
(2014) 07 CAL CK 0029
In the Calcutta High Court
Case No : F.M.A. No. 939 of 2009

National Insurance Company Limited

APPELLANT

Vs

Sabita Das

RESPONDENT

Date of Decision : 02-07-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2014) 5 CHN 343

Hon'ble Judges : Indira Banerjee, J;M.K. Chaudhuri, J.

Bench : Division Bench

Advocate : Kamal Krishna Das and S. Pal Choudhuri, for the Appellant; Amit Ranjan Roy, for the Respondent

Final Decision : Disposed off

Judgement

1. This appeal filed by the appellant insurer is against a judgment and award dated 29th February, 2008 passed by the Motor Accident Claims Tribunal, 1st Court at Tamluk, Purba Medinipur in an application for compensation under section 166 of the Motor Vehicles Act, 1988 filed by the respondent claimants being MACC No. 34 of 2004. The claimants are apparently the heirs of late Mritunjoy Das, who was killed in a motor accident involving a tanker bearing the Registration No. WB-23A/0453 owned by the respondent No. 6 and covered by a policy of insurance issued by the appellant insurer.

2. In the claim application, it is claimed that late Mritunjoy Das, hereinafter referred to as "the victim", was proceeding along the left side of the road on a Hero Honda motor cycle bearing the Registration No. WB-30B/6145 when he was run over by the offending tanker insured by the appellant insurer and owned by the respondent No. 6. The claimants are the widow, three sons and one daughter of the victim.

3. By the judgment and award under appeal, the learned Tribunal awarded the claimants compensation of Rs. 19,54,864/- along with interest at the rate of 6%

per annum from the date of filing of the claim application, that is, from 15th November, 2003, till full payment of the claim in entirety,

4. Since the claimants have not preferred any appeal, it is not necessary for us to go into the appropriateness of the apportionment made by the learned Tribunal in respect of the respective claimants.

5. Mr. Das, learned Counsel, appearing on behalf of the appellant insurer, submitted that the appellant insurer was not liable since the motor cycle was driven by the victim, who did not have a valid driving licence and secondly, because the driver of the offending tanker also did not have valid driving licence.

6. Mr. Das next contended that in any case, the compensation was excessive. First of all, the multiplier should have been applied having regard to the number of years of service that were left and/or, in other words, the number of years for which the victim would actually have earned, had he been alive. Next it is contended that in computing compensation, the monthly income should not have been taken as Rs. 22,703/-.

7. In support of his argument Mr. Das cited United India Insurance Co. Ltd. through its Divisional Manager vs. Sujata Arora and Ors., reported in 2013 (3) T.A.C. 29 (S.C.) , Oriental Insurance Co. Ltd. Vs. Angad Kol and Others, , National Insurance Co. Ltd. Vs. Vidhyadhar Mahariwala and Others, and also on a judgment of a Division Bench of this Court in Pampa Banik and Others Vs. The New India Assurance Company Ltd. and Another, .

8. There can be no doubt that in case of violation of condition of insurance policy, the insurer would not be liable to indemnify the owner as laid down in United India Insurance Co. Ltd. through its Divisional Manager vs. Sujata Arora and Ors. (supra), Oriental Insurance Co. Ltd. vs. Angad Kol (supra) and National Insurance Company Limited vs. Vidhyadhar Mahariwala and Ors. (supra). There can be no doubt that if the offending vehicle is driven by a person who does not hold a valid diving licence and there is contravention of the terms and conditions of the insurance policy on the part of the owner of the offending vehicle, the insurer would not be liable. The liability would be solely of that of the owner. Of course, in certain cases, the Supreme Court has not interfered with awards in such cases where the insurer has been directed to pay the victim, but has given leave to the insurer to recover the amount disbursed by the insurer from the owner of the insured vehicle.

9. In the instant case, what is relevant is whether the driver of the offending vehicle had a valid driving licence. Whether the motor cycle was being driven by a driver with a valid driving licence or not, is not material. There is evidence on the basis of which the learned Tribunal has arrived at the conclusion that the offending tanker was being driven in a rash and negligent manner and the accident was caused due to the fault of the offending tanker. On the other hand, there is no evidence adduced on behalf of the appellant insurer or the respondent owner to show that the accident was not caused due to the fault of

the offending tanker.

10. The factual finding of the Court below that the offending tanker was responsible for the accident, does not call for interference in appeal. We are, therefore, unable to accept the contention of Mr. Das that the insurer is not liable because the motorcyclist did not have a valid driving licence.

11. So far as the offending tanker is concerned, admittedly a driving licence was seized by the police. The driving licence number is also on record. The appellant insurer neither summoned the owner of the vehicle nor the driver of the vehicle. It is well established that the onus of proof lies on the person who alleges. Allegations of fraud and/or forgery have to be proved by the party who makes the allegation of fraud and/or forgery.

12. In this case, the only evidence sought to be relied upon by the appellant insurer is a letter dated 15th July, 2004 written by one Surajit Biswas, Investigator, Tracer, Claim Recoverer, Supervisor of the appellant insurer stating that licensing authority had confirmed that as per register, only 2,30,000 licences had been issued till date and that D.L. No. WB-19-497844 had not been issued by the licensing authority, Alipore; a similar note issued by its own regional office, which is dated 24th July, 2004 and a certificate of the licensing authority, South 24-Parganas, which is extracted herein below:

TO WHOM IT MAY CONCERN RE: D/L No.: WB-19-497844

A/c: RAM LAXMAN SINGH

The above noted D/L No. has not yet been issued by this office till date. This is for your information."

13. The letter dated 15th July, 2004 is of the appellant insurer's own Investigator, and the note dated 21st July, 2004 is based on the said letter. The concerned Investigator was not examined. Significantly, in the note dated 24th July, 2004, the Assistant Administration Officer of the appellant insurer wrote that the Investigator, Surajit Biswas had informed that licensing authority, Public Vehicles Department, Alipore did not entertain any request for certificate certifying that the licence was fake.

14. As observed above, a driving licence had admittedly been seized. The driving licence was not sent for forensic/scientific examination. No. official/employee of the office of the concerned licence issuing authority was not examined. No attempt has been made to summon the driver or the owner of the vehicle. In view of the failure of the appellant insurer to substantiate its allegation that the driving licence of the driver of the tanker was either forged or fraudulent, the learned Tribunal rightly proceeded on the basis that the tanker was driven by a person who had a valid driving licence.

15. The submission of Mr. Das that the multiplier should have been applied having regard to the number of years of service which the victim would have put

in, had he been alive, having regard to the age of retirement of the victim, does not find support from the provisions of the Motor Vehicles Act, 1988 and/or second schedule appended thereto or from any of the judgments cited by Mr. Das. In Pampa Banik's case (supra), the Division Bench found and rightly that where the claimants were the mother and the widow, who was younger than the victim, the multiplier would have to be applied as per the age of the victim. In Pampa Banik's case (supra), this Court held that in making apportionment between the widow and the mother, the mother's age would have to be taken into account and proportionately a lower amount would have to be given to the mother and a higher amount to the widow. The judgment has no application in the instant case.

16. Mr. Das has, however, very rightly pointed out that as per the evidence on record, the last drawn salary of the victim was Rs. 17057/-, including overtime and all other allowances. The learned Tribunal erred in proceeding on the basis that the average income of the deceased was Rs. 22,703/-. There was no justification for computing the compensation on the basis that the victim had an average monthly income of Rs. 22,703/-. This calls for modification of the award under appeal.

17. For the purpose of computation of income, the total salary less any statutory deduction is required to be taken into account. The average income of the deceased should have been taken as Rs. 17057/-, instead of Rs. 22,703/-.

18. The monthly income will, thus, have to be taken as Rs. 17,057/-. The annual income is to be obtained by multiplying the aforesaid amount by "12", which works out to Rs. 2,04,684/-, from which one-third (i.e. Rs. 2,04,684-K3=Rs. 68,228/-) is to be deducted towards personal expenses of the victim. The figure works out to Rs. 1,36,456/- (Rs. 2,04,684/- - Rs. 68,228/-). The multiplier applicable, in this case, is "11". The total compensation works out to Rs. 15,01,016/- (Rs. 1,36,456/- X 11). In addition to the aforesaid amount, Rs. 2,000/- is statutorily required to be added towards funeral expenses and Rs. 2,500/- towards loss of estate. The total takes us to Rs. 15,05,516/-. The claimant respondent No. 1, being the widow, shall be entitled to an additional Rs. 5,000/- towards loss of consortium.

19. The aforesaid amount (i.e. Rs. 15,05,516/-) less statutory deposit, if any, and the additional Rs. 5000/- payable to the widow, will carry interest at the rate of 8% per annum, as per reducing balance, from the date of the application till full payment to the claimants.

20. It is recorded that the claimant respondent No. 5, who was minor at the time of the accident, has now attained majority.

21. The Registrar General of this Court shall disburse the amount awarded, inclusive of interest, equally amongst the claimants, as prayed for by learned Counsel, appearing on behalf of the respondent claimants. The balance amount may be refunded to the appellant insurer.

22. The appeal is, thus, disposed of. Urgent photostat certified copies of this judgment, if applied for, be supplied to the parties subject to compliance of all requisite formalities.