24-12-2020
Sl. 75
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F. M. A. T. 656 of 2019
(CAN 8198 of 2019)

Future Generali India Insurance Co. Ltd
Vs.
Smt. Aloka Soren and others

Ms. Sucharita Paul
… for the appellant.

Mr. Krishanu Banik
…for the claimants/respondents

By consent of the parties, the appeal itself is taken up for hearing.

The department is directed to issue FMA number forthwith.

This appeal of the Insurance Company is directed against the judgement and award dated 18th March, 2019 passed by the learned Judge, Motor Accident Claims Tribunal, 1st Court, Hooghly Sadar, Chinsurah in M. A. C. Case No. 171 of 2013.

The facts of the case are not in dispute. The only issue that arises for consideration is that the Court below had failed to apply the dicta of the Hon'ble Supreme Court laid down in the case of **National Insurance Company Limited** – Vs. – **Baljit Kaur and others** reported in **AIR 2004 Supreme Court 1340**, particularly paragraphs **20 and 21 thereof**.

Counsel for the respondents also in his usual fairness submits that the decision in the case of **Promod Kumar Agrawal & Ors.** – Vs. – **Mushtari Begum & Ors.** reported in **2004 (3) T.A.C. 289 (S.C.)** [taken out from SCC Reference, particularly paragraphs 10 and 11 thereof] as also the case of **United Insurance Company Limited** – Vs. – **Suresh K.K. and another** reported in **2008 A.C.J. 1741**, particularly **paragraphs 12 to 16**.

That the Court below while dealing with a claim under Section 163A did not allow the Insurance Company after paying the awardees/respondents to recover the awarded sum from the owner of the offending vehicle.

This is clearly contrary to the decisions of the Hon'ble Supreme Court of India referred hereinabove.

Admittedly the sum awarded was under Section 163A to the injured and/or deceased persons, who were gratuitous travelers in a public vehicle.

This Court also sees certain errors committed by the Tribunal below in the matter of calculation of compensation.

In those circumstances, the applying dicta of the Hon'ble Supreme Court of India in the case of Baljit Kaur (supra) as reiterated in the Promod Kumar Agrawal & Others (supra) and Suresh K.K.

(supra), the compensation payable to the respondents shall stand recalculated and modified as follow:

Income (per month) =		Rs. 3,000 /-
		X 12
Yearly Income		Rs. 36,000/-
(-) deduction 1/3rd personal living=		Rs. 12,000/-
		Rs. 24,000/-
Multiplier		x 17
		Rs. 4,08,000/-
(+) General damages	=	Rs. 9,500/-
Total Compensation		**Rs. 4,17,500/-**

The claimants/respondents shall be entitled to a sum of Rs.4,17,500/- as total compensation and the same shall carry interest @ 7% per annum on and from 03.08.2013 till the date of payment.

The Insurance Company shall make payment to the respondents and recover the same from the owner/owners of the vehicle in question.

It is submitted by the Insurance Company that they have deposited a sum of Rs.25,000/- (Rupees twenty five thousand only) with the Registrar General of this Court in aid of this appeal.

Upon payment of sum indicated hereinabove to the Bank Accounts of the claimants/respondents, upon the same being furnished by their Counsel to the Insurance Company and within 45 days thereof, the Insurance Company shall be entitled to claim refund of the aforesaid sum of Rs.25,000/- (Rupees twenty five thousand only) together with any accrued interest from the Registrar General of this Court by an authorized officer to be named in the withdrawal application.

With the aforesaid observations, the instant appeal shall stand disposed of.

In view of disposal of the instant appeal, connected application being CAN 8198 of 2019 is disposed of.

LCR, if any, may be returned back to the court below.

No order as to costs.

Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all formalities.

(Rajasekhar Mantha, J.)