

(2020) 03 GAU CK 0024

In the Gauhati High Court

Case No : Motor Accident Appeal No. 156 Of 2013

National Insurance Co. Ltd.

APPELLANT

Vs

Musstt. Husna Ara Begum And Anr

RESPONDENT

Date of Decision : 05-03-2020

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 163(A), 173

Citation : (2020) 03 GAU CK 0024

Hon'ble Judges : Sanjay Kumar Medhi, J

Bench : Single Bench

Advocate : R. Goswami, A. Ganguly

Final Decision : Disposed Off

Judgement

1. Heard Shri. R. Goswami, learned counsel for the appellant. Also heard Shri. A. Ganguly, learned counsel for the contesting respondents.

2. The instant appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 against a judgment and award dated 30.01.2013 passed

by the learned MACT, Sonitpur in MAC Case No. 374/2009. By the said award, a amount of Rs. 1,00,000/- has been granted as compensation under

a personal accident Insurance company coverage.

3. The brief facts of the case may be summarized as follows:-

4. The claimant is the father of the deceased Ebrar Ansari. On 11.06.2009 at about 09.30 P.M. while the deceased was proceeding towards Tezpur

riding a motorcycle bearing registration No. AS-12 C/0191 alongwith one Manjur Alam Ansari as a pillion rider, the motorcycle met with an accident

and fell off into a ditch consequent to which he expired. The decesed son was about 25 years old and he used to earn Rs. 3,300/- per month by

carrying business of cloths.

5. The Insurance Company had contested the claim by filing written statement in which it was stated that the deceased not being a 3rd party, a

jurisdictional error was committed by the learned MACT in granting compensation. The learned Tribunal after consideration the respective cases of

the parties had framed the following issues:-

(i) Whether the victim Ebrar Ansari died as a result of accident of the vehicle, bearing registration No. AS-12C/0191 (Motorcycle), as alleged?

(ii) Whether the claimant-mother is entitled to any compensation, as prayed for, and if yes, from whom and to what extent?

6. The claimant in support of the case had adduced evidence through 2(two) cws whereas the Insurance Company did not adduce any evidence.

7. After hearing the arguments, the learned Tribunal vide judgment and award dated 30.01.2013 had granted an amount of Rs. 1,00,000/- only in

favour of the claimant with interest at the rate of 9% per annum from the date of institution of the case till 26.10.2009. The learned Tribunal had taken

into account the law laid down by the Honâ??ble Supreme Court in the case of Ningamma and Another â??Vs- United India Insurance Company

Limited reported in (2009) 13 SCC 710.

8. It is the legality and validity of the Award which is the subject matter of the dispute in the present appeal.

9. Shri. Goswami, learned counsel for the appellant submits that there is a jurisdictional error on the part of the learned Tribunal in passing the

impugned Award inasmuch as the policy in question did not cover the accidental death of the son of the claimant in the instant case. He submits that

the policy in question was a Package Policy in which the coverage is for the owner and the driver and the son could not have been treated to the

owner and driver of the motorcycle in question. Learned counsel submits that the contract to indemnify is only for the legal liability which would occur

upon the injured and not for any other purpose and facts of the instant case not legal liability had occurred upon the insured owner. He further

contends that though the amount in question is not a substantial amount, on principle, the present appeal ought to be allowed.

10. On the other hand, Shri. Ganguly, learned counsel for the claimants submits that there is a distinction between Package Policy and an Act Policy.

In the instant case admittedly the policy in question was a package policy and the deceased who was riding the motorcycle had automatically steps into shoes of the insured and therefore the exercise of jurisdiction by the learned Tribunal has been properly done. He further submits that the amount in question is not a huge one and considering the age of the deceased which was only 25 years, grant of the compensation by the Tribunal is otherwise justified as the entire piece of legislation is the beneficial one to meet with situation where accidental death or injuries occurred causing immense hardships to her family.

11. In support of the submissions, Shri. Ganguly relies upon the following decisions rendered by the Honâ??ble Supreme Court as follows;-

(i) Ningamma and Another â??Vs- United India Insurance Company Limited reported in (2009) 13 SCC 710.

(ii) Ashalata Bhowmic and Others â??Vs- National Insurance Co. Ltd reported in (2018) 9 SCC 801.

(iii) Ramkhiladi and Another â??Vs- The United India Insurance Company and Another reported in AIR (2020) SC 527.

12. In the case of Ningamma, the Honâ??ble Supreme Court has observation as follows:-

â??21. Section 147 of the Motor Vehicles Act provides that the policy of insurance could also cover cases against any liability which may be incurred by the insurer in respect of death or fatal injury to any person including owner of the vehicle or his authorized representative carried in the vehicle or arising out of the use of vehicle in the public place.â??

13. In the case of Ashalata, the Honâ??ble Supreme Court had directed payment of Rs. 2,00,000/- which was the amount under the contract of insurance to indemnify the case of personal accident of the deceased.

14. In Ramkhiladi (supra), the Honâ??ble Supreme Court after discussing the earlier cases on the subject has observed as follows:-

â??5.6 In view of the above and for the reasons stated above, in the present case, as the claim under Section 163A of the Act was made only against the owner and insurance company of the vehicle which was being driven by the deceased himself as borrower of the vehicle from the owner of the vehicle and he would be in the shoes of the owner, the High Court has rightly observed and held that such a claim was not

maintainable and the claimants ought to have joined and/or ought to have made the claim under Section 163A of the Act against the driver,

owner and/or the insurance company of the offending vehicle i.e. RJ 29 2M 9223 being a third party to the said vehicle.

5.8 However, at the same time, even as per the contract of insurance, in case of personal accident the owner driver is entitled to a sum of Rs.1 lakh.

Therefore, the deceased, as observed hereinabove, who would be in the shoes of the owner shall be entitled to a sum of Rs.1 lakh, even as per the

contract of insurance. However, it is the case on behalf of the original claimants that there is an amendment to the 2 nd Schedule and a fixed amount

of Rs.5 lakh has been specified in case of death and therefore the claimants shall be entitled to Rs.5 lakh. The same cannot be accepted. In the

present case, the accident took place in the year 2006 and even the Judgment and Award was passed by the learned Tribunal in the year 2009, and

the impugned Judgment and Order has been passed by the High Court in 10.05.2018, i.e. much prior to the amendment in the 2nd Schedule. In the

facts and circumstance of the present case, the claimants shall not be entitled to the benefit of the amendment to the 2 nd Schedule. At the same time,

as observed hereinabove, the claimants shall be entitled to Rs.1 lakh as per the terms of the contract of insurance, the driver being in the shoes of the

owner of the vehicle.â??

15. The rival contentions of the learned counsel have been duly considered.

16. This Court has taken into consideration that the policy in question was a Package Policy which would cover the owner and driver. In the instant

case the death caused was not of the owner but that of his son and therefore, Shri. Goswami may be correct in contending that there is no contract to

indemnify in such a case. However, there are certain factors which taken into consideration which amongst others would include the object of the

legislation, admitted facts of death of the son of the owner, age of the deceased which only 25 years and the amount in question which is not a

substantial one. This Court is also fortified by the observations made by the Honâ??ble Supreme Court in the case of Ramkhiladi, stepping into shoes

of the owner has been brought in to justified payment of the amount assured.

17. In view of aforesaid facts and circumstances and the factors indicated above, this Court is of the view that without this being binding precedent

the amount awarded is not liable for any interference. More so, the same is of only Rs. 1,00,000/- that to the death of the young son of the claimant. In that view of the matter, the instant appeal is disposed of.

18. It is needless to say that the deposit amount including statutory deposit made by the Insurance Company before the Registry of this Court would be suitably adjusted at the time of receipt of the final amount.