(2018) 11 CAL CK 0051

In the Calcutta High Court

Case No : C.A.N. 10956 Of 2017, F.M.A.T. 1206 Of 2017

National Insurance Company Limited APPELLANT

Vs

Ruma Mondal and another RESPONDENT

Date of Decision : 28-11-2018

Acts Referred:
Motor Vehicles Act, 1988 — Section 149(2), 166

Citation : (2018) 11 CAL CK 0051

Hon'ble Judges : Subhasis Dasgupta, J;Harish Tandon, J

Bench : Division Bench

Advocate : Rajesh Singh, Jayanta Kumar Mondal

Final Decision : Dismissed

Judgement

The judgment and order dated 5th September 2017 passed by the Motor Accident Claims Tribunal, South 24-Parganas at Alipore is the subject matter

of challenge in the instant appeal.

It is evident from the record that the claim application was filed for compensation for the death of a minor daughter Trisha Mondal who met with an

accident alleged to have been committed by the offending vehicle on 18th December 2010. The said minor daughter was taken to the hospital and

subsequently succumbed to the injury. Admittedly, she was eight years of age at the time of untimely death and also a student.

There is no challenge at the behest of the Insurance Company that the claimant is not entitled to maintain the said application claiming compensation

but the challenge is squeezed to a singular point that the driver of the offending vehicle did not have the requisite licence to ply and, therefore, the

Insurance Company is not liable to pay compensation under the policy covering the offending vehicle.

After permitting the parties to adduce evidence and upon examining the evidentiary value thereof, the Tribunal awarded a sum of Rs. 2,50,000/- as

compensation under Section 166 of the Motor Vehicles Act along with an interest at the rate of nine per cent over the said amount to be calculated

from the date of the application till the actual payment.

In the instant appeal, Mr. Rajesh Singh, learned Advocate appearing on behalf of the appellant, reagitates the aforesaid points and submits that if the

driver of the offending vehicle did not have the licence to ply the said vehicle, the Insurance Company cannot be foisted with any liability to pay

compensation. Alternatively, it is submitted by him that in such event the amount of compensation can be claimed from the owner of the said offending

vehicle. In support of the aforesaid contention, Mr. Singh heavily relies upon the licence held by the said driver and submits that it cannot be construed

to permit the said driver to ply the heavy vehicles. It is further submitted by Mr. Singh that the said document though marked as â??Exhibitâ?? but

after objection and, therefore, the contents thereof have not been proved.

The learned Advocate appearing on behalf of the respondent no. 1/claimant repelled the aforesaid contentions of the appellant and submits that once

the document was marked as â??Exhibitâ?? in the proceeding, it is immaterial that the same was received in evidence after objection. It is further

submitted that the moment the document is exhibited in the proceeding, the contents are automatically proved and the admissibility of the said

document cannot be challenged at a later stage of the proceeding, as held by the Apex Court in case of Dayamathi Bai (Smt) vs. K. M. Shaffi,

reported in (2004) 7 Supreme Court Cases 107. It is ardently submitted by the respondent no. 1 that the Court cannot deny the legitimate

compensation to the heirs of the deceased victim because of such trifle issues nor can exonerate the liability of the Insurance Company in payment of

compensation. The reliance is placed upon a judgment of the Division Bench of this Court in case of National Insurance Company Limited vs. Smt.

Dipannita Acharya & Ors. (FMAT 543 of 2017, decided on 12th October 2018) in support of the contention that the plea of fake driving licence,

plying the vehicle by a driver have no driving licence, though driving licence has been issued to a driver but not for plying a particular type of vehicle,

are immaterial for the purpose of awarding compensation to the claimant.

On the conspectus of the aforesaid stand of the parties, the sole question, which arises in the instant appeal, is whether the Insurance Company can be

exonerated of their liability to pay compensation as the driver of the offending vehicle did not have the requisite driving licence for plying the said

offending vehicle or the Insurance Company has a primary liability for payment of compensation and may be permitted to recover the same from the

owner of the offending vehicle.

There is no quarrel on the admitted facts as narrated herein above. The daughter of the claimant suffered and succumbed to the injury because of the

accident and, therefore, there is no impediment on the part of the claimant to make an application for compensation under the provisions of the Motor

Vehicles Act. It is also an admitted fact that the offending vehicle was insured with the Insurance Company and the validity period did not expire on

the date of the said accident.

As indicated above, whether the claimant shall be denied of just compensation as the driver of the offending vehicle did not have the requisite licence,

came up for consideration before the Division Bench in case of Smt. Dipannita Acharya & Ors. (Supra) to which one of us (Harish Tandon, J.) was a

party thereto and has been answered in the following:

â??The judgment at paragraph 110(x) clearly states that once the Tribunal has arrived at a conclusion that the insurer has satisfactorily proved its

defence in accordance with the provisions of Section 149(2), the Tribunal can direct the insurer to pay to the third party and thereafter seek

reimbursement of the same from the insured person. The Supreme Court clarified that the money found due to the insurer from the insured will be

recoverable on a certificate issued by the Tribunal to the collector in the same manner as under Section 174 of the Act as arrears of land revenue.â??

In the said report, a judgment of the Apex Court delivered in case of National Insurance Co. Ltd. vs. Swaran Singh and Ors., reported in (2004) 3

Supreme Court Cases 197 was noticed, wherein the three-Judge Bench held that even in cases where the Insurance Company has been able to put a

good defence under Section 149(2) of the said Act, it is upon the Insurance Company to first pay the claimants of the victim and thereafter recover it

from the owner of the offending vehicle. The judgment of Swaran Singh and Ors. (Supra) was further noticed in a subsequent decision rendered in case of Shamanna and another vs. Divisional Manager, Oriental Insurance Co. Ltd. and others., reported in AIR 2018 Supreme Court 3726 and was

accepted and applied with full rigor and force. The Apex Court in case of Swaran Singh and Ors. (Supra) categorically observed that even where the

insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his

qualification to drive during the relevant period, it would not be proper to suggest that the Insurance Company would be able to avoid its liability

towards the insured.

In the instant case, admittedly the driver was holding a valid licence to ply other type of vehicles but not the offending vehicle in question. In view of

the ratio laid down in Swaran Singh and Ors. (Supra) it is not open to the Insurance Company to escape from its primary liability to pay compensation

to the claimants of the victim.

We, thus, do not find any grounds warranting interference with the judgment and order of the Tribunal wherein the Insurance Company was held

liable to pay compensation to the claimant. The appeal is, thus, dismissed.

Liberty is granted to the Insurance Company to take recourse as permissible in law to recover the money from the owner or the person liable therefor.

After delivery of the judgment in open Court, we are informed that the entire awarded amount had already been deposited by the Insurance Company

with the Registrar General of this Court, which has been invested in a short term fixed deposit carrying interest.

Liberty is granted to the respondent no. 1/claimant to apply for release of the said amount with accrued interest before the Registrar General within

two weeks from date. If such application is made, the Registrar General shall release the amount to the respondent no. 1/claimant upon being satisfied

with proper identification of the claimant.

The learned Advocate for the respondent no. 1/claimant shall furnish the details of the bank account held by the claimant in her individual name and

the negotiable instrument that would be issued to her shall also depict that the said amount can only be encashed in the said account.

In view of the dismissal of the appeal itself, nothing remains in the connected application being CAN 10956 of 2017 and the same is also dismissed.

There shall, however, be no order as to costs.

