05.01.2026
Item No.23
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ct. no.9

FMA 3530 of 2016

Gopal Sarkar & Anr.
Vs.
Reliance General Insurance Co. Ltd. & Anr.

Mr. Amit Ranjan Roy
…… for the appellants/claimants.

Mr. Sanjay Paul
…for the respondent No.1/Insurance Co.

1. Learned advocate for the appellants/claimants and learned advocate for the respondent No. 1/Reliance General Insurance Company Ltd. are present.
2. Heard learned advocates for the parties.
3. The appellants before this Court was a claimants in a case under Section 163A of the Motor Vehicles Act, 1988 and is aggrieved by the judgment and award dated 17th November, 2015 passed by learned Additional District Judge, 6th Court, Paschim Medinipur in MAC Case No. 357 of 2010. The case of the claimants/appellants may be summed up thus:

"On 21.06.2010 at about 9 P.M. deceased Suman Sarkar was riding as a pillion rider in a motor cycle owned and driven by Uttam Kumar Guin from Jhargram to Old Jhargram and reached in front of Smasan Kali Mandir. At that time suddenly due to rash and negligent driving of the rider, the motor

cycle dashed to a concrete pillar by the side of the road and the victim fell down on the road, suffering from grievous injury on head and body. He was taken to Jhargram S.D. Hospital initially and thereafter he was admitted at St. Mary's Nursing Home at Calcutta for better treatment. But the victim succumbed to his injuries on 28.06.2010".

4. The victim was 21 years old and a student of B.A. 1st year at Vivekananda Satavidyala at Jhargram. He was also a supervisor at his father's business and used to earn Rs. 3,000/- per month.

5. Pursuant to the filing of this case the respondent No. 1/Reliance General Insurance Company Ltd. contested the case by filing written statement. Issues were framed and evidences were adduced. By judgment and award dated 17th November, 2015 the learned Trial Court disposed of MAC Case No. 357 of 2010 by observing and directing as follows:

"Hence, it is,

O R D E R

That the application filed by the claimant-petitioners is hereby allowed ex parte against the O.P. No.1 and dismissed on contest against the O.P. No.2. The claimants, subject to payment of ad valorem Court fees, gets a compensation award to the extent of Rs.3,00,000/- along with interest @ 5% per annum as decided in the body of the judgment, to be paid through this Tribunal, within two months from the date of the

order by O.P. No.1, failing which the order shall be executable as per law".

6. The appellants/claimants being aggrieved by the judgment and award passed by the learned Trial Court has come up with the instant appeal. The appellants have challenged the order of the learned Trial Judge on the ground that the quantum awarded is inadequate and secondly, the learned Trial Judge has directed the respondent No. 2-owner of the vehicle to pay the awarded sum instead of respondent No. 1/Reliance General Insurance Company Ltd.

7. Learned advocate draws the attention the terms of the policy and submits that as it is a package policy and the passenger in a motorbike is not a gratuitous passenger but is a third party. Learned advocate also relies upon the decision of the Hon'ble Supreme Court in the case of:

i) ***General Manager, United India Insurance Co. Ltd. Vs. M. Laxmi and Others*** reported in ***2009 (1) T.A.C. 6 (S.C.).***

ii) ***Oriental Insurance Company Ltd. Vs. Surendra Nath Loomba and Others*** reported in ***2013 (1) T.A.C. 15 (S.C.).***

8. It appears from the record that the policy of the vehicle owner was a package policy thus in this regard it is necessary to consider the decision of the Hon'ble Supreme Court in the case of Surendra Nath Loomba. The Hon'ble Supreme

Court in the said case was pleased to observe and direct as follows:

"8. Learned Counsel for the respondents would contend that whether the policy is an "Act Policy" or a "Comprehensive Package Policy" or whether any extra-premium was paid to cover the passenger, is not reflected from the Certificate of Insurance as the policy was not brought on record by tendering the same before the Tribunal.

9 In Tilak Singh (supra) this Court referred to the concurring opinion rendered in a three-Judges Bench decision in New India Assurance Co. Ltd. V. Asha Rani, (2003) 2 S.C.C. 223, and ruled thus:

"In our view, although the observations made in Asha Rani case were in connection with carrying passengers in a goods vehicle, the same would apply with equal force to gratuitous passengers in any other vehicle also. Thus, we must uphold the contention of the appellant Insurance Company that it owed no liability towards the injuries suffered by the deceased Rajinder Singh who was a pillion rider, as the insurance policy was a statutory policy, and hence it did not cover the risk of death of or bodily injury to a gratuitous passenger."

9. In the case of M. Laxmi and Others the Hon'ble Supreme Court was pleased to observe and direct as follows:

"4. Learned Counsel for the appellant submitted that the High Court has misread the Circular of the Tariff Advisory Committee

dated 2nd June, 1986. The same referred to compensation payable to pillion riders in case of comprehensive policy. The Clarification/Circular has no relevance so far as Act Policy Cases are concerned and it relates to only Comprehensive Policy.

5. Learned Counsel for respondent Nos. 1 to 3, on the other hand, supported the judgment of the High Court.

6. there is no dispute that the Circular dated 2nd June, 1986 refers to Comprehensive Policy. It categorically states that standard form for motorcycle should cover liability to pillion passengers in case of Comprehensive Policy. As noted by the MACT, the policy in the instant case was an Act Policy.

7. In New India Assurance Co. Ltd. v. Asha Rani and others, 2003 (2) S.C.C. 223:2003 (1), it has been noted as follows:

"Section 147 of the 1988 Act, inter alia, prescribes compulsory coverage against the death of or bodily injury to any passenger of "public service vehicle". Proviso appended thereto categorically states that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in a goods vehicle would be limited to the liability under the Workmen's Compensation Act does not speak of any passenger in a "goods carriage".

In view of the changes in the relevant provisions in the 1988 Act vis-à-vis the 1939 Act, we are of the opinion that the meaning of the words "any person" must also be

attributed having regard to the context in which they have been used i.e. "a third party'. Keeping in view the provisions of the 1988 Act, we are of the opinion that as the provisions thereof do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods vehicle the insurers would not be liable therefor.

Furthermore, sub-clause (i) of Clause (b) of sub-section (1) of Section 147 speaks of liability which may be incurred by the owner of a vehicle in respect of death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place, whereas sub-clause (ii) thereof deals with liability which may be incurred by the owner of a vehicle against the death or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place.".

10. Learned advocate further refers to a judgment of learned Coordinate Bench of this Court where the learned judge was pleased to observe as follows:

"b) The Notification dated 22nd May 2018, issued under Section 163A(3) of the Act, revises the Second Schedule to enhance the quantum of compensation to Rs.5,00,000/- in death cases. The core issue is whether such enhancement can be retrospectively applied to a case where the accident occurred in 2004 — nearly 14 years prior to the notification.

The Notification itself is categorical in its language:

"This notification shall come into force on the date of its publication in the Official Gazette."

The Hon'ble Supreme Court in Pratap Narain Singh Deo v. Srinivas Sabata [(1976) 1 SCC 289] held in clear terms that the relevant date for determination of compensation is the date of the accident, and not the date of adjudication or decision. This cardinal principle has been uniformly followed across decades of jurisprudence and affirmed in several judgments.

The issue of retrospective applicability of the 2018 Notification was directly addressed in Ramkhiladi & Anr. v. United India Insurance Co. Ltd. [AIR 2020 SC 527; 2020 (2) SCC 550]. The Hon'ble Apex Court in Paras 3.7, 4.4, 5.8, 7.1, and 9.8 held that the notification has only prospective effect, and cannot be invoked to determine compensation in cases where the accident occurred prior to its issuance.

c) The reliance on the unreported decision of the Hon'ble Supreme Court in New India Assurance Co. Ltd. v. Urmila Halder [SLP (C) No. 6240 of 2019, disposed on 08.02.2024] — where retrospective application was seemingly approved — must be viewed with circumspection.

This later decision did not notice or consider the binding coordinate Bench judgment in Ramkhiladi (supra), nor did it consider the Four-Judge Bench ruling in Pratap Narain

Singh Deo (supra). As such, per the doctrine of per incuriam, a decision rendered in ignorance of a binding precedent is not good law.

In this context, the following decisions affirm the principles governing precedential hierarchy:

. State of Bihar v. Kalika Kuer [(2003) 5 SCC 448] – A coordinate bench must follow earlier decisions or refer the matter to a larger bench.

. National Insurance Co. Ltd. v. Pranay Sethi [AIR 2017 SC 5157; (2017) 16 SCC 680, Paras 19–21, 24, 29, 30] – Emphasized consistency and application of binding precedent.

. State of M.P. v. Devendra [AIR 2009 SC 3009, Para 11] – Where there are conflicting decisions, the statute must prevail and the High Court must apply its own mind.

Thus, the authority in Urmila Halder (supra) cannot override the binding and reasoned decision in Ramkhiladi (supra), particularly when the latter rests on a larger and well-established line of precedents.”

11. The learned judge was further pleased to observe as follows:

“11. Whether the Notification dated 22nd May, 2018 issued under Section 163(3) of the aforesaid Act that revised the 2nd Scheduled to enhance the quantum of compensation to Rs. 5,00,000/- in death cases would be effective retrospectively or not has been dealt with by the Supreme Court in the New India Insurance Company

Limited –Vs.- Urmila Halder reported in 2024 SCC OnLine SC 4983 in the following paragraphs:-

"6. Reliance was placed on the last line of the notification, which indicates that the said amendment would come into force from the date of publication in the official Gazette, which is 22nd May, 2018. It was submitted that as the accident had occurred on 11th December, 2004, the benefit of such amendment could not be granted to the respondent. In support of this contention, learned counsel referred to and relied upon various decisions of this Court in Padma Srinivasan v. Premier Insurance Company Limited, [(1982) 1 SCC 613]; Shyam Sunder v. Ram Kumar, [(2001) 8 SCC 24]; Nasiruddin v. Sita Ram Agarwal, [(2003) 2 SCC 577] and Panchi Devi v. State of Rajasthan, [(2009) 2 SCC 589].

7. It was further contended that the present case is covered by the policy under which the payment is made and the same crystallized on the date the same was entered into and subsequent developments would not alter the rights and liabilities of the parties. Thus, the contention was that the appellant would not be liable to pay any further than what it was obliged to pay under the Act prior to coming of the amendment on 22nd May, 2018.

8. Learned counsel for the respondent submitted that the High Court has rightly taken a view that it is merely a procedural amendment which has to be given

retrospective effect and it is nothing substantive so as to affect the merits of the issue.

9. Having considered the matter, we do not find any reason to interfere with the judgment impugned. With regard to the judgments of this Court relied upon by learned counsel for the appellant, having gone through the same we find that they are distinguishable from the facts of the present case and thus, the ratio of those cases would not apply in the present case.

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."

12. The view of the decision relied upon by the learned advocates and considering the facts of the case this Court is of the view that the direction to pay the awarded sum ought to have been upon the respondent No. 1/Reliance General Insurance

Company Ltd. Secondly, the awarded amount should be enhanced to Rs. 5,00,000/- (Rs. five lakhs only).

13. Thus, this appeal stands disposed of.

14. The judgment and awarded dated 17th November, 2015 passed by learned Additional District Judge, 6th Court, Paschim Medinipur in MAC Case No. 357 of 2010 stands modified to the extent that the appellants are entitled to a compensation of Rs.5,00,000/- (Rs. five lakhs only) from respondent No. 1/ Reliance General Insurance Company Ltd. alongwith interest @ 6% per annum from 27.09.2010 till today.

15. Let the deposit be made before the learned Registrar General, High Court, Calcutta of Rs. 5,00,000/- (Rs. five lakhs only) alongwith interest from 27.09.2010 till today within a period of eight weeks from the date of communication of this order. The appellants will be entitled to withdraw the awarded sum upon compliance of all necessary formalities.

16. Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

(Biswaroop Chowdhury, J.)