

(2007) 08 CAL CK 0015

Calcutta High Court

Case No: F.M.A.T. No's. 2829 and 3086 of 2004

Amit Bar and Others

APPELLANT

Vs

National Insurance Co. Ltd.

RESPONDENT

Date of Decision: Aug. 1, 2007

Acts Referred:

- Motor Vehicles Act, 1988 - Section 147, 166, 171

Citation: (2009) ACJ 486

Hon'ble Judges: Tapan Kumar Dutt, J; Alok Kumar Basu, J

Bench: Division Bench

Advocate: Subhabrata Dutta, S.K. Das and Rita Bhattacharya, for the Appellant;

Judgement

Alok Kumar Basu, J.

The learned Judge of Third Court, Motor Accidents Claims Tribunal, Midnapore (West), while disposing of M.A.C. Case No. 115 of 2003 of his file brought by Amit Bar against National Insurance Co. Ltd. by his order dated 26.7.2004 determined a compensation amount of Rs. 52,000 in favour of the claimants and directed National Insurance Co. Ltd. to pay the compensation amount.

2. Amit Bar and another being dissatisfied with the quantum of compensation amount determined by the learned Tribunal in their favour preferred F.M.A.T. No. 2829 of 2004, while National Insurance Co. Ltd. being aggrieved by and dissatisfied with the order of the Tribunal directing it to pay the compensation amount preferred F.M.A.T. No. 3086 of 2004.

3. By an order dated 13.11.2006 recorded in the file of F.M.A.T. No. 2829 of 2004, a Division Bench of this Court was of the view that when F.M.A.T. Nos. 2829 and 3086 of 2004 arose out of a common order of the Tribunal, both the appeals should be heard- together and since the issue involved in both the appeals mainly relates to a question of law as to whether the claimants being the legal heirs of the deceased are entitled to get compensation without calling for the lower court record, the

question would be considered and for that purpose both the appeals should be posted "for orders" to decide the question of law as referred to.

4. Pursuant to the above order, we have taken up both F.M.A.T. Nos. 2829 and 3086 of 2004 in presence of learned advocates of the respective parties and after considering submissions of the learned advocates of the respective parties, we propose to dispose of both the appeals by delivering this common judgment.

5. Before dealing with the respective submissions put forward by the learned advocates, it would be proper on our part to bring on record the facts of the case in brief which gave birth to the present appeals.

6. Claimants Amit Bar and another filed an application u/s 166 of Motor Vehicles Act, 1988, claiming compensation to the tune of Rs. 1,00,000 on the ground that on 19.7.2003 near Nimtala Gas Go-down under P.S. Ghatal at about 5.30 p.m. while victim Durga Bar, wife of one Amit Bar was travelling by a motor cycle as pillion rider, due to rash and negligent driving of the motor cycle by its owner Samit Bar, victim Durga Bar suddenly fell from the motor cycle and in that process she received serious injury on her head and after two days from her admission in Ghatal Sub-divisional Hospital she succumbed to her injury.

7. The claimants stated in the claim application that victim was an earning lady and the motor cycle bearing No. WB 30-B 1919 was duly insured with National Insurance Co. Ltd. and the insurance policy was valid up to 28.3.2004. Claimants prayed for compensation both from the owner as well as from the insurance company.

8. Before the learned Tribunal, National Insurance Co. Ltd. contested the claim application by filing written objection contending, inter alia, that it had no responsibility for payment of compensation in view of the facts and circumstances disclosed in the claim application and since the victim died due to rash and negligent act on the part of the owner of the motor cycle, the owner of the motor cycle was liable to pay the compensation. The insurance company also challenged the quantum of compensation.

9. Learned Tribunal after considering evidence adduced by the claimants and after hearing submissions of the learned advocates appearing for the claimants and National Insurance Co. Ltd. ultimately decided that the claimants are entitled to get Rs. 52,000 as compensation on account of death of victim Durga Bar and the Tribunal directed the insurance company to pay the compensation.

10. We have stated earlier that claimants Amit Bar and another being dissatisfied with the quantum of compensation determined by the Tribunal preferred F.M.A.T. No. 2829 of 2004. The learned advocate appearing for the claimants-appellants submits before us that the learned Tribunal ignoring the statutory provisions required for consideration before determining the compensation amount has quite arbitrarily fixed the compensation amount and hence, that determination cannot be

supported in law. The learned advocate appearing for the respondent insurance company in this appeal supports the contention of the appellants and submits that, since no evidence in support of the actual income of the victim woman could be produced before the Tribunal, the Tribunal should have taken Rs. 15,000 per annum as the notional income of the victim woman as per Schedule to the Motor Vehicles Act and after deducting 1/3rd from the said notional income, the income of the victim woman would come to Rs. 10,000 and after applying multiplier of 13, the compensation amount would be Rs. 1,30,000 and another sum of Rs. 9,500 should be added which includes funeral expenses, loss to estate and loss of consortium and thus, the learned Tribunal should have passed the award for Rs. 1,39,500.

11. On careful examination of the judgment and order of the learned Tribunal and having regard to the statutory provisions relating to calculation of compensation amount in case of a person for whom no evidence has been produced to support his actual income, the Tribunal is required to accept Rs. 15,000 as notional income and after deducting 1/3rd from that income, in the present case, the total compensation amount should be Rs. 1,39,500 and, that apart, u/s 171 of the Motor Vehicles Act, the claimants are also entitled to get interest at the rate of 6 per cent per annum on the compensation amount on and from the date of presentation of the claim application till the amount is paid. We find that in this case the claim application was filed on 29.8.2003 and hence, interest is payable from that date till the actual amount is paid.

12. National Insurance Co. Ltd. also filed an independent appeal number being F.M.A.T. No. 3086 of 2004 challenging the order of the Tribunal by which the insurance company was directed to pay the compensation amount contending, inter alia, that under the provision of the Motor Vehicles Act as per terms of the insurance policy, in the present case, the insurance company was not liable to pay any compensation.

13. We have already stated that pursuant to an earlier order of this Court we have taken both the appeals, one preferred by the claimants and the other preferred by the insurance company together for hearing and disposal and now, we take up the appeal of the insurance company for disposal on its merit.

14. From the fact of the case which is undisputed we find that the victim woman was a pillion rider of a motor cycle belonging to its owner Samit Bar and when that Samit Bar was driving the motor cycle and the victim woman was a pillion rider, the victim woman fell from the motor cycle and received head injury and ultimately she succumbed to her injury.

15. We find from the judgment and order of the learned Tribunal that insurance company took the plea before the Tribunal that since the victim woman was a pillion rider and since the terms and conditions of the insurance policy did not cover the risk of a pillion rider of a motor cycle, the insurance company was not responsible

for payment of any compensation.

16. The learned advocate appearing for the insurance company in support of the appeal of the insurance company submits before us that a pillion rider is a mere gratuitous passenger and naturally, u/s 147 of the Motor Vehicles Act the insurance coverage of the offending motor cycle cannot give any benefit to the legal heirs and dependants of the pillion rider who met with an accident being a pillion rider of the motor cycle. The learned advocate also contends that from the insurance policy of the offending motor cycle it was very much clear that no additional premium was paid to cover the risk of pillion rider of the motor cycle and on that ground also, the insurance company, so far as the terms and conditions of the insurance policy are concerned, cannot be compelled to pay the compensation to the claimants.

17. The learned advocate for the insurance company in support of the above contention has drawn our attention to the decision in the case of [United India Insurance Co. Ltd., Shimla Vs. Tilak Singh and Others](#), and submits that the Hon'ble Apex Court in that case held that insurance company owed no liability towards injury suffered by pillion rider since statutory policy did not cover the risk of death or bodily injury to gratuitous passenger. The learned advocate submits that in that decision at para 2, was also held that unless additional premium was paid to cover the risk of pillion rider, the insurance policy of the offending vehicle cannot be put in use to claim compensation on account of death or bodily injury of such rider from the insurance company. The learned advocate submits that in this case from the copy of the insurance policy it would appear that no additional premium was paid to cover the risk of pillion rider and naturally, as per the terms and conditions of the insurance policy, the pillion rider being a gratuitous passenger and without having any insurance coverage, the claimants are not entitled to claim any compensation from the insurance company on account of death of the pillion rider.

18. The learned advocate appearing on behalf of the claimants-respondents, on the other hand, submits before us that the insurance policy produced before the Tribunal would show that it was a "package" policy and naturally, it would cover the risk of the pillion rider also and hence, even if the pillion rider may be termed as gratuitous passenger, since the owner of the vehicle had a "package" insurance policy in respect of the vehicle that would cover the risk of the pillion rider also even if the pillion rider is considered to be gratuitous passenger and for that reason the ratio of decision rendered in the case of [United India Insurance Co. Ltd., Shimla Vs. Tilak Singh and Others](#), shall have no application and the insurance company shall be liable to pay the compensation as ordered by the learned Tribunal.

19. We have considered submission of the learned advocate for the insurance company as well as the learned advocate for the claimants and we find that the undisputed fact was that the victim woman who succumbed to her injury was a pillion rider of a motor cycle. We find from the ratio of decision rendered in the case of [United India Insurance Co. Ltd., Shimla Vs. Tilak Singh and Others](#), as also from

the provision of Section 147 that a pillion rider of a motor cycle is a gratuitous passenger. Now, we find from the ratio of decision of Tilak Singh's case (supra) that even if a pillion rider is a gratuitous passenger, if the owner of the vehicle pays additional premium to cover the risk of death or injury of the pillion rider while entering into agreement with the insurance company, if the pillion rider suffers a death or any bodily injury during the validity of the insurance policy, on the basis of that additional premium paid to the insurance company, the dependants or legal heirs of that deceased pillion rider can claim compensation from the insurance company.

20. The learned advocate for the claimants submits before us that in the present case the insurance policy covered the risk of pillion rider also since the policy was a "package" policy. We have examined the copy of the insurance policy and we do not find anything in the said policy to indicate that any additional premium was paid to cover the risk of pillion rider of the motor cycle and from the recitals of the policy we find that the "package" policy was meant to cover the risk against third party in a series of accidents which would take place during the validity of the insurance policy.

21. Thus, after considering submissions of the learned advocate of both the sides and on careful consideration of insurance policy and fact and evidence of the present case, we find that the victim woman as a pillion rider met with the accident, the insurance policy of the motor cycle was valid on the date of accident, the insurance policy did not cover the risk of the pillion rider since there were no terms and conditions on payment of additional premium to cover the risk of the pillion rider and in such a situation having regard to the provision of Section 147 of the Motor Vehicles Act and the ratio of decision rendered in the case of [United India Insurance Co. Ltd., Shimla Vs. Tilak Singh and Others](#), we are of the considered view that the insurance company as per terms of the. insurance policy is not liable to pay any compensation and the claimants are to realize the compensation amount from the owner of the offending motor cycle.

22. In the light of our above discussion, while we modify the compensation amount determined by the Tribunal and hold/that the claimants are entitled to get compensation amount of Rs. 1,39,500 along with 6 per cent simple interest per annum on that compensation amount on and from 29.8.2003 till the amount is paid, we hold that the insurance company, as directed by the Tribunal, cannot be made liable for payment of such compensation amount and the owner of the vehicle is liable to pay the compensation amount.

23. Thus, after hearing both the sides we dispose of both appeals being F.M.A.T. Nos. 2829 and 3086 of 2004 accordingly.

24. The judgment and order of learned Tribunal is modified to the extent that the owner of the motor vehicle Samit Bar is liable to pay the compensation amount of

Rs. 1,39,500 along with 6 per cent simple interest per annum over the compensation amount on and from 29.8.2003 till the amount is paid and the owner is directed to pay the amount within two months from communication of this order to the said owner failing which the claimants are entitled to start execution case before the learned Tribunal to realize the said amount. The insurance company is not liable to pay the compensation amount as directed by the learned Tribunal. The insurance company is hereby granted leave to withdraw the statutory amount which it has deposited with the learned Registrar General of this Court and the learned Registrar General is directed to pay the amount to the insurance company under proper receipt within 15 days from making a formal prayer before him by the insurance company.

25. Let a copy of this judgment and order be sent to learned Tribunal immediately for information and necessary action.

26. Urgent xerox certified copy of this judgment, if applied for, may be supplied expeditiously after complying with necessary formalities.

Tapan Kumar Dutt, J.

27. I agree.