Ct. No. 26

11

akb

06.7

2021

F.M.A. 228 of 2019

(Via Video Conference)

National Insurance Co. Limited

Vs.

Sarifa Bewa & Ors.

Ms. Sucharita Paul ...**For the Appellant/Insurance Co.**

Mr. Saidur Rahaman ...**For the Respondents/Claimants**

The appeal of Insurance Company is directed against the judgement and award dated August 17, 2018 passed by learned Judge, Motor Accident Claims Tribunal Cum Additional District & Sessions Judge, Fast Track 2nd Court, Malda, in M.A.C. Case No. 263 of 2015/CIS Regd. No. 267 of 2015.

Two grounds have been raised by the Insurance Company in the instant appeal. The first ground is that at the time of the accident the victim was travelling as a gratuitous passenger in the offending goods carrying Mini Truck. Therefore, Insurance Company is not liable to pay compensation and the award should be satisfied by the owner of the said vehicle. The second contention is that the deduction on account of personal expenses of the victim should have been 1/3rd instead of 1/4th, which has been applied by the Tribunal while assessing the quantum of compensation.

As to the first ground, it does not appear that the Insurance Company adduced any evidence or called any witness in support of its contention. The Tribunal, considering the judgements passed by Hon’ble Supreme Court, granted Insurance Company the right to recover the awarded amount from the owner of the vehicle after making due payment to the claimants. I do not find any error in such directions passed by the Tribunal. Accordingly, the Insurance Company shall be entitled to proceed against the owner of the vehicle for recovery of any sums of money that it would pay under the relevant provisions of the Motor Vehicles Act and otherwise.

As to the second ground raised by the appellant, I find that there is substantial basis to the appellants' assertion that the deduction on account of personal expenses should be $1/3^{rd}$.

The impugned award of August 17, 2018 is thus modified. Since the income of the victim was Rs.3,000/- per month, on an annual basis, such income would be Rs.36,000/-. After deducting one-third on account of personal expenses, the notional figure comes to Rs.24,000/- on which the multiplier of 16 would apply for the net compensation to be Rs.3,84,000/-. The claimants would also be entitled to an amount of Rs.2,500/- on account of loss of estate, Rs.2,000/- for funeral expenses and Rs. 5,000/- as loss of consortium. The gross compensation works out to Rs.3,93,500/-. The claimants will be entitled to interest on such amount at the rate of 6% per annum from the date of lodging the claim till the receipt of payment.

It appears that a sum of Rs.5,32,945/- has been deposited by the appellant under OD Challan No. 090 dated April 11, 2019 and the statutory amount of Rs.25,000/- has also been deposited under OD Challan No. 2503 dated January 4, 2018 with the Registrar General of this Court. The Registrar General will ensure that the amount due to the claimants in terms of this order is paid off as expeditiously as possible and preferably within two weeks from the date of receipt of bank account details of the claimants, in the same manner and proportion as decided by the Court below. To this effect, Counsel for the claimants shall furnish the particulars of the Bank Accounts of the claimants to the Registrar General of this Court within three weeks from date. The Registrar General shall check the veracity of the bank accounts and the identity of the claimants before disbursing the amounts.

The remaining balance amount should be refunded to the appellant Insurance Company without any undue delay.

With the aforesaid directions the instant appeal is disposed of.

In view of the 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 will be no order as to costs.

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.)