(2018) 07 GAU CK 0024

In the Gauhati High Court

Case No : MACApp. 85 of 2007

M/S New India Assurance Co. Ltd. APPELLANT

Vs

Khyama Talukdar And Ors RESPONDENT

Date of Decision : 12-07-2018

Acts Referred:

Motor Vehilce Act, 1988 — Section 140, 146, 147, 146(1), 147(1)(b), 166

Citation : (2018) 07 GAU CK 0024

Hon'ble Judges : RUMI KUMARI PHUKAN, J

Bench : Single Bench

Advocate : S. Dutta, M. Choudhury, M.H. Ahmed

Final Decision : Disposed Off

Judgement

1. Heard the learned senior counsel, Mr. S. Dutta, assisted by the learned counsel Ms. M. Choudhury, for the appellant (the New India Assurance

Co. Ltd.) (hereinafter referred to as â??the Insurance Companyâ??). Also heard Mr. M.H. Ahmed, learned counsel appearing for the respondent

Nos.1â?"3. None is present to represent the respondent Nos.4 & 5.

2. This Appeal is preferred by the Insurance Company against the judgment and award dated27.3.2007, passed by the learned Member, Motor

Accident Claims Tribunal, Barpeta, in the MAC Case No.1012/2005.

3. The brief case that can be recapitulated is that on 19.9.2005, while Late Pranjit Talukdar, who was working as a handyman of the vehicle bearing

registration No.AMP-1899 (Bus), was going from Bahari towards Barpetaroad, the said vehicle met with an accident at Batgaon. As a result, he

sustained grievous injuries and although he was immediately shifted to the hospital for treatment but he succumbed to his injuries.

4. Alleging that the accident took place due to rush and negligent driving of the said vehicle, theclaimants being the legal representatives of the

deceased (respectively the mother, wife and minor son), a claim petition was filed before the learned Motor Accident Claims Tribunal, Barpeta, under

Section 166/140 of the Motor Vehilce Act, 1988 (hereinafter referred to as â??the M.V. Actâ??), claiming compensation of Rs.15,00,000/-.

5. Notice was duly served upon the opposite parties i.e. the owner, the driver and the insurer ofthe said vehicle. The opposite party Nos.1 & 2 being

the owner and driver of the said vehicle filed their written statement, admitting the factum of accident and it was submitted that the vehicle was duly

insured with the M/s. New India Assurance Co. Ltd. and there is a valid insurance policy. Accordingly the driver also contended that he has valid

driving license at the time of accident and the vehicle was properly insured with the opposite party No.3.

6. In the separate written statement, the Insurance Company, as usual, raised the pleas that thesuit is not maintainable in the present from and they

denied the liability, if the same is not as per the terms and conditions of the insurance policy.

7. The learned Tribunal framed the following four issues:

i. Whether the claimants are entitled to get compensation?

ii. Whether the suit is maintainable?

iii. Whether the victim Pranjit Talukdar died in a motor vehicle accident by the vehicle No.AMP-1899 (Bus) during the course of employment in

connection with Tarabari P.S. Case No.114/05?

iv. Whether the Insurance Company is liable to pay compensation?

8. In the course of trial, the learned Tribunal examined the oral and documentary evidence andcame to the finding that the deceased was working as a

handyman of the said vehicle and he died out of the accident for the use of the motor vehicle, as mentioned in the claim petition. Considering the age

and the income of the deceased person, the Tribunal assessed his income as Rs.3000/- per month and taking the age as 36 years, the Tribunal

computed the compensation after deducting 1/3rd of the total income from his salary and the amount of compensation was assessed as Rs.3,91,000/-

only. As the vehicle was insured with the M/s. New India Assurance Co. Ltd., which was contesting the case, directed to pay the amount with interest @6% per annum, including the interim relief of Rs.50,000/-.

9. Raising the grievances, the Insurance Company has carried the matter to the appeal on theground that the Tribunal has committed grave illegality,

did not consider the fact that the deceased was employed as a handyman and is not require to be covered under the policy of insurance, in terms of

Section 147 of the M.V. Act. The contention raised by the Insurance Company is that the cases of employees of insured require to be covered by the

policy and the liability of the Insurance Company is limited to the extent, as required under the Workmenâ??s Compensation Act, 1923 (hereinafter

referred to as â??the W.C. Actâ??) and not under the M.V. Act. However, the Insurance Company is agreeable to pay the amount to the extent as

required under the W.C. Act and not under the M.V. Act and they have accordingly prayed for interference with the aforesaid order.

10. The learned senior counsel for the appellant, Mr. S. Dutta has submitted that in terms of theinsurance policy which is produced in the Court, the

Insurance Company require to indemnify three employees of the vehicle including the driver, and the conductor and examiner of tickets, in terms of

the policy. This Court also gone through the said policy condition which reflects that there is coverage of WC employees (three). The learned counsel

for the appellant has also referred to the observation made by the Honâ??ble Apex Court in Ramashray Singh vs. New India Assurance Co. Ltd.

and others, reported in (2003) 10 SCC 664, wherein provision of Section 147(1)(b) and Section 146 of the M.V. Act have dealt with elaborately and

has held that the Insurance Policy can cover only the driver, conductor or examiner of tickets. No other employee such as cleaner (khalasi) is covered

under Section 147 of the M.V. Act. Mere fact that the insurance policy specifying that the insurance has been paid by the appellant/owner for seating

capacity including the driver and cleaner does not mean that the cleaner will be included as a passenger for imposing liability on the Insurance

Company.

11. The aforesaid citation has clearly answered the provision that the Insurance Company is liableto indemnify only those three categories of persons.

On the basis of the aforesaid provision, the leaned senior counsel for the appellant has submitted that although the said aspect was not specifically

pleaded in the written statement but the same being the legal provision, can be raised at any stage. However it has been fairly submitted that they are

ready to pay the compensation in terms of the W.C. Act, as per the schedule. In that view of the matter, considering the age of the deceased as 36

years and the factor 194.64, as per the Schedule-IV of the W.C. Act, the compensation can be computed as 36 x 194.64 x 1500 (50% of the income

of the deceased) = Rs.2,91,960/-.

12. The learned counsel for the contesting respondents has submitted that such a contentionraised by the appellant at this stage is not maintainable, as

the same was not made in the written statement specifically and the claimants are entitled to get the compensation under the M.V. Act.

13. I have considered the rival submissions made by the learned counsel for the parties and alsogone through the materials in record.

14. The Honâ??ble Apex Court, it in clear terms has held that the Insurance Company is liable toindemnify the persons under the provision of

Section 147(1)(b) of the M.V. Act. For the purpose of Section 146(1) of the M.V. Act, the policy shall not be required to cover liability in respect of

the death arising out of and in the course of any employment of the person insured, unless the liability of the insured arises under the W.C. Act.

15. Now in the instant case, the deceased is specifically stated to be of handyman and he was notan employee within the category of Section 147(1)

(b) of the M.V. Act and as such, the Insurance Company cannot go beyond the policy, what is entered into.

16. Consequently, the Insurance Company cannot be compelled to pay the compensation in termsof Section 147(1)(b) of the M.V. Act. However,

they are now agreeable to pay the compensation in terms of the W.C. Act, which will certainly redress the grievances of the claimantsâ?? side.

17. The matter is one of the old cases, pending for disposal since 2007. So we should give a closureto all such dispute, obviously in a legal manner.

Only for the fact that the said issue was not raised before the Tribunal at the time of trial, the same cannot be now ignored being a matter of policy

condition and is under the statute.Â Â Â Â

18. Considering all aspects of the matter, the payable amount of compensation is now becalculated, as has been assessed by the Insurance Company,

as mentioned above i.e. Rs.2,91,960/(Rupees two lacs ninety one thousand nine hundred sixty) only, to be the just amount of compensation. However, this amount will carry interest @9% per annum instead of @6% per annum, from the date of filing of petition till payment, so as to adequately redress

the grievance of the claimants.

19. It has been appraised in that that 50% of the earlier awarded amount has been deposited andwithdrawn by the claimantsâ?? side. So the

remaining amount, as indicated above be deposited by the appellant Insurance Company, by adjusting the statutory deposit of Rs.25,000/- and the

amount already paid. The Insurance Company will make the payment within six weeks from today, before the Registry of this

Court.Â Â Â Â Â Â Â Â Â

20. The appeal is disposed of accordingly. Return the LCR forthwith.

