In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

06.03.2026
Item No.4
Ali
ct. no.9

FMA 346 of 2022

Shriram General Insurance Co. Ltd.
Vs.
Pata Bauri & Ors.

Mr. Rajesh Singh
…for the appellant/Shriram General Insurance Co. Ltd.

Ms. Sima Ghosh
….for the respondents/claimants No. 1,2,3 and 4.

Ms. Sucharita Paul
…for the respondent No.9/National Insurance Ltd.

1. Learned advocate for the appellant/Shriram General Insurance Company Limited and learned advocate for the respondents/claimants No. 1, 2, 3 and 4 and learned advocate for respondent No. 9/National Insurance Company Limited are present.
2. Heard learned advocates for the parties.
3. This appeal is directed against the judgment and award dated 22nd day of February, 2017 passed by learned Additional District Judge, 1st Court, Suri, Birbhum in MAC Case No. 143 of 2012 read with order dated 10.04.2017.
4. The learned Trial Judge by judgment and award dated 22nd Day of February, 2017 was pleased to allow the claim application filed by the

claimants/respondents No. 1, 2, 3 and 4 by observing and directing as follows:

"That the petition u/s 163A of Motor Vehicle Act filed by the petitioners is allowed on contest without cost against the OP/National Insurance Company Ltd. and ex parte without cost against Ops/Owners and it is held that both the Ops are jointly and severally liable to pay Rs.4,48,000/- to the petitioners as compensation u/s 163A of the MV Act along with interest of the compensation amount from the date of filing of this petition to till date of this order subject to payment of sufficient court fees.

The OP/Insurance Company is directed to issue account payee cheque for the sum of Rs.1,12,000/- in favour of the petitioner No. 1, Pata Bauri, widow of the deceased and Rs.1,12,000/- each in favour of the petitioner nos. 2 and 4 respectively, namely, Subhojit Bauri and Titli Bauri, the minor son and daughter of the deceased and Rs.1,12,000/- in favour of the petitioner no. 3, namely, Abhimani Bauri, the mother of the deceased along with interest at the rate of 8% per annum from the date of filing of this petition that is on and from 07.09.12 till t he date of payment within two months from the date of this order failing which the OP/Insurance Company has to pay additional interest at the rate of 8% per annum from the date of this order till payment.

Petitioner No.1, Pata Bauri shall receive the cheques on behalf of her minor son and daughter i.e. petitioner nos. 2 and 4, namely,

Subhojit Bauri and Titli Bauri and shall deposit the amount in any Nationalized Bank or Post Office in their names and the minors shall be able to withdraw the amount after attaining the age of their majority. The petitioner no. 1 shall be at liberty to use the interest which would accrue against the fixed deposits kept in the name of the minors for their maintenance".

5. In the instant matter the appellant/Shriram General Insurance Company Limited was unrepresented. As there was certain mistakes in the judgment and order of the learned Trial Court an application was taken up under Section 152 of the Code of Civil Procedure and the learned Trial Judge was pleased to clarify and rectify the judgment and order dated 22.02.2017 by observing and direction as follows:

"Accordingly, it is hereby declared that necessary corrections which are as follows are made in the judgment and award passed by this Tribunal on 22.02.17 and this order will be part and parcel of the judgment and award of the M.A.C. Case no. 143 of 2012 passed by this Tribunal on 22.02.2017.

In line nos. 3,8, and 11 of page no. 4 of the judgment the words and figure will be "WB37-6007" instead of "WB39-6007" and in the line no. 12 of page 4 of the judgment the name of the insurance company will be "Shri Ram General Insurance Company Limited" instead of "National Insurance Company Limited".

6. As the appellant/Shriram General Insurance Company Limited was unrepresented before the

learned Trial Court, an application for setting aside the ex parte order was filed by the appellant before the learned Trial Court but the same was dismissed. The appellant/Shriram General Insurance Company Limited being aggrieved by the judgment and award passed by the learned Trial Court has come up with the instant appeal. The ground of challenge in the instant case was the quantum awarded by the learned Trial Court the involvement of the vehicle as well as the fake policy on which the claimant filed the case. Although three different grounds were taken in the appeal but learned counsel for the appellant confines his submission only to the fake Insurance policy.

7. Upon hearing the learned advocates and considering the facts of the case, this Court is of the view that as the dispute with regard to the genuineness of the Insurance policy is a question of fact and that cannot be decided at the appellate stage without proper evidence the matter at this stage should be remitted to the learned Trial Court to decide on this issue. However, as Motor Accident Claim legislation is a beneficial legislation and the family of the victims were pursuing this case from 2012 after 13 (thirteen) years they should not be deprived of the compensation which is awarded by the learned Trial Court. However, as fraud is pleaded by the appellant

and fraud and justice cannot dwell together the appellant/Shriram General Insurance Company Limited should be granted opportunity to conduct enquiry upon giving the vehicle owner opportunity of being heard and, thereafter, if not being satisfied to move for recovery of the compensation amount before the learned Trial Court in accordance with law.

8. Thus, this appeal stands disposed of.

9. As the amount awarded by the learned Trial Judge is already deposited, no further deposit is required to be made.

10. The respondent Nos. 1 to 4 are permitted to withdraw the amount deposited along with accrued interest, if any upon compliance of the necessary formalities.

11. Upon obtaining copy of the order and communicating the same to the owner of the vehicle being ***"WB37-6007"*** and upon issuing notice to the said owner and upon hearing him the appellant/Shriram General Insurance Company Limited, if not, satisfied with the explanation given may move the Trial Court for recovery of the compensation amount in accordance with law. The learned Trial Court shall proceed with the said recovery case in accordance with law after hearing the parties. All relevant points are kept open. It is

hereby made clear that this court has not gone into the merit of whether the policy is fake or not and all points will be left open to be decided by the Insurance Company at the time of enquiry or at the time of recovery proceeding.

12. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

(Biswaroop Chowdhury, J.)