

FMA 1701 of 2014
+
I.A. No. CAN 3 of 2016 (Old No. 7174 of 2016)
Subhendu Chatterjee
Versus
New India Assurance Co. Ltd. & Anr.
with

FMA 1702 of 2014
New India Assurance Co. Ltd.
Versus
Subhendu Chatterjee & Anr.

Mr. Arabinda Kundu
Ms. Sipra Chanda
…for the Appellant
Mr. P. K. Pahari
…for the Respondent/Insurance Company

1. Learned advocates for the parties are present.

2. Heard the learned advocates for the parties.

3. The appellant/claimant in FMA 1701 of 2014 was the claimant in a motor accident claim case under Section 166 of the Motor Vehicles Act and is aggrieved by the judgment and award dated 19th June, 2013 passed by the learned Additional District Judge, 5th Court, Nadia, Krishnagar in MAC Case No. 346 of 2008.

4. The respondent No.1/New India Assurance Company Limited was the opposite party in claim case under Section 166 of the Motor Vehicles Act being also

aggrieved by the judgment and award passed by the learned Additional District Judge, 5th Court, Nadia, Krishnagar has also preferred a separate appeal being FMA 1702 of 2014.

5. Both the appeals are heard together as because it is interconnected.

6. The case of the claimant before the learned Trial Court may be summed up thus.

7. While the victim, Mr. Subhendu Chatterjee was moving in a TATA SUMO as an occupier along with others, reached near Bager Hotel at Ayeshpur on the way to Kolkata side from Ranhaghat side on NH-34, the driver lost the control of the vehicle after hitting a man and dashed against a stationed truck and as a result of which, all the occupiers including the petitioner sustained serious injuries on their persons. The claimant was immediately shifted to J.N.M. Hospital, Kalyani and therefrom he was referred to Ruby General Hospital Ltd., Kolkata. Subsequently, he was medically treated and operated for his broken hip joint at Bhattacharyya Orthopaedics Related Research Centre (p) Ltd., Narayanpur, Rajarhat. Even after that, his treatment continued as he did not return to his earlier position and disabled. Pursuant to the institution of the case, notice was issued upon the opposite parties. The opposite parties/New India Assurance Company Limited also contested the case by

filing written statement. Evidence was adduced by the claimant as well as the insurance company. By the judgment and award dated 9th June, 2013 the learned Trial Court disposed of the claim case by observing and directing as follows:-

> *"Hence, it is*
>
> ***O R D E R E D***
>
> *that the M.A.C. Case No.346/2008 is allowed on contest u/s.166 of the Motor Vehicles Act, 1988 against the O.P. No.2-New India Assurance Company Ltd.*
>
> *The petitioner do get an award of Rs.8,86,236/- as compensation.*
>
> *The O.P. NO.2/New India Assurance Company Ltd. is directed to pay the said compensation amolunting of Rs.8,86,236/- (Rupees eight lakhs eighty-six thousand two hundred thirty-six only) directly to the petitioner through NEFT.*
>
> *The Petitioner is directed to furnish the Savings Bank Account Number and other necessary details to the O.P./Insurance Company (New India Assurance Company Ltd.) within 20 days from this date with an intimation to this court.*
>
> *The O.P./New India Assurance Company Ltd. is directed to pay the said compensation to the petitioner within two months hereof, failing which, the amount shall carry a simple interest @ 6% per annum from the date of this order till realization of the entire amount.*

> *As the registered owner (O.P. No.1) of the offending vehicle has discharged her liability from being responsible to make any compensation, no order shall be passed against her."*

8. Being aggrieved by the quantum of compensation awarded by the learned Trial Court, the claimant/appellant has preferred this appeal being FMA 1701 of 2014. The insurance company being aggrieved by the said judgment and award passed by the learned Trial Court has filed a separate appeal being FMA 1702 of 2014.

9. The ground of challenge by the appellant/claimant is that the learned Trial Court ought to have granted future prospect but the same was not considered. Secondly, the quantum of compensation should be higher as because the claimant/victim being in the profession is unable to attend court at all. Thirdly, the interest ought to have awarded from date of filing of the claim case but the same being awarded in the event of default of the pain compensation.

10. The ground of challenge by the insurance company in FMA 1702 of 2014 is that the learned Trial Judge erred not granting leave to recover the amount of compensation from the vehicle owner, although the driver of the offending vehicle was held to be possessing fake licence.

11. Upon considering the facts of the case, the nature of the profession which the victim was engaged, the evidence adduced by the victim regarding his incapability of attending court and the nature of the disability, this Court is of the view that the compensation ought to have been granted upon taking the future prospect as well as the victim's inability to attend court when noting has come out in the cross-examination that the victim is attending court regularly. Thus, the monetary compensation which is granted on account of loss of dependence should be enhanced to Rs. 5,68,518/- to Rs. 8,00,000/-. With regard to the medical expenses as it is awarded by the learned Trial Court to be Rs. 3,17,718/-, the said medical expenses should also be awarded along with compensation. Further as the Courts and the Motor Vehicle Tribunal is empowered to award just and reasonable compensation and as no compensation is awarded on account of pain and suffering, this Court is of the view that Rs. 1,00,000/- should be awarded on account of pain and suffering. Thus, the total compensation amounting to Rs. 12,00,000/- is just and reasonable compensation which the appellant/claimant is entitled to from the respondent No.1/New India Assurance Company Limited along with interest @ 6% per annum from the date of filing of the claim case till today.

12. The respondent No.1/New India Assurance Company Limited shall deposit before the learned Registrar General, High Court at Calcutta Rs. 8,12,718/- along with interest @ 6% per annum from the date of filing of the claim case till today within a period of eight weeks from the date of communication of this order. In the event, the amount awarded by the learned Trial Court is already deposited the balance amount shall be deposited within eight weeks from the date of communication of this order.

13. Now, with regard to the appeal being FMA 1702 of 2014 as preferred by the appellant/New India Assurance Company Limited regarding the right of recovery from the vehicle owner, this Court finds from the judgment and award passed by the learned Trial Court that the learned Trial Court has observed that the registered owner of the offending vehicle has discharged her liability from being responsible to make any compensation.

14. In the instant matter, although the insurance company has examined their own officers who have conducted the enquiry with regard to the fake licence but the officers of the Motor Vehicle Department or the Investigating Officer has not been examined in this regard.

15. It is to be remembered that in case of claim for compensation all that the claimant is required to prove

is that there was rash and negligence on the part of the offending vehicle which is insured. The claimant cannot have knowledge about violation of policy condition which is to be established by adducing necessary evidence by Insurance Company and by giving the vehicle owner an opportunity of being heard, prior to raising such plea in Court.

16. In the case of National Insurance Co. Ltd. vs. Lirasa Bibi & Anr. (FMA 1003 of 2025), it was observed as follows:-

> *"In the case of Reliance General Insurance Company Ltd. VS Niyati Kumar and ors FMA-1326 of 2025 reported in 2025 SCC Online Cal 8886 it was observed as follows:*
>
> *'Thus it is well settled that in order to absolve from liability of paying compensation and to obtain an order of pay and recovery it is mandatory for the Insurer to prove breach of the condition of Insurance Policy.*
>
> *Although all Insurance Companies are not 'State' within the meaning of Article 12 of the Constitution of India but the fact that third party Motor Insurance Law is a beneficial Legislation and it has a public aspect and its object is to protect the public (third parties) from financial losses due to accidents caused by a motorist by ensuring that victims are compensated. On one hand, and also to protect the vehicle owners from bearing huge burden of compensation in case of accidents where the insurance policy condition is complied with on the other hand. Thus considering the public aspect of Motor Insurance Claims Insurance Companies have responsibilities to ensure that genuine accident*

claims are settled without delay and the vehicle owner who has not violated the terms of policy is not unnecessarily harassed.

In the event the Insurance Company has reasons to believe that policy conditions were violated it should conduct an enquiry issue notice upon the vehicle owner and give him an opportunity of being heard. Where the Insurance Company is satisfied after enquiry that conditions of policy were not violated the allegations of violation of policy, namely the vehicle was driven without permit or without valid driving license should not be raised in Court.

However upon Enquiry if the Insurance Company finds that there was violation of terms of policy such findings should be recorded by Insurance Company and necessary evidence should be adduced in Court. In such a case the Enquiry Report should also be filed in Court, apart from adducing evidence.

A vehicle owner after getting his vehicle insured proceeds with the assumption that Insurance Company will settle the compensation claim in case of accidents thus the vehicle owners ordinarily do not appear in Court to contest claim cases. Thus in the event there is allegation of violation of condition of Policy the vehicle owners should be given an opportunity of being heard before such allegation being made in Court and before being examined in Court as witness. Upon such enquiry being made the Insurance Company can decide as to whether policy violation was minor or major and whether to condone such violation or recover the amount of compensation paid.

In the instant case the Appellant Insurance Company has merely alleged that the vehicle was driven without permit on the ground permit was *not seized by Police Authority but no steps were taken to conduct an enquiry and to examine officers of Regional Transport Authority as witness with regard to permit of the vehicle.'*

In the event the violation of policy condition appears at the time of argument when the case is at the verge of disposal and there was no scope for the Insurance Company to make preliminary enquiry and give the vehicle owner an opportunity of being heard the Learned Tribunal after it arrives at a finding that there was breach of policy condition shall after directing payment by the Insurance Company to the claimant issue show cause upon the Insured/vehicle owner as to 'why the compensation amount directed to be paid shall not be recovered.' Copy of the Award shall also be enclosed with the notice.

Upon hearing the vehicle owner/insured with regard to violation of policy condition if the tribunal/Court comes to the conclusion that there was violation of policy condition which was not bona fide and without sufficient explanation, the Court/Tribunal will order recovery of amount directed to be Paid by Insurance Company.

In the normal course where vehicle owners receives notice of claim case they ordinarily do not appear in Court on the ground that Insurance Company will settle the claim. However if subsequent allegation is made in the written statement about violation of policy condition and additional issue in this regard is framed, and evidence adduced by the Insurance Company further notice in this regard should be issued upon vehicle owner to meet the allegation. In the event the Court/Tribunal is of the view that notice to be issued after considering the evidence adduced in this regard Learned Tribunal may issue notice after evidence. In any event prior to directing recovery after payment notice in this *regard must be issued specifically and the vehicle owner should be given an opportunity of being heard.*

In the instant case the vehicle owner/insured was not put to notice with regard to violation of policy condition for the purpose of pay and recovery. Thus no order with regard to recovery can be directed without the Appellant Insurance Company causing enquiry and giving the vehicle owner/insured an opportunity of being heard. Thus the Appellant National Insurance Company Limited is granted liberty to cause service of notice upon the vehicle owner/insured annexing copy of the order of trial Court and this order and upon hearing him with regard to violation of policy condition and recovery of compensation amount awarded. Upon hearing the insured respondent no-2 Subrata Nath the Appellant National Insurance Company Limited will decide whether to proceed against the said respondent for recovery. In the event recovery proceedings is instituted parties will be entitled to take relevant points involved to enable the Court/Tribunal to arrive at a just decision."

17. In the instant case separate notice ought to have been issued upon vehicle owner, and prior to raising claim the Insurance Company ought to have caused enquiry by giving the vehicle owner an opportunity of being heard according to the principles of natural justice. However, the same was not done.

18. Upon considering the judicial decision and the facts of the case, this Court is of the view that the right to recovery by the insurance company should be kept

open. The insurance company is entitled to recover the amount from the offending vehicle owner upon causing enquiry and giving vehicle owner an opportunity of being heard and thereafter the proceeding before the learned Trial Court for recovery of the awarded sum in accordance with law. In the event recovery proceeding is instituted, points of law will be kept open.

19. The above appeals stand disposed of.

20. As the original claimant/victim has died, the substituted appellants are permitted to withdraw the awarded sum upon compliance with all formalities.

21. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

22. Urgent Photostat certified copy, if applied for, be given to the parties upon compliance with all formalities.

(Biswaroop Chowdhury, J.)