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(Via Video Conference)

F.M.A.T. 39 OF 2020
with
I.A. No. CAN 1 OF 2020
(Old No. CAN 781 OF 2020)

Reliance General Insurance Co. Ltd.
Vs.
Smt. Sreya Chowdhury (Sarkhel) & Ors.

with

COT 13 OF 2020

Smt. Sreya Chowdhury (Sarkhel) & Ors.
Vs.
Reliance General Insurance Co. Ltd.

Mr. Soumendranath Gangopadhyay
Ms. Gopa Das Mukherjee.
...For the Appellant/
Insurance co. & Respondent
Insurance Co. in COT 13/2020

Mr. Ashique Mondal
...For the Respondents/
No. 1 to 3. & Appellants 1, 2
& 3 in COT 13 OF 2020.

The appeal is directed against the judgment and award dated 26th November, 2019 passed by the learned Judge, Motor Accident Claims Tribunal, IVth Bench, City Civil Court at Calcutta, in M.A.C. Case No. 196 of 2015.

The appeal has been preferred by the appellant insurance company primarily on the ground that the driver of the offending vehicle did not possess a valid driving license at the time of the accident which amounts to breach of terms of insurance policy and consequently, the insurance company should be absolved of all its liability to pay compensation to the respondent claimants. It is also pleaded as a ground of appeal that tax has not been deducted by the tribunal while assessing the income of the deceased victim for the purpose of quantification of the payable compensation.

The claim was filed under Section 166 of the M. V. Act, 1988. Learned advocate for the respondent nos. 1, 2 and 3/ claimants submits that the impugned judgment is unjust and erroneous and that the tribunal has failed to exercise the jurisdiction vested in it. He further argues that the tribunal ought to have appreciated that the compensation awarded does not mitigate the hardship of the cross-objectors, is inadequate, and does not constitute just and reasonable compensation. It is argued that the tribunal has erred by overlooking the relevant aspects for quantifying just and reasonable compensation both under the heads of pecuniary or general damages as well as non-pecuniary or special damages. In the process of deciding the claim, it is argued, the tribunal has erred in not appropriately appreciating the documentary evidence on record while considering the monthly income of the deceased victim for the purpose of quantifying the payable compensation. Compensation granted under the head of loss of consortium, funeral expenses, and loss of estate of the deceased victim has also been challenged and pleaded as grounds in COT No. 13 of 2020.

In turn, learned advocate for the insurance company submits that the award passed by the tribunal is unjust and there is no scope of any further enhancement of the award rather it should be reduced.

The first ground raised by the appellant/ insurance company with regard to liability of the insurance company to pay compensation to the respondent Nos. 1, 2 and 3/ claimants due to absence of valid driving license of the offending driver at the time of accident is devoid of any merit. The issue has been adequately dealt with by the tribunal in the impugned judgment wherein it has already been clearly held that the offending driver was not holding any valid driving license at the time of accident. In terms of the binding precedents in this regard, the tribunal has correctly directed to pay the insurance company the due compensation to the claimants and then recover the same from the owner of the vehicle. The decision of the Hon'ble Apex Court passed in ***Parminder Singh v. New India Assurance Co. Ltd.*** reported in ***(2019) 7 SCC 217*** lends support to the long line of decisions in support of pay and recovery principle in this regard. As such although the offending driver was not holding a valid driving licence at the time of accident, the insurance company shall pay the compensation amount and shall be at liberty to recover it from the owner of the vehicle.

The second ground of the appellant/ insurance company is with regard to the non-deduction of tax from the income of the deceased victim. The respondent Nos. 1, 2 and 3/ claimants have also challenged the computation of the income of the deceased victim, claiming that it is on the lower side. The income assessed by the tribunal is Rs.18,007/-. From Exhibit 17 (Series) it can be clearly seen that the deceased victim had drawn a total salary of Rs.20,157/- in the month of October, 2014 i.e. the month immediately preceding the date of accident which was 24.11.2014. From the said salary, Professional Tax of Rs. 130/- only can be deducted which would bring the salary of the deceased victim to Rs.20,027/-. This salary should be considered for the purpose of calculation of the compensation payable to the respondent Nos. 1, 2 and 3/ claimants since the other components of the salary such as T.A., D.A., Provident Fund etc. cannot be deducted from the income of the deceased victim.

The remaining factors of computation of payable compensation has been well-settled by the Hon'ble Apex Court in ***National Insurance Company Limited –vs.- Pranay Sethi & Ors.***, reported in ***(2017) 16 SCC 680***. Be that as it may, considering the rival submissions of the parties as well as judgment of Hon'ble Apex Court as well as general practice of our High Court, above award, passed by the tribunal, is modified and recalculated as follows:

Particulars	**Amount (Rs.)**
Monthly Income	20,027/-
Less - 1/3rd towards personal expenses	13,352/-
Add - 50% additional income towards future prospects	20,028/-
Annual Income (x 12)	2,40,336/-
Multiplier (17)	40,85,712/-
Loss of consortium	40,000/-
Loss of estate	15,000/-
Funeral expenses	15,000/-
Total	41,55,508/-

Since no amount has been paid by the insurance company to the respondent Nos. 1 – 3/ claimants, the entire awarded amount which comes to Rs. 41,55,508/- together with 6% interest from date of claim application i.e. 29.06.2015 till payment shall be paid to the respondent Nos. 1-3/ claimants within 30 days of receipt of particulars of their respective bank accounts to be supplied by their counsel to the counsel for the insurance company.

It is made clear that the payment shall be made by the insurance company by way of NEFT/ RTGS in the respective bank accounts of the respondent Nos. 1-3/ claimants directly in accordance with the proportionate share as indicated in the impugned judgment dated 26th November, 2019 passed by learned Judge, Motor Accident Claims Tribunal, IVth Bench, City Civil Court at Calcutta, in M.A.C. Case No. 196 of 2015.

It is further made clear that the insurance company shall pay the compensation amount to the respondents/claimants and shall be at liberty to recover it from the owner of the vehicle thereafter.

With the aforesaid directions, the instant appeal and connected cross-objection being F.M.A.T. No. 39 of 2020 and COT No. 13 of 2020 stand disposed of.

In view of the disposal of the appeal, connected applications, if any, are also disposed of. The department concerned is directed to tag the applications, if any, with the main appeal.

The department is directed to send down the lower court records, if arrived, immediately.

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.

(Shekhar B. Saraf, J.)