
(2022) 09 CAL CK 0002

In the Calcutta High Court

Case No : FMA No. 1450 Of 2007, 890 Of 2009

United India Insurance Company Limited

APPELLANT

Vs

Kamala Roy

RESPONDENT

Date of Decision : 02-09-2022

Acts Referred:

Motor Vehicles Act, 1988 — Section 166
Indian Penal Code, 1860 — Section 279, 304A

Citation : (2022) 09 CAL CK 0002

Hon'ble Judges : Rabindranath Samanta, J

Bench : Single Bench

Advocate : Parimal Kumar Pahari, Jayanta Kumar Mondal

Final Decision : Disposed Of

Judgement

Rabindranath Samanta, J

1. Challenge in these two appeals being FMA No. 1450 of 2007 and FMA No. 890 of 2009 is against the judgment and award dated 14.06.2007 passed by the learned Judge, Motor Accident Claims Tribunal (hereinafter be referred to as the Tribunal), 11th Court, Alipore in MACC No. 99 of 2007. By the impugned judgment the learned Tribunal directed the Insurance Company i.e. United India Insurance Company Limited to pay Rs.3,96,000/- as compensation to the claimants Smt. Kamala Roy and others and to pay interest @6% per annum on the awarded amount of money from the date of filing of the claim application on 01.07.2002 till the date of payment.

2. However, the learned Tribunal observed in the body of the judgment that the Insurance Company was at liberty to realise the amount of compensation of award from the owner of the offending vehicle if it was found during any independent enquiry that the insurance policy was forged.

3. By preferring the appeal being FMA No. 1450 of 2007 the Insurance Company assails the findings of the learned Tribunal on the ground that the learned

Tribunal has erred in not recording the finding that the insurance policy produced on behalf of the claimants is a forged document. On such ground the Insurance Company in the appeal seeks setting aside of the impugned judgment and award. On the other hand, the claimants in appeal being FMA No. 890 of 2009 pray for enhancement of the compensation amount.

4. Before I proceed to pen the judgment it will be apposite to record that claimant No.4 Astami Roy and claimant No.5 Rajib Roy who were minors at the time of the filing of the claim application on 01.07.2002 have now attained majority. The memorandum of appeal or any connected paper be corrected recording their name as major. They be treated as major so far as the appeals on hand are concerned.

5. The facts which led the filing of the claim application under Section 166 of the Motor Vehicles Act may be summarised as under:

On 30.12.2001 at about 12:30 hrs a matador van bearing registration No. WMV-217 was proceeding along Kingsway (Gostha Pal Sarani), at an excessive speed and driven in rash and negligent manner endangering to human life and safety. While the vehicle reached near Eden Gardens Gate No.4A, then the vehicle knocked down and ran over a person namely Sudhir Roy @ Sudhir Kumar Roy. Immediately after the accident he was removed to SSKM Hospital where the attending doctor declared him brought dead.

6. Owing to rash and negligent driving on the part of the driver of the offending vehicle the accident took place and the victim died because of the accident. The victim died at the age of 44 years. He was a Group-D staff under P&T Department, G.P.O and he used to earn Rs.4745/- per month.

7. On the allegations of rash and negligent driving on the part of the driver of the offending vehicle an FIR was lodged at Hastings Police Station and the FIR was registered as Hastings PS Case No. 409 dated 30.12.2001 under Sections 279/304A of Indian Penal Code. At the time of the accident the offending vehicle was insured with United India Insurance Company Limited.

8. Owing to sudden and untimely death of the victim, the claimants who happen to be his widow, three daughters and a son fell in acute financial crisis. On the facts as above the claimants sought for compensation of Rs.4,50,000/- with interest thereon.

9. The owner of the offending vehicle namely Sakti Chakraborty contested the claim case before the learned Tribunal by filing a written statement wherein it stated that at the time of the accident the vehicle being matador bearing registration No. WMV-217 was covered under the policy of insurance issued by the United India Insurance Company Limited. However, he denied the allegations that the accident took place due to rash and negligent driving on the part of the driver of the vehicle. It was his assertion that the accident took place due to the negligence contributed by the victim himself. On such grounds, he sought for

dismissal of the claim application.

10. The Insurance Company i.e. United India Insurance Company Limited contested the claim case by filing a separate written statement wherein it specifically stated that the offending vehicle was not at all covered by any valid insurance policy with it. It asserted that the copy of policy filed by the claimants was not genuine. In all insurance policies number of money receipt was written at the bottom of the policy certificate, but the copy of the policy filed by the claimants did not bear the money receipt number at the bottom of the insurance certificate. On such factual aspects, it had no vicarious liability to pay any compensation to the claimants. On such grounds and denying the allegations/ averments as made in the claim application, the Insurance Company sought for dismissal of the claim case.

11. Upon the pleadings of the parties the following issues were framed by the learned Tribunal:

- i) Is the case maintainable in its present form?
- ii) Was the offending vehicle bearing no. WMV 217 involved in the alleged accident?
- iii) Had the victim died due to rash and negligent act of the driver of the offending vehicle?
- iv) Are the petitioners entitled to get compensation as prayed for?
- v) Had the insurance policy valid at the time of accident?
- vi) Are the O.Ps liable to pay compensation to the petitioners?
- vii) To what other relief, if any, are the petitioners entitled?

12. In order to prove the case, claimant no.1 Kamala Roy got herself examined as P.W.3. The claimants examined Abdul Munaf Khan (P.W.1), an employee of G.P.O, Jagadish Chandra Gayen(P.W.2), S.P Chattopadhyay, a senior assistant of United India Insurance Company Limited as P.W.4 and constable Digendra Nath Sarkar as P.W.5.

13. On the other hand, the Insurance Company in order to establish its defence examined Chittorranjan Das, a deputy manager of the Insurance Company as D.W.1 and Anil Kanta Sanyasi, an administrative officer of the Insurance Company as D.W.2.

14. The documents upon which the claimants placed reliance were marked as Exhibits 1 to 19. On the other hand, the documents upon which the Insurance Company placed reliance were marked as Exhibits A,B and C respectively.

15. Upon hearing the learned Advocates appearing for the parties and on assessment of the evidence on record the learned Tribunal partly allowed the claim application with observations as quoted above.

16. Mr. Parimal Kumar Pahari, learned counsel appearing for the Insurance Company submits that it was the specific defence of the Insurance Company that the offending vehicle was not insured with it at the time of the accident and the insurance policy filed by the claimants was not a genuine document. Learned counsel submits that though the witnesses from the Insurance Company namely P.W. 4 S.P Chattopadhyay, a senior assistant of the Insurance Company, D.W.1 Chittoranjnan Das, a deputy manager of the Insurance Company and D.W.2 Anil Kanta Sanyasi, an administrative officer of the Insurance Company deposed in unequivocal term that the insurance policy certificate as filed by the claimants was not issued by the United India Insurance Company Limited, the learned Tribunal by the impugned judgment cast responsibility on the Insurance Company to pay the compensation amount to the claimants with a liberty to realise the amount from the owner of the offending vehicle if it was found during an independent enquiry that the policy was forged. Learned Counsel argues that while the evidence as above is adequate to arrive at a finding that the policy in question was not a genuine one, the learned Tribunal ought not to have directed the Insurance Company to pay the compensation first and recover the amount from the owner of the offending vehicle.

17. Per Contra, Mr. Jayanta Kumar Mondal, learned counsel appearing for the claimants submits that it was not to the knowledge of the claimants as to whether the insurance policy was genuine or not. Learned lawyer by referring to the evidence of P.W.5 constable Digendra Nath Sarkar submits that this witness has deposed that the crime index then prepared by Hastings Police Station will show that the papers which were seized from the offending vehicle included the insurance policy in the name of the owner of the offending vehicle. That being the factual matrix, learned counsel argues that presumption would be drawn out of the police papers that at the time of the accident the vehicle was insured with the Insurance Company namely United India Insurance Company Limited. Learned lawyer further argues that since neither the owner of the offending vehicle nor the Insurance Company produced any copy of the insurance policy, adverse inference would be drawn on the basis of the policy filed in Court that at the material time the offending vehicle was insured with the Insurance Company. In support of his contention learned Counsel has cited a decision in the case of C. Annacheriam and Ors-Vs-Achotha Menon and Ors reported in AIR 1963 SC 128. Learned Counsel referring to paragraph 16 of the written statement of the Insurance Company points out that the Insurance Company in its written statement has stated that the insurance policy certificate was genuine and in such context learned lawyer citing a decision in the case of New India Assurance Co. Ltd.-Vs-Smt. Saheli Sarkar and Others reported in 2013(3) TAC 181 (Cal) submits that such being the pleading of the Insurance Company, the evidence adduced by it that the insurance policy was not genuine should not be taken into consideration.

18. An overall reading of the written statement filed by the Insurance Company shows that in fact the Insurance Company has alleged in the written statement

that the offending vehicle was not insured with it at the time of the accident and as such the copy of the policy filed by the claimants was not genuine. That being the pleading, the decisions reported in 2013(3) TAC 181 is not applicable to the facts on hand.

19. What I find, the owner of the offending vehicle by filing written statement and cross-examining the witnesses of the claimants contested the claim case before the learned Tribunal. But, interestingly, though the owner of the offending vehicle asserted in its written statement that at the material time the offending vehicle was insured with the Insurance Company, he did not file any iota of document in original relating to the insurance policy namely payment of yearly or periodical insurance premium etc. The claim of the claimants was based on photocopy of the insurance policy certificate, which was seized by the police. That being the situation, the original insurance policy ought to have been in possession of the owner of the offending vehicle, but, he failed to produce the original insurance certificate before the Tribunal.

20. It is our common experience that if a vehicle is insured with an Insurance Company, the Insurance Company ordinarily does not question the genuinity of the insurance policy in a claim case. But, as stated above, the Insurance Company has vehemently taken the stand that the offending vehicle was never insured with it and the insurance policy certificate filed by the claimants was not a genuine document.

21. As the case of the claimants is made out, the claimants tried to impress that the insurance policy certificate was issued by the aforesaid Insurance Company manually and it was not a computerised one. In order to establish this factum the claimants examined P.W.4 S.P Chattopadhyay of the aforesaid Insurance Company. In his evidence P.W.4 has stated that since 25.01.2001 the insurance policy certificates were prepared through computer and the computerised policy certificates used to be handed over to the owners of the vehicles. Though this witness was summoned at the instance of the claimants, this witness has vehemently stated that the insurance policy certificate filed in the Tribunal was not a genuine document. On the other hand, the Insurance Company to establish their defence examined the aforesaid two witnesses namely D.W.1 Chittoranjana Das and D.W. 2 Anil Kanta Sanyasi. These two witnesses have categorically testified that since 25.01.2001 all the insurance policy certificates were prepared through computer and computerised policy certificates were issued to the concerned persons. They have stated in their evidence that the insurance policy certificate filed by the claimants was not issued by their company.

22. Perusal of the impugned judgment shows that the learned Tribunal has observed that the evidence produced by the Insurance Company are insufficient to prove that the insurance policy certificate (Exhibit 13) is a forged document. On such observation the learned Tribunal directed the Insurance Company to pay the compensation and it was at liberty to realise the amount of compensation from the owner of the offending vehicle if it was found during any independent

enquiry that such policy was a forged document.

23. It is trite to say that the standard of proof relating to a motor accident claim case is based on preponderance of probability and not beyond reasonable doubt. If on analysing the evidence on record on the touchstone of preponderance of probability the Court or Tribunal finds that some fact stands proved, the Court or Tribunal will act accordingly.

24. As stated above, the owner of the offending vehicle has failed to prove by any iota of documentary evidence that the offending vehicle was ever insured with the Insurance Company. On the contrary, the evidence of P.W. 4 and the evidence of D.W.1 and D.W. 2 as excerpted above unequivocally prove that the United India Insurance Company Limited never issued insurance policy certificate covering the offending vehicle.

25. In view of the above, this Court without any hesitation in mind may safely hold that the claimants as well as the owner of the offending vehicle have failed to prove that at the time of the accident the offending vehicle was insured with the aforesaid Insurance Company.

26. Such being the factual scenario the decision cited by the learned counsel for the claimants reported in AIR 1963 SC 128 is not applicable to the facts of the instant case.

27. Therefore, the Insurance Company has no liability to pay the compensation which is admissible to the claimants.

28. In the absence of any insurance policy covering the offending vehicle, the owner of the offending vehicle is liable to pay the compensation which is payable to the claimants.

29. Now, the question is what would be the quantum of compensation to be paid by the owner of the offending vehicle to the claimants. As it appears from the evidence of P.W.1 Abdul Munaf Khan, an employee of G.P.O as well as from the last pay certificate of the deceased Sudhir Roy, Exhibit (1a) the victim used to draw Rs. 4,895/- per month as a gross salary. Out of this amount, a sum of Rs.150 was deducted as P.Tax. Therefore, at the time of the death the monthly income of the victim was Rs.4,745/-. The victim died at the age of 44 years. The Hon'ble Apex Court in the decision in the case of National Insurance Company Limited -Vs- Pranay Sethi and Ors reported in (2017) 16 SCC 680 has held at paragraph 59.3 that while determining the income an addition of 30% of actual salary should be made as future prospects if the deceased had a permanent job and was between 40 to 50 years of age. In terms of this decision of the Hon'ble Apex Court, 30% should be added to the income of the deceased towards his future prospects. Since the victim died at the age of 44 years multiplier 14 will be adopted in terms of the observations made by the Hon'ble Apex Court at paragraph 42 of the decision in the case of Sarla Verma and Ors -Vs- Delhi Transport Corporation and Ors reported in (2009) 6 SCC 121.

30. The Hon'ble Apex Court in the decision in the case of Pranay Sethi (supra) has held at paragraph 59.8 that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. The claimant No.1 Smt. Kamala Roy is entitled to get the spousal consortium of Rs.40,000/-. However, learned lawyer appearing for the claimant submits that if this amount of Rs.40,000/- is distributed amongst all the claimants equally, his clients will have no objection.

31. As held in Sarla Verma (supra) at paragraph 30, deduction to the extent of 1/4th should be made considering his five dependants.

32. In view of the above the award passed by the learned Tribunal requires modification in the following manner:-

Monthly Income=

Rs.4,745/-

Yearly Income=

Rs.56,940/-

(Rs.4745x12)

Adding Future Prospects @30%=

Rs.17,082/-

of the aforesaid income of the victim

Total=

Rs.74,022/-

Deduction to the extent of 1/4th

Considering his number of dependants =

Rs.18,505/-

Total=

Rs.55,517/-

Adopting multiplier 14 considering =

Rs.7,77,238/-

the age of the victim of 44 years

(Rs.55,517 x 14)

General Damages =

Rs.70,000/-

Loss of Estate(Rs.15,000/-)

Spousal Consortium (Rs.40,000/-) and

Funeral Expenses(Rs.15,000/-)

Total=

Rs.8,47,238/-

33. The claimants are entitled to get the aforesaid compensation from the owner of the offending vehicle. Besides, they are also entitled to get interest @6% per annum on this awarded amount from the date of the filing of the claim application on 01.07.2002.

34. In view of the above, the appeal being FMA 1450 of 2007 preferred by the United India Insurance Company Limited is allowed and the appeal being FMA 890 of 2009 preferred by the claimants Kamala Roy and others is allowed so far it relates to enhancement of compensation.

35. Accordingly, the claim case being MACC No.99 of 2007 brought by the claimants against the United India Insurance Company Limited is dismissed, but the case is allowed against the owner of the offending vehicle namely Sakti Chakraborty.

36. The owner of the offending vehicle, Sakti Chakraborty, the respondent No.1 of FMA 890 of 2009 and respondent No. 6 of FMA 1450 of 2007 is directed to deposit Rs.8,47,238/- as compensation and deposit interest @6% per annum on this awarded amount of Rs.8,47,238 from the date of filing of the claim case on 01.07.2002 by way of cheque with the learned Registrar General of this Court within six weeks from date. After this awarded amount is deposited with the learned Registrar General, the learned Registrar General shall release the amount to the claimants in equal share as expeditiously as possible after being satisfied with their identity. However, if the owner of the offending vehicle fails to deposit the amount within the stipulated time, the claimants will be at liberty to put the award in execution to realise the amount from him.

37. The Insurance Company is at liberty to withdraw the amount deposited by it with the Office of the learned Registrar General as well as the accrued interest thereon. 38. With the aforesaid directions the appeals and connected application, if any, stand disposed of. No order as to costs.

39. Send down the LCR along with a copy of this judgment to the learned Tribunal for information.

40. Urgent certified website copies of this judgment, if applied for, be given to the parties upon compliance with all requisite formalities.

41. However, the appellants may act upon the web generated copy of this judgment.