S/L 20
02.7.2021
Court No.26
SD

FMAT 49 of 2020
With
CAN 1 of 2020
(Old CAN 945 of 2020)
(Via Video Conference)

The New India Assurance Co. Ltd.
Vs.
Smt. Arati Pal & Ors.

Mr. Sanjay Paul
... for the Appellants/Insurance Co.
Mrs. Susmita Saha Dutta
Mr. Niladri Saha
... for the Respondents/Claimants.

On the basis of oral application, delay in filing the appeal is condone.

This instant appeal filed by the New India Assurance Co. Ltd. against the award and/or Judgment dated August 29, 2019 passed by the Additional District & Sessions Judge, M.A.C. Tribunal, F.T.C.- 1st, Islampur, Uttar Dinajpur in C.I.S. No. (M.A.C.C.) No. 147 of 2018 (Arati Pal & Anr. –vs- Md. Bin Kashim Sarkar & Anr.).

The facts of the case are not in dispute.

The claim was filed under Section 163A of the M. V. Act, 1988. Counsel for the appellant/insurance company submits that the Tribunal committed error in law while awarding compensation of Rs.5,00,000/ by relying upon a Gazette notification dated 22nd May, 2018 published by the Ministry of Road Transport and Highways Authorities whereby the said authority amended the Second Schedule of 163A of the Motor Vehicles Act, 1988 and assessed compensation of Rs.5,00,000/- lump sum basis irrespective of age and income of the victim which has given effect from 22nd May, 2018 to those cases which shall be filed after the said amendment but the accident as well as claim application filed in the instant case prior to date of amendment.

Counsel for the appellant/insurance company further submits that the Tribunal committed error in law while directing the appellant/insurance company to pay compensation instead of owner of the offending vehicle since at the time of accident the insurance policy was not valid due to dishonour of cheque issued by the insured for renewal of insurance policy.

Counsel for the respondents/claimants submit that due to non-payment of premium for insurance policy by the owner of the offending vehicle the third party to the accident cannot be suffered, therefore, the Tribunal is just while directing the appellant/insurance company to pay compensation. Regarding quantum of compensation the counsel for the respondents/claimants fairly conceded over the issue and submit that her clients are ready and willing to take compensation by following the old II Schedule of the M.V. Act, 1988.

Needless to mention here that despite service of summons, the owner of the offending vehicle chose not to contest the case before the Tribunal and claim case was heard ex-parte against the said opposite party.

Be that as it may, considering the rival submissions of the parties this Court assessing compensation by following the old II Schedule of the M.V. Act, 1988 as follows:

Monthly income	Rs.3,000/-
Annual Income	Rs.36,000/-
Less personal expenses (1/3rd)	Rs.12,000/-
Annual loss of dependency	Rs.24,000/-
Multiplier 11 (51 years as per P.M. Report	
(Rs. 24,000/ x 11)	Rs.2,64,000/-
General Damages	Rs.9,500/-
Total compensation =	Rs.2,73,500/-

Counsel for the respondents/claimants acknowledges that her clients have not received any compensation amount in terms of the award dated 29.08.2019 passed by the Tribunal.

The Appellant submits that they have already deposited the statutory amount of Rs.25,000/- before this Hon'ble Court. Therefore, the appellant/insurance company is directed to pay a sum of Rs.2,73,500/- together with 6% interest from the date of filing of claim application till payment to the claimants within 45 days of receipt of particulars of their bank accounts to be supplied by her counsel to the counsel for the insurance company. It is made clear that the payments shall be made by NEFT/ RTGS in the proportion as ordered by the Court below. After payment of the above compensation to the claimants, the appellant/insurance company shall be at liberty to recover the compensation amount paid to claimants from the owner of the offending vehicle by initiating appropriate proceeding in accordance with law.

The appellant/insurance company shall also be at liberty to withdraw the statutory amount of Rs.25,000/- together with accrued interest thereon from the Learned Registrar General, High Court, Calcutta after payment to the claimants.

With the aforesaid directions, the instant appeal is disposed of.

There shall be no order as to costs.

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

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.)