

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

IA No. CAN 3 of 2015 (CAN 11082 of 2015)
in
FMA 185 of 2006

The New India Assurance Co. Ltd.
Vs.
Sankar Biswas Barman & Ors.

Ms. Gopa Das Mukherjee
... For the appellant/Insurance Company

Mr. Amit Ranjan Roy
... For the respondent no.1/Claimant

In re: IA No. CAN 3 of 2015 (CAN 11082 of 2015)

This is appeal an application for substitution with a prayer for incorporating the names of legal heirs of the injured with regard to the compensation awarded by the learned Tribunal and modified in appeal. The injured sustained injury in a motor accident which took place on 20th April, 2000. On a claim petition, the learned Tribunal awarded compensation. But dissatisfied with the judgment and award passed by the learned Tribunal, the New India Assurance Company Limited preferred the appeal, being FMA 185 of 2006, before this Hon'ble Court and that appeal was disposed of on 5th August, 2015, modifying the award passed by the learned Tribunal.

It is the fact that the claimant/injured died on 10th June, 2012 as it appears from the death certificate

issued by the Kolkata Municipal Corporation. Therefore, the injured/claimant died prior to modification of award in the appeal on 5th August, 2015. Now, this application has been filed on behalf of the legal heirs, i.e., wife and three sons of the injured.

Though, I do not find any prayer for substitution in the application itself or for a prayer for withdrawal of the compensation amount by the legal heirs of the injured/deceased, but the learned advocate appearing on behalf of the applicants/petitioners submits that prayer for recalling of the order dated 5th August, 2015 was made in the application only for substitution of the applicants/petitioners in place of the injured.

In opposition to that, learned advocate appearing on behalf of the Insurance Company raised objecting contending, inter alia, that there is not specific prayer for substitution in the application itself and more so when the appeal was disposed of by this Hon'ble Court the injured was not alive.

After careful perusal of the entire application, I find that tone and tenor of the application is to get the compensation passed by the learned Tribunal and subsequently modified in the appeal.

Considering the beneficial legislation and all the facts and circumstances, I find that the names of the legal heirs of the injured should be allowed to be

substituted as it is reported that the Insurance Company has already deposited all the awarded sum by the order of the Appeal Court dated 5th August, 2015.

As such, the applicants/petitioners be substituted in place of the injured in the appeal.

Department is directed to do the needful.

The applicant/petitioner/claimant no.1, Kabita Biswas Burman, is at liberty to withdraw the compensation amount after substitution.

The learned Registrar General is requested to disburse the amount to the applicant/petitioner/claimant no.1, Kabita Biswas Burman, on proper identification.

The application, being CAN 3 of 2015 (CAN 11082 of 2015), stands disposed of.

(Bibhas Ranjan De, J.)