

Ct. No. 26
14
akb

16.9
2021

F.M.A. 1851 of 2018
Bajaj Allianz General Insurance Co. Ltd.
Vs.
Nemai Chandra Khanra @ Nemi Khanra & Ors.
(Via Video Conference)

Mr. Rajesh Singh **...For the Appellant/Insurance Co.**
Mr. Krishanu Banik **...For the Claimants/Respondents**

This appeal is directed against the judgment and award dated August 30, 2017 passed by the learned Judge, Motor Accident Claims Tribunal, 2nd Court, Tamluk, Purba Medinipur, in M.A.C. Case No. 18 of 2015 / 118 of 2009, for the death of one 34 years old lady 'Krishna Khanra' in a vehicular accident dated February 14, 2009.

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 'Hyundai Santro Car', was not involved in the accident. Insurer further pleaded that even after assuming that the said car was involved, the rash and negligent driving of its driver was not proved. The issue of 'contributory negligence' of the deceased pillion rider, who was going on a motorcycle which carried 4 (four) persons at the time of accident, was also raised. Lastly, it was submitted that the rate of interest of 8% per annum on the compensation amount, was excessive.

Mr. Krishanu Banik, learned Counsel for the respondents/claimants, supports the finding of the learned Tribunal. The claimants pray for enhancement of compensation amounting along with granting of interest from the date of filing of claim application.

The involvement of the offending vehicle was

proved through the charge sheet filed by the police authorities. The judgment of this Court in the case of *National Insurance Co. Ltd. Vs. Mita Samanta & Ors.*, reported in 2010 (3) CHN (Cal) 411 holds that after taking the leave under Section 170 of the Motor Vehicles Act, 1988 from the Tribunal, if the insurer fails to produce the driver and owner of the offending vehicle, adverse inference may be drawn that on the date of accident, the offending vehicle was involved. Similarly, in AIR 1968 SC 1413 (*Gopal Krishnaji Ketkar Vs. Md. Haji Latif*) the Hon'ble Supreme Court held that until and unless the best witness, i.e. driver of insured vehicle is summoned and examined in Court, the disputed question of fact cannot be adjudged. In addition, the decision of the Hon'ble Supreme Court in the case of *Laxmibai Vs. KSTRC, Bangalore*, reported in AIR 2001 SC 2208, decided that the alleged offending vehicle in the said case was involved in the accident, as the respondent withheld the evidence which were in its possession.

Similarly, in the instant case as well, the appellant, being the insurer of the alleged offending Santro Car, could not bring its best witness, the owner or the driver of the said car to Court. To prove its case of 'non-involvement of alleged offending car' or 'rash and negligent driving of the car driver not being established', none of the other occupants of the motorcycle came before the Tribunal. There is not even an iota of evidence of 'contributory negligence' of the deceased motorcycle occupant. The offending car and its documents were seized and its driver was charge sheeted and arrested. Thus, the involvement of offending vehicle (Santro Car) and rash and negligent driving of its driver cannot be questioned.

Accordingly, both the above points raised by the insurer are devoid of merits and dismissed. The claimants would be entitled to receive the compensation amount of Rs.4,20,000/- as assessed by the Tribunal along with interest to be calculated @ 6% per annum on the said amount, to be calculated on and from the date of filing of the claim application till realisation.

The learned Counsel for the appellant Insurance Company submits that a total sum of Rs.4,44,832/- by way of two separate deposits, has been secured by the insurer with the learned Registrar General of this Hon'ble High Court.

Accordingly, the claimants/respondents shall furnish particulars of their respective bank accounts and also proof of identity with the Registrar General of this Court as expeditiously as possible. Upon receipt of such details, the Registrar General is directed to pay the entire deposited amount along with accrued interest to the claimants/respondents in accordance with law 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 learned Counsel for the Insurance Company. The Insurance Company, within 45 days 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 same manner and proportion as decided by the Court below.

With the aforesaid directions, the instant appeal, being F.M.A. 1851 of 2018 shall stand disposed of.

Consequently, the connected application for stay is also disposed of.

There shall be no further 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.*)