30.11.2021
Item No.5
Ct. No.7
PA
(disposed of)

F.M.A. 309 of 2019
IA NO:CAN/1/2018 (Old No:CAN/10384/2018)
With
C.O.T. No. 4 of 2020
United India Insurance Company Ltd.
Vs.
Nasima Mollick & Ors.

Mrs. Sucharita Paul
…for the Appellant/Insurance Company

Mr. Jayanta Kumar Mandal
Mr. Sayantan Rakshit
…for the Respondents/ Claimants

The instant appeal is listed today under the heading “To Be Mentioned” at the instance of learned advocate for both the parties to this case, upon mentioning.

Learned advocate for both the parties are ad idem on the point that the instant appeal may be disposed of giving a go bye to the technicalities involved in the process.

It is submitted by the learned advocate for the appellant/Insurance Company that the appeal may be disposed of on the basis of the materials furnished by both the parties to this case, which is not opposed by the respondents/claimants.

When the learned advocates for both parties are agreeable to the expeditious disposal of the instant appeal, the Court should not stand in the way.

The appeal is thus taken up for consideration irrespective of the fact that the appeal is appearing today under the heading “To Be Mentioned”.

This is an appeal of Insurance Company, and the appeal is directed against the judgement and award dated 29th September, 2018, passed by the learned Judge, Motor Accident Claims Tribunal, 3rd Fast Track Court, Alipore, South 24 Parganas, in M.A.C. Case No.59 of 2016, of a claim under Section 166 of the M.V. Act, 1988, granting award to the tune of Rs.8,72,800/- to the dependents of the deceased, namely, Saddam Hossain Mollick @ Saddam Mollick, for a vehicular accident, occurred on 8th April, 2016, by reason of involvement of vehicle No.WB-19G/1259 in consequence of rash and negligent driving.

Mrs. Sucharita Paul, learned advocate representing appellants/Insurance Company submits that the learned Tribunal has erroneously decided the compensation ignoring the facts that the driver of offending vehicle neither possessed driving licence, nor the offending vehicle had any valid route permit, and more so, the registration of the offending vehicle was not valid on the date of accident.

Adverting to the exhibited documents, like claim application, seizure list, charge-sheet, copy of route permit, Mrs. Paul submits that a yellow colour offending school bus had been used to make staff of Netaji Subhas Chandra Bose International Airport reach to the destination, making violation of the terms and conditions of the policy issued by the appellant/Insurance Company.

The quantification of the award is thus absolutely illegal.

Emphasis has been made by Mrs. Paul that the accident was held on 8th April, 2016 and the registration certificate/Exbt.3 was valid till 19th February, 2016. Therefore, the validity period of the registration having expired before the date of accident, there had been gross violation of the terms and conditions of the policy, for which the appellant/Insurance Company should not have been made liable to pay any compensation responding to the claim application.

Referring to the terms and conditions of the policy, and the wanting of valid driving licence of driver of the offending vehicle, Mrs. Paul contends that the compensation, if any, should have been paid by the owner of the offending vehicle, but not by Insurance Company, for the apparent violation of the terms and conditions of the policy being *ex facie*, shown in the instant claim case.

Mr. Jayanta Kumar Mandal, learned advocate appearing on behalf of the claimants being dissatisfied with the quantum of compensation awarded by the learned Tribunal has filed a cross-objection being COT 4 of 2020, mainly on the point of income of the victim, which according to respondents/claimants, remained improperly assessed by the learned Tribunal leading to inadequate quantification of the award granted in this case, which can hardly be regarded just and proper.

Upon perusal of the judgement, it appears that victim left this world being a victim of road traffic accident, when he was 23 years old. Victim was a fish seller at the time of accident.

Facts leading to the death of the victim in the above accident are not disputed.

Ascertainment of the income of the deceased, and proper selection of multiplier are of highest significance for appropriate quantification of the award.

In this appeal, the respondents/claimants taking recourse to cross-objection, referred above, has submitted that the income of the deceased has been improperly assessed at Rs.3,000/- per month, which should have been much more, than already ascertained by the Tribunal.

Having regard to the practice and precedents of this High Court, the Court is of the view that though the deceased had no permanent employment, but he had some substantial income to maintain his dependants/family members. In that view of the matter, the accident having occurred in 2016, it would be more appropriate to assess the income of the deceased victim at Rs.5,000/- per month, instead of Rs.3,000/- per month.

The multiplier appears to have been rightly chosen following settled proposition of law rendered in the case of ***Smt. Sarla Verma & ors. Vs. Delhi Transport Corporation & Anr.*** reported in **(2009) 6 SCC 121,** subsequently reinforced by the Apex Court in the case of ***National Insurance Company Ltd. vs. Pranay Sethi & ors.,*** reported in **(2017) 16 SCC 680.**

Considering rival submission of the parties, and the proposition of law decided by the Apex Court, in cases of ***Amrit Paul Singh & Anr. Vs. TATA AIG General Insurance Company Limited & Anr.***, reported in ***(2018) 7 SCC 558, National Insurance Company Ltd. Vs. Swaran Singh & Ors.*** reported in ***(2004) 3 SCC 297***, ***Mukund Dewangan Vs. Oriental Insurance Company Limited***, reported in ***(2017) 14 SCC 663,*** as well as general practice and precedent of this High Court, the above award passed by the learned Tribunal needs modification so as to make it just, proper and perfect.

For the violations of the terms and conditions of the policy, inadequacy of the driving licence, and the deficit in the certificate registration, the dependants of the deceased should not be subjected to starvation for their financial distress in a claim case under Section 166 of M.V. Act.

The points so raised in the appeal by the appellant/Insurance Company are subject of consideration before the appropriate forum in connection with appropriate litigation, if any, undertaken by the Insurance Company intending to recover the amount payable to claimants/respondents.

Therefore, in the given context of this case, there can not be any reverse decision of law against the settled proposition of law already decided by the Apex Court **"pay and recover"**.

The order passed by the learned Tribunal is thus modified to the extent hereinbelow and re-calculated in the manner referred hereinafter.

Particulars	**Amount (Rs.)**
Monthly Income	5,000/-
Add- 40% future prospect	(+) 2,000/-
	7,000/-
	X 12
	84,000/-
Less:1/3th deduction Towards Personal expenses	(-) 28,000/-
	56,000/-
Multiplier 18	(X) 18
	10,08,000/-
General Damages	+.70,000/-
Total	**10,78,000/-**

The total amount or Rs.10,78,000/- would become payable to the claimants together with interest assessed at the rate of 6% per annum on and from the date of filing of the claim petition within a period of 45 days from the date of receipt of the bank account particulars of the respondents/claimants.

It appears that a sum of Rs. 10,82,415/-, apart from statutory deposit of Rs. 25,000/-, have already been deposited by respective challans with the Registrar General of this Court. The Registrar General will ensure that the entire deposited amount is paid to the claimants as expeditiously as possible, preferably within a period of two (2) weeks from the date of receipt of bank account details of the claimants.

Liberty is given to claimants to make proper approach to Registrar General for release of such modified award, and if any approach is made by claimants, the Registrar General of this Court shall cause order releasing such modified sum of award forthwith upon establishing identity of claimants.

Learned advocate for the respondents/claimants shall forward the bank account details of the respondents/claimants within a fortnight from date to the Registrar General of this Court. The payment shall be made in the same manner and proportion, as already decided by the learned court below.

After receiving such amount from High Court, the respondents/claimants are at liberty to furnish the bank particulars to the appellant/Insurance Company, informing the amount already received by them, to enable the Insurance Company to transmit the differential amount in view of this order within three (3) weeks in the said bank account of the claimants/respondents, in the same proportion, as directed in the award of the learned Tribunal. The Insurance Company after receiving intimation from the claimants shall calculate the further amount due to the respondents/claimants and transmit the same directly to the respective bank account of the claimants within four weeks thereafter.

Insurance Company is further given liberty to take steps in accordance with law to recover the amount payable to the respondents/claimants from the owner of the offending vehicle.

With the aforesaid directions the instant appeal is disposed of.

In view of the disposal of this appeal and cross-objection, connected applications, if any, are also disposed of.

There shall be no further order as to costs.

L.C.R. if any, may be returned back to the learned 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.

All parties shall act in terms of copy of this order downloaded from the official website of this Court.

(Subhasis Dasgupta, J.)