

(2024) 01 CAL CK 0089
In the Calcutta High Court

Case No : FMA No. 1338 Of 2013, CAN/1/2019 (Old No: CAN/11143/2019)

Rina Chakraborty & Ors.

APPELLANT

Vs

Oriental Insurance Co. Ltd. And Anr.

RESPONDENT

Date of Decision : 30-01-2024

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 170

Citation : (2024) 01 CAL CK 0089

Hon'ble Judges : Ajay Kumar Gupta, J

Bench : Single Bench

Advocate : Amit Ranjan Roy, Sucharita Paul

Final Decision : Disposed Of

Judgement

Ajay Kumar Gupta, J

1. Appellants have assailed the judgment and award dated 30.01.2013 passed by the Learned Judge, Motor Accident Claims Tribunal, 1st Court, Hooghly in Motor Accident Claim Case No. 130 of 2010 whereby the learned Tribunal ordered that the Motor Accident Claim case be allowed ex parte but without any cost against the owner of the offending vehicle and dismissed against the Ins. Co. i.e. the Oriental Ins. Co. Ltd. and awarded compensation to the tune of Rs. 3,69,500/- along with interest at the rate of 7% per annum from the date of filing of the case till actual realization from the owner of the offending vehicle in an application filed under Section 166 of the Motor Vehicles Act, 1988 on account of death of the deceased due to Motor traffic accident and the owner of the offending vehicle is directed to pay the amount of compensation of Rs. 3,69,500/- to the appellants by way of cheque equally through the Ld. Tribunal within two months thereof, failing which the appellants will be at liberty to take necessary steps in accordance with law and the claimants will be entitled to interest @ 9 % per annum over the entire amount till actual realization. The owner of the offending vehicle is further directed to issue a separate cheque of Rs. 5,000/- with respect to loss of consortium to the widow of the deceased

Ratan Chakraborty i.e. in favour of the appellant no. 1 in addition to her actual entitlement.

2. The brief facts leading to the present appeal in a nutshell are as hereunder.

On 03.05.2010 at about 10 a.m. on GT Road near Champarui Radio Centre, the victim Ratan Chakraborty was proceeding towards Hoera by riding an auto Rickshaw bearing no. WB-15/A-3963. When it reached near Champarui Radio Centre under Mogra P.S. at that point of time, the offending container being No. WB-41/D-8683 coming from the opposite direction dashed against the auto rickshaw with a very high speed and negligent manner endangering the human life and safety. As a result, some passengers of that auto rickshaw including the deceased of this case received serious injuries on their persons. One unknown passenger died instantaneously at the spot and the auto rickshaw got damaged. Ratan Chakraborty and other injured passengers were shifted to Imambara Sadar Hospital at Chinsurah, wherein the doctor declared Ratan Chakraborty as dead. It has been stated in the claim application that four persons died out of the said accident. Ratan Chakraborty was one of them and was man of active habit and used to earn Rs. 4000/- per month from his employment in M/s Ghatak Builders under Mogra P.S. Hence, the claim application filed by the widow and other family member of the deceased and claimed a compensation to the tune of Rs. 5, 00,000/-.

3. The Oriental Ins. Co. Ltd. contested the case wherein all the material allegations with regard to the age, income of the deceased, the mode and manner of accident and also the insurance coverage of the vehicle were denied. It has also been specifically averted in the written statement that the accused driver of the offending vehicle was driving the vehicle without any valid driving licence. The number of the D.L. is a fake one and it has no existence up till then as per testimonies of RTO and local investigator of the insurance company. It was contended that the claim of the appellants was excessive, abnormal and without any legal and equitable basis as such the claim application was liable to be dismissed with cost. It has further been alleged that the victim was responsible for the fatal accident and he himself violated the traffic rules. The insurer also filed an application under Section 170 of the M.V. Act for permission of the Ld. Tribunal to take all the defence available to the owner of the offending vehicle. Petition was allowed to take all defence available on behalf of the owner of the offending vehicle.

4. Mr. Roy, learned advocate appearing on behalf of the appellants/claimants submitted that the Ld. Tribunal while awarding compensation did not consider the compensation towards future prospects and general damages in view of the judgment passed in National Insurance Company Ltd. Vs. Pranay Sethi & Ors. (2017) 16 SCC 680. If the Ld. Tribunal would have considered the compensation towards future prospects and actual general damages then the compensation amount would have been enhanced.

5. It is further submitted that though the claimants have proved by producing the driving licence to show that the driver had a valid licence on the date of accident but that is not considered by the Ld. Tribunal and erred in holding that no such driving licence was valid on the date of accident as such owner of the offending vehicle violated the terms and conditions of the insurance policy. In view of such observations, the Ld. Tribunal has allowed the claim application ex parte against the owner of the offending vehicle and dismissed against the insurance company i.e. Oriental Ins. Co. Ltd. and directed to get an award of Rs. 3, 69,500/- as compensation together with interest @ 7% per annum from the date of filing of the case till actual realization from the owner of the offending vehicle i.e. Skylark Properties Pvt. Ltd., 6, Hastings Part Road, Kolkata- 700 027. That observation is totally erroneous and without considering the entire evidence adduced by the appellants/claimants. Actually, Insurance Company should have indemnified the compensation.

6. In alternatively, learned advocate further submitted even for the sake of argument, if owner of the offending vehicle manifestly violated the terms and conditions of the insurance company even then the Ld. Tribunal would have directed the insurance company to pay the compensation amount and then recover, thereafter, from the owner of the offending vehicle. There is no need to file a separate suit for recovery of the compensation amount from the owner of the offending vehicle. Ld Advocate further place reliance of the judgement reported in Singh Ram v. Nirmala and Others-2018 ACJ 1264 (SC)., wherein the Hon'ble Supreme Court held that the Insurance Company is to pay the compensation amount to the claimants with a liberty to recover from the owner of the offending vehicle. In the said case, the owner-cum- driver produced a licence which was fake and another licence which he sought to produce had already expired before the accident and it was renewed more than two years after it had expired. Accordingly, the owner of the offending vehicle violated the conditions of the insurance policy. Lastly, he submitted on his usual fairness that the Ld. Tribunal erred in assessing multiplier as 15 though it would be 14 considering the age of the victim in view of the judgment pronounced in Sarla Verma and Others vs. Delhi Transport Corporation and Another (2009) 6 SCC 121 and thereafter by Constitution Bench in National Insurance Company Ltd. Vs. Pranay Sethi & Ors. (2017) 16 SCC 680.

7. Considering all the above issues, he prays for enhancement of the compensation and also direction for pay and recovery provision in view of the judgment referred above.

8. On the other hand, Ms. Sucharita Paul, learned Advocate appearing on behalf of the respondents/Ins. Co. vehemently argued and submitted that the owner of the offending vehicle had violated the terms and conditions of the insurance company. It is reflected in the judgment itself that the driving licence produced by the claimants subsequently found fake because the authorised persons of RTO adduced evidence as OPW 3. He stated in his evidence that the driving licence

which was produced by the claimants bearing driving licence No. WB-25042314 did not find in the office record. As per the office record, the driving licence up to no. 25042300 was only issued and no driving licence bearing no. WB-25042314 had been issued by the office as yet. So, it is the fake driving licence and during cross-examination his evidence did not contradict or rebut by the appellants/claimants. So, this is a clear case of violation of terms and conditions of Insurance Policy on the date of accident as there was no valid licence.

9. The observations made by the Ld. Tribunal is absolutely correct and rightly observed that without any hesitation it can be held that the owner of the offending vehicle violated the terms and conditions of the insurance policy. Consequently, the case was dismissed against the Insurance Company. Therefore, the insurance company is not liable to pay the compensation as awarded by the Ld. Tribunal. Accordingly, she prays for dismissal of the instant appeal with costs.

10. Having heard the rival submissions of parties and on perusal of the record as well as judgment passed by the Ld. Tribunal, it appears the Ld. Tribunal has awarded a sum of Rs. 3,69,500/- in favour of petitioner nos. 1, 2 and 3 without considering the future prospect and actual general damages. Furthermore, the Ld. Tribunal also wrongly calculated the multiplier as 15 though it would be 14 in view of the age of the claimants. In the present case, the age of the deceased was 43 years as per the post mortem report as such he falls in the age group of 41 to 45 years and for that actual multiplier would be 14 in view of judgement pronounced in Sarla Verma and Others vs. Delhi Transport Corporation and Another.

11. It is not disputed by the parties regarding the assessment of the income of the victim as Rs. 3,000/- per month as notional income because the claimants failed to prove the income as claimed by the claimants as Rs. 4,000/- from his service in M/s Ghatak Builders.

12. We should not forget the judgments pronounced by the Hon'ble Supreme Court in Pranay Sethi's Case and Sarla Verma's Case. Those judgements are landmark in the field of process of awarding compensation in Motor Traffic Accident cases. In view of aforesaid judgements, the claimants are also entitled to get future prospects and general damages towards loss of estate, funeral expenses and consortium.

13. Keeping in mind the above observations, the calculation of compensation would be assessed as follows:

CALCULATION OF COMPENSATION

Monthly Income

Rs.

3,000/-

Add: 25% Future Prospect

Rs.

750/-

Total Income

Rs.

3,750/-

Annual Income (3,750/- X 12)

Rs.

45,000/-

Multiplier 14 (Rs. 45,000 X 14)

Rs.

6,30,000/-

Less 1/3rd for personal expenses

Rs.

2,10,000/-

Total Income after deduction

Rs.

4,20,000/-

Add: General Damages

Rs.

70,000/-

Total compensation amount after adding general damages

Rs.

4,90,000/-

14. Thus, the appellants/claimants are entitled to get total compensation amount to the tune of Rs. 4,90,000/= (Rs. Four Lakh Ninety Thousand Only) which shall carry interest @ 6% per annum from the date of filing of the claim application i.e. from 29.06.2010 till final payment.

15. The respondent no. 1-Insurance Company is directed to deposit the total compensation amount i.e. Rs. 4, 90,000/= (Rs. Four Lakh Ninety Thousand only) and the interest as indicated above by way of cheques before the Office of learned Registrar General, High Court, Calcutta within a period of 4 weeks in

view of judgment delivered in Singh Ram v. Nirmala and Others reported in 2018 ACJ 1264 (SC) with a liberty to recover from the owner of the offending vehicle.

16. Learned Registrar General, High Court, Calcutta, upon deposit of the amount and interest on the total awarded compensation amount as indicated above, shall release the amount in favour of the appellants/claimants in equally share to the claimants, upon proper identification and subject to verification of the payment of ad valorem Court fees on the total amount, if not already paid.

17. The impugned judgment and award of the learned Tribunal dated 30.01.2013 is modified to the extent only as aforesaid.

18. With the above observations, the instant appeal being FMA 1338 of 2013 stands disposed of without order as to costs. Consequently, pending application, if any, is also disposed of.

19. Let a copy of this Judgment along with Lower Court Records be sent back to the learned Tribunal forthwith for information.

20. All parties shall act on a server copy of the judgment and order uploaded from the official website of High Court at Calcutta.

21. Urgent photostat copy of this Judgment and Order be given to the parties upon compliance of all legal formalities.