Ct. No. 26

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02.8 2021

F.M.A. 1067 of 2017

National Insurance Co. Limited
Vs.
Kabita Mandal & Ors.
With
C.O.T. 63 of 2017
Kabita Mandal & Ors.
Vs.
National Insurance Co. Limited & Anr.
(Via Video Conference)

Mr. Rajesh Singh **...For the Appellant/Insurance Co. And respondent in COT 63 of 2017**

Mr. Ali Imam Shah **...For the Claimants/Respondents & Appellants in COT 63 of 2017**

The instant appeal is directed against the judgment and award dated July 14, 2016 passed by the learned Additional District Judge, Fast Track Court, Durgapur and Motor Accident Claims Tribunal, Durgapur, Burdwan, in M.A.C. Case No. 40 of 2013/78 of 2012.

The appeal has been preferred by the appellant Insurance Company, disputing its liability of satisfaction of the award, on the ground that the offending vehicle, a ‘Dumper’, did not possess any ‘route permit’ at the time of accident. The insurer also pleaded that the 56 years old deceased was due to retire after 4 years, therefore considering the residual years of service, instead of ‘9’, the multiplier of ‘4’ should have been adopted. The compensation of Rs.1,25,000/- granted under collective heads of ‘general damages’ is alleged to be excessive.

Learned Counsel for the respondent claimants, by way of cross objection, submits that the Tribunal has not awarded compensation on account of deceased’s future prospects.

It is the case of the Insurance Company that route permit was neither found nor seized by the police. In spite of the summons being issued, the owner of the offending vehicle did not appear and the route permit was not even produced before the Court below. Insurance Company took the plea of 'no route permit' in its written statement. However, Insurance Company did not bring any evidence to prove its case. The insurer neither exhibited any document nor produced any witness to deny its liability. Thus, it could not substantiate its case conclusively and there cannot be any definite finding on the issue of 'no route permit'.

While dealing with the 'quantum' of compensation assessed, relying upon the judgments of ***Smt. Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr.,*** reported in **(2009) 6 SCC 121** and ***National Insurance Company Ltd. Vs. Pranay Sethi & Ors.,*** reported in **(2017) 16 SCC 680**, I find substance in the arguments of the Insurance Company on the point of 'general damages'. It should not exceed Rs.70,000/- in total. However, insurer's plea of selection of multiplier on the basis of residual years of service is rejected. The decision of ***Bhogireddi Varalakshmi and Others –Vs- Mani Muthupandi and Others,*** reported in **2017 (2) TAC 3 SC** on the said point, is specific and against the insurer. Deceased was a permanent employee of Eastern Coalfield Limited, therefore claimants' entitlement for 15% additional income under 'future prospect' is allowed.

Accordingly, the impugned award is modified and recalculated in the manner referred hereinafter.

Net Annual Salary (less tax)	**Rs. 14,95,620/-**
Add 15% future prospects (Rs.2,24,343/-)	**Rs.17,19,963/-**
Less - 1/3rd towards personal expenses (5,73,321/-)	**Rs. 11,46,642/-**
Multiplier (9)	**Rs.1,03,19,778/-**

Collective General Damages	**Rs.**	**70,000/-**
Total	**Rs.**	**1,03,89,778/-**

The compensation amount shall carry interest at the rate of 6% per annum from the date of filing of claim application till the date of realization.

Mr. Singh submits that the Insurance Company has deposited a total of Rs.1,19,50,357/- before the Registrar General of this Court. In the light of above submissions, the claimants/respondents shall furnish particulars of their respective Bank accounts with the Registrar General of this Court as expeditiously as possible. Upon receipt of such details, the Registrar General is directed to pay the total deposited amount along with accrued interest to the claimants/respondents in accordance with law in the same manner and proportion of the award as decided by the Court below within a period of four weeks.

The Registrar General shall check the veracity of the bank accounts and the identity of the claimants before disbursing the amounts.

Upon receiving the said payment, the learned Counsel for the claimants shall intimate the amount received along with details of the bank account of the claimants, to the insurer. The Insurance Company, within four weeks from the date of receiving such details and bank particulars, shall calculate and make over the deficit payment to the claimants by way of NEFT/ RTGS in the respective bank accounts of the respondent claimants directly in the proportion decided by the Court below.

However, it will be open to the Insurance Company to file a civil suit against the owner of the offending vehicle for recovery of the compensation paid or payable on the ground that it was the sole obligation of the owner of offending vehicle to pay the compensation, if it can prove its case that the offending vehicle did not possess a valid route permit at the time of accident.

With the aforesaid directions, the instant appeal and connected cross-objection, being F.M.A. 1067 of 2017 and C.O.T. 63 of 2017, together with the connected applications shall stand disposed of. The concerned Department is directed to tag the applications, if any, with the main appeal. There shall be no further order as to costs.

The Registry is directed to send down the lower Court records at once, if received by this time.

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.)