Ct. No. 26

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F.M.A. 2128 of 2014
Oriental Insurance Co. Ltd.
Vs.
Debasis Soren & Anr.
With
C.O.T. 24 of 2012
Debasis Soren & Anr.
Vs.
Oriental Insurance Co. Ltd. & Ors.
(Via Video Conference)

Mr. Samindra Kumar Das
Mr. Debasis Bhundari ...**For the Appellant/Insurance Co. & Respondent in COT 24 of 2012**

Mr. Krishanu Banik
Mr. Ali Imam Shah ...**For the Respondents/Claimants & Appellants In COT 24 of 2012**

This appeal is directed against the judgment and award dated December 06, 2010 passed by the learned Judge, Motor Accident Claims Tribunal, 5th Court, learned Additional District Judge, Burdwan, in M.A.C. Case No. 48/149 of 2008/2008.

The appeal has been preferred by the appellant Insurance Company disputing its liability of satisfaction of award on the ground that two vehicles were involved in the accident but learned Tribunal passed the award against the appellant Oriental Insurance Co. Ltd. However, the appellant Oriental Insurance Company did not produce 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 contributory negligence.

Learned Counsel for the respondents/claimants by way of cross objection submits that the Tribunal has not awarded compensation on account of future prospects and general damages since the deceased named Ester Soren was working as a peon of R.I. Office of Kula under Khandaghosh B.L. & L.R. Office under Government of West Bengal.

Learned Counsel for the respondents/claimants further submits that the claimants are major son and major daughter so they are entitled to get compensation as legal representatives of the victim as decided by the learned Apex Court in the case of ***National Insurance Co. Vs. Birender and Ors.,*** reported in **2020(1) TAC 675**.

Considering the judgements 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 respondents/claimants.

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

Monthly Income	**Rs. 7,000/-**
Annual Income	**Rs. 84,000/-**
Add: Future Prospect 30%	**Rs. 25,200/-**
	Rs. 1,09,200/-
Less: 1/3rd personal expenses	**Rs. 36,400/-**
Contribution to her family	**Rs. 72,800/-**
Multiplier '13' as age in group 46-50	**Rs. 9,46,400/-**
Add 'General Damages'	**Rs. 30,000/-**
TOTAL Principal Compensation	**Rs. 9,76,400/-**

The compensation amount Rs. 9,76,400/- shall carry interest at the rate of 6% per annum on and from the date of filing of claim application till the date of realization.

Mr. Shah submits that the Insurance Company has deposited a total sum of Rs. 8,80,500/- before the learned 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 from the date of receipt of the bank particulars of the claimants by way of NEFT/RTGS in their respective bank accounts.

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

Upon receiving the said payment from Registrar General, the learned Advocate for the claimants shall inform the same along with bank particulars of the claimants, to the learned Advocate for the insurance company. The insurer, within a period of 45 days from the date of receipt of bank account details of the claimants, shall calculate the deficit payment in terms of the direction of this court and make payment of the same to the claimants. The payment shall be made directly in the bank accounts of the claimants through NEFT/RTGS, in the proportion decided by the Court below.

With the aforesaid directions the instant appeal, being FMA 2128 of 2014 and the COT 24 of 2012 are disposed of.

In view of disposal of this appeal, connected applications, if any, are also 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.)