

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

FMA 659 Of 2023

Sulakha Pandit & Ors.

Versus

National Insurance Company Ltd. & Anr.

For the Appellants : Mr. Supratim Dhar, Adv.
Mr. Dhananjay Nayak, Adv.

Heard on : 30.08.2023, 26.09.2023

Judgment on : 04.10.2023

Ajay Kumar Gupta, J:

1. The appellants have assailed the judgment and awarded dated 8th August, 2018 passed by the Ld. Judge, Motor Accident Claims Tribunal,

Tamluk, Purba Medinipur, in M.A.C. Case No. 3 of 2016, thereby the learned Tribunal allowed the claim application filed under Section 163A of the Motor Vehicles Act, 1988 after rejecting the same against the respondent no. 1/Insurance Company and ex parte against respondent no. 2/owner of the offending vehicle.

2. The background of the filing this appeal is that on 14.10.2013 at about 12 hours, when the victim was going in a pickup van bearing Registration No. WB 29/7251 as a Khalashi, at that material point of time, the vehicle dashed one unknown vehicle, which was standing near Mankur Morh on Kolaghat to Howrah bound road due to rash and negligent driving of the driver. The victim as well as other persons sustained grievous bleeding injuries. Victim was removed to Bagnan Hospital. Where the victim declared brought dead.

3. The respondent no. 1/Insurance Company contested the case by filing written statement denying all the material facts and allegations made by the appellants in the claim application and further Insurance Company stated that the victim was a gratuitous passenger of the light goods vehicle. Accordingly, the Insurance Company is not liable to pay any compensation as claimed by the appellants. Whereas respondent no. 2/owner of the offending vehicle did not contest the case from the initial

stage and claim case was decided ex parte against the owner of the vehicle.

4. The appellants examined Sulakha Pandit as P.W. 1 to substantiate their claim and further produced several documents i.e. FIR, charge sheet, seizure list, insurance policy, PM report, Voter Card marked as Exhibits 1 to 6/1. However, no evidence adduced from the side of Insurance Company. After completion of argument, the learned Judge after scanning and appreciation of evidence adduced by the party came to a final conclusion that the victim, Pratap Pandit was a gratuitous passenger of pickup van along with his son and others. They were going to Kolkata for purchasing vegetables on the basis of facts admitted by the P.W. 1 in her evidence and the owner of the pickup van has flouted the conditions of the insurance policy by carrying passenger in a goods carriage vehicle. The appellants have failed to prove that the victim was a helper of the pickup van. No oral or documentary evidence brought before the learned Tribunal to accept the contention of the appellants that the victim was a helper of pickup van. The learned Tribunal has assessed the compensation amount to the tune of Rs. 4,06,000/- along with interest @ 6% per annum from the date of filing of the claim application till final payment against the owner of the offending vehicle since the owner of the offending vehicle violated the conditions of the Insurance Policy.

5. It is further observed that the Insurance Company is not liable to pay any compensation for carrying the gratuitous passenger in a goods vehicle and finally directed the owner of the offending vehicle/respondent no. 2 to pay the awarded compensation to the claimants by way of three account payee cheques in equal amount within two months from the date of passing of judgment and award as aforesaid through the learned Tribunal. Failing which the claimants will be at liberty to realise the said sum of money in accordance with the provisions of the law.

6. Feeling aggrieved with the said findings of the learned Tribunal, the appellants have filed this appeal only on one ground i.e. the Insurance Company ought to have paid the compensation amount to the claimants in the manner and mode as stipulated by the learned Tribunal in the said judgment and awarded dated 8th August, 2018 with a liberty to recover the said sum from the owner of the offending vehicle in view of catena of judgments of the Hon'ble Supreme Court.

7. Learned advocate appearing on behalf of the appellants further referred three judgments to support his contention that insurance company shall pay and recover the compensation amount from the owner of the vehicle since the insurance policy was valid on the date of accident as follows:

- i). Rani and Others v. National Insurance Co. Ltd. and Others report in 2018 ACJ 2430 (SC).
- ii). Singh Ram v. Nirmala and Others reported in 2018 ACJ 1264 (SC).
- iii). V. Renganathan and Another v. Branch Manager, United India Insurance Co. Ltd. and another reported in 2023 ACJ 623 (SC).

8. Ld. counsel further contended that the learned Tribunal ought to have been directed the Insurance Company to pay the compensation amount as awarded by the learned Tribunal together with interest with a provision of recovery the same from the owner of the offending vehicle but the learned Tribunal has committed an error and directed the owner of the offending vehicle to pay the awarded compensation. The owner of the offending vehicle did not pay any compensation to the claimants till date. He prays for direction upon the Insurance Company to pay the compensation amount to the appellants/claimants together with interest upon giving liberty to recover the same from the owner of the offending vehicle which was involved in the said accident and as the Insurance policy was valid on the date of accident. None appears on behalf of the respondents.

9. Having heard the submission and on perusal of the record and judgments as referred by the appellants, this Court finds there is no

dispute regarding the findings of the learned Tribunal regarding the victim Pratap Pandit was a gratuitous passenger of an offending vehicle i.e. pickup van on the date of accident. Accordingly, the condition of Insurance Policy was flouted by the owner of the offending vehicle. It is true that when the insurance policy was violated by the owner of the offending vehicle, the Insurance Company is not liable to pay compensation. However, the Hon'ble Supreme Court time and again on similar facts and circumstances of the present case directed the Insurance Policy to pay the compensation to the claimants at the first instance, when it is found that the insurance policy was valid on the date of accident and further given liberty to recover the amount from the owner of the offending vehicle in accordance with law. The Hon'ble Supreme Court further observed that there is no need to file a separate suit or fresh proceeding for recovery of the compensation amount awarded by the Id. Tribunal from the owner or driver of the offending vehicle.

10. The judgment referred by the appellant reported in **Rani and Others vs. Insurance Company Ltd. and Others**¹, the Hon'ble Supreme Court observed that the appeals were partly allowed by directing the respondent/insurance company to first pay the compensation amount to the respective claimants as determined by the High Court and Id.

¹ 2018 ACJ 2430 (SC)

Tribunal as the case may be, with liberty to recover same from the owner of the offending vehicle i.e. respondent no. 2 since the offending vehicle had no permit for being plied in the State of Karnataka as its permit was restricted to the State of Maharashtra.

11. In another judgment reported in **Singh Ram v. Nirmala and Others²**, 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.

12. Similarly, in the third case referred by the appellants of the Hon'ble Supreme Court reported in **V. Renganathan and Another v. Branch Manager, United India Insurance Co. Ltd. and Another³**, wherein the Hon'ble Supreme Court held that the Insurance company is liable to pay compensation to the claimants and further entitled to recover

² 2018 ACJ 1264 (SC)

³ 2023 ACJ 623 (SC)

the said amount from the owner of the offending vehicle. In the said case, the victim died while travelling on the mudguard of a tractor, when the tractor met with an accident resulting the death of the victim. Here also the owner of the tractor violated the conditions of the insurance policy. Similarly in the instant case, the victim was travelling in an offending vehicle as a gratuitous passenger at the time of accident. He was with his son and other family members, who were going to Kolkata for purchasing vegetables and the said fact was admitted by the P.W. 1. Accordingly, the learned Tribunal has held that the victim was a gratuitous passenger and the offending vehicle was a goods vehicle and the owner of the pickup van has flouted the conditions of the policy by carrying passenger in a goods carrier vehicle. In such facts and circumstances, the justice would be subserved if this Court directed the insurance company to pay the compensation amount as awarded by the learned Tribunal in the manner and mode as stipulated in the judgment and award dated 08.08.2018 to the claimants with further liberty is given to recover the said amount from the owner of the offending vehicle i.e. pickup van, bearing registration no. WB 29/7251 in accordance with law by the insurance company.

13. In the light of the above discussions, the judgment and awarded dated 08.08.2018 is modified to the above extent and other portions of the judgment are remain unaltered.

14. Accordingly, **FMA 659 of 2023** is disposed of with order as to costs.

15. Let a copy of this Judgment along with Lower Court records, if received, be sent back to the learned Tribunal forthwith for information.

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

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

(Ajay Kumar Gupta, J)

P. Adak (P.A.)