

Ct. **13.9**
No. **2021**
26
2
akb

F.M.A. 198 of 2011
With
C.O.T. 79 of 2018
New India Assurance Co. Ltd.
Vs.
Belmoni Murmu & Ors.
(Via Video Conference)

Mr. Kartick Kumar Bhattacharya
...For the Appellant/Insurance Co. &
Respondent in COT 79 of 2018

Mr. Krishanu Banik
...For the Respondents/Claimants &
Appellants in COT 79 of 2018

The application being IA No. CAN 5 of 2018 (Old No. CAN 6325 of 2018) for attainment of majority in respect of the applicant Nos. 2 and 3 is not available on record.

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

On the oral prayer of the learned Counsel appearing on behalf of the applicants/claimants, the application is allowed subject to the prayer made in the said application. No serious objection has been raised by Mr. Kartick Kumar Bhattacharya, learned Counsel appearing on behalf of the Insurance Company/respondent.

The application is disposed of.

The concerned department is directed to tag the application with the main appeal.

By consent of the parties, both the appeals are taken up for hearing analogously by treating the cross appeal, being COT 79 of 2018, as on day's list.

The concerned Department is directed to trace out and tag the said cross appeal along with this appeal, being FMA 198 of 2011.

The appeal is directed against the judgment and award dated May 17, 2010 passed by the learned Judge, Motor Accident Claims Tribunal, Hooghly, in M.A.C. Case No. 283 of 2018.

The facts of the case are not in dispute.

The claim application was filed under Section 166 of the Motor Vehicles Act, 1988. Although various points are taken in the present appeal, the main ground in the present appeal is canvassed with regard to lack of a valid driving licence of the driver of the offending vehicle.

Mr. Krishanu Banik, learned Counsel appearing on behalf of the respondents/claimants submits that the point of 'not having a valid driving licence' of the driver of the offending vehicle is no longer res integra. Since the larger Bench of the Hon'ble Apex Court of India had already decided this issue in the reported decision of *National Insurance Co. Ltd. Vs. Swaran Singh & Ors.*, reported in AIR 2004 SC 1531. The Insurance Company would be liable to satisfy the award and the said Insurance Company has the right of recovery from the owner of the vehicle.

Mr. Banik further submits that this Hon'ble Court while disposing of the appeal case may consider the point of future prospects, deduction of 1/4th amount on account of owner personal living expenses and general damages of Rs.70,000/- in view of the decision of the Hon'ble Apex Court of India.

In view of the law as it stands now, after the decisions of the Hon'ble Apex Court in cases of *Smt. Sarala*

Verma & Ors. -Vs.- Delhi Transport Corporation & Anr., reported in (2009) 6 SCC 121 and in the case of *National Insurance Company Limited -Vs.- Pranay Sethi & Ors.*, reported in (2017) 16 SCC 680, the submissions and the points made by Mr. Banik are accepted. Therefore, the impugned award is thus modified as stated hereinafter :

Monthly income	Rs. 2,500/-
Annual Income	Rs. 30,000/-
40% future prospects	Rs. 12,000/-
Annual loss of income	Rs. 42,000/-
1/4th deduction for personal Expenses	Rs. 10,500/-
After deduction the figure comes	Rs. 31,500/-
Use Multiplier (16) (31,500 X 16)	Rs. 5,04,000/-
Add: General Damages	<u>Rs. 70,000/-</u>
Principal Compensation	<u>Rs. 5,74,000/-</u>

The respondent Insurance Company is hereby directed to pay Rs.5,74,000/- with 6% interest per annum on and from the date of filing of the claim application till the payment to be made directly to the bank account of the claimants/appellants within a period of 45 days from date.

It is made clear that all the payments shall be made through NEFT/RTGS to the bank accounts of the claimants/respondents and for such purpose the learned Counsel for the claimants shall furnish bank accounts particulars of the claimants to the Counsel for the Insurance Company within two weeks.

After payment being made to the claimants, the Insurance Company is at liberty to withdraw the awarded sum deposited with the Registrar General along with accrued interest from the learned Registrar General of this Court.

With the aforesaid directions, the instant appeal being F.M.A. 198 of 2011 along with the cross objection of the claimants, being COT 79 of 2018 are disposed of.

In view of disposal of the appeal, all connected applications, if any, are also disposed of. The concerned Department is directed to trace out the applications and tag with this appeal.

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

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of all formalities, on priority basis.

(*Shekhar B. Saraf, J.*)