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(Via Video Conference)

F.M.A. 1193 of 2013

I.A. No. CAN 5 of 2013 (old no. 9565 of 2013)
I.A. No. CAN 6 of 2019 (old no. 661 of 2019)

The New India Assurance Co. Ltd.
Vs.
Sandhya Mondal & ors.

Mr. Rajesh Singh
...For the Appellants/Insurance Co..

Mr. Amit Ranjan Roy
... for the respondents/claimants

Instant appeal is directed against the judgment and award dated April 30, 2012 passed by the Learned Judge, Motor Accident Claims Tribunal, 1st Court, Burdwan in MAC Case No. 6 of 2008 on a claim under section 166 of the Motor Vehicles Act, 1988 for the death of one 37 years old 'Sunil Mondal' in a vehicular accident dated January 1, 2008.

The facts of the case are not in dispute. The deceased, while travelling in a Bus insured with the appellant 'The New India Assurance Company Limited' died in an accident when the said Bus collided with a Truck. The claimants filed the claim case against the owner/insurer of the Bus. The involved Truck's owner/insurer was not made a party to the said claim proceedings. The learned Tribunal passed an award for Rs.17,59,004/- against the appellant insurer.

Appellant/ Insurance Company prefers the appeal on the ground that the liability of payment of compensation should be equally divided between the appellant and owner/insurer of the other involved Truck. Appellant argues that the victim died in a 'head-on-collision' between the insured Bus and the Truck. First Information Report was filed against the drivers of both the involved vehicles. As drivers of both the vehicles also died, it showed that both were responsible for the accident and therefore the liability of paying compensation to the claimants should also have been equally distributed amongst the owners/insurers of both the vehicles.

Counsel for the respondent claimants, by way of cross objection, submits that the Tribunal has not awarded compensation on account of victim's future prospects. Claimants also pray for granting of full component of 'general damages' and 'interest' from the date of filing of claim application.

The above is a case of 'composite negligence' where more than one vehicle was involved. In 'Khenyei -Vs- New India Assurance Co. Ltd. and Ors.' reported in 2015 (2) TAC 677 SC, Hon'ble Supreme Court held that in case of composite negligence, plaintiff/claimant is entitled to sue both or any one of the joint tort-feasors to recover the entire compensation, as liability of joint tort-feasors is joint and several. In the case of composite negligence, apportionment of compensation between two tort-feasors vis-à-vis the plaintiff/claimant is not permissible. Claimant can recover at his option whole damages from any one of them. In case all the joint tort-feasors have been impleaded and evidence is sufficient, it is open to Court/Tribunal to determine *inter se* extent of composite negligence of the drivers. However, determination of the extent of negligence between joint tort-feasors is only for purpose of their *inter se* liability so that one may recover the sum from the other after making whole of payment to plaintiff/claimant to the extent it has satisfied the liability of the other. In case both of them have been impleaded and the apportionment/extent of their negligence has been determined by the Court/Tribunal, in that case one joint tort-feasor can recover amount from the other in the execution proceedings. It would not be appropriate for the Court/Tribunal to determine the extent of composite negligence of the drivers of two vehicles in the absence of impleadment of other joint tort-feasors. In such a case, impleaded joint tort-feasors should be left, in case he so desires, to sue the other joint tort-feasor in independent proceedings after passing of the decree or award.

Accordingly, it was not necessary for the claimants to implead the owner/driver of the other Truck as a party in the claim proceeding. Moreover, the eye witness (PW2) had confirmed that the Bus driver was rash and negligent and solely responsible for the accident. In any event, if the appellant insurer at all desires, it can sue the owner/ insurer of the Truck in an independent proceeding to determine the extent of negligence of the Truck driver for deciding their *inter se* liability so that it may recover the sum from the owner/insurer of the Truck. Thus, the appeal of the appellant fails.

Relying upon the judgments of ***Smt.Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr.***, reported in ***(2009) 6 SCC 121*** and ***National Insurance Company Ltd. Vs. Pranay Sethi & Ors.,*** reported in ***(2017) 16 SCC 680***, I find that claimants would be entitled for 50% additional income as 'future prospects' since victim was a permanent employee of 'Eastern Coalfield'. The total of Rs.70,000/- under 'general damages' should be paid to the claimants and their entitlement of interest cannot be denied. The appellants however admit that in view of 37 years of age of the victim, the appropriate multiplier in the instant case should be of '15' purchase factor.

Accordingly, the impugned award is modified and recalculated in the manner referred hereinafter.

Particulars	**Amount (Rs.)**
Annual Salary (less tax)	1,64,000/-
Add 50% future prospects (Rs.82,000/-)	2,46,000/-
Less - 1/3rd towards personal expenses (Rs.82,000/-)	1,64,000/-
Multiplier (15)	24,60,000/-
Collective General Damages	70,000/-
Total Principal compensation	25,10,000/-
LESS – awarded by Tribunal and deposited by insurer	17,59,004/-
BALANCE (enhancement)	7,50,996/-

Mr. Singh submits that the Insurance Company has deposited a total of Rs.17,59,004/- before the Registrar General of this Court. By an earlier order of this Court, claimants have already withdrawn a sum of Rs.8,00,000/- from the said deposit. Therefore, the claimants/respondents shall furnish particulars of their respective Bank accounts with the Registrar General of this Court as expeditiously as possible. Upon receipt of such details, the Registrar General is directed to pay the total balance amount along with all accrued interest to the claimants/respondents in accordance with law in the same manner and proportion of the award within a period of four weeks. The Registrar General shall check veracity of the bank accounts and identity of the claimants before disbursing the amounts.

Furthermore, insurance company shall pay the enhanced sum of Rs.7,50,996/- to the appellants together with interest assessed at the rate of 6 per cent 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 bank account particulars of the appellants by way of NEFT/RTGS in the respective bank accounts of the respondent claimants directly in the proportion decided by the Court below.

It will be open for the appellant to sue the owner/insurer of the other Truck involved in the accident, in an independent proceeding to determine the extent of negligence of the Truck driver for deciding their *inter se* liability so that appellant may recover the sum from the owner/insurer of the Truck.

With the aforesaid directions, the instant appeal and connected cross-objection being F.M.A. 1193 of 2013 and C.O.T. 27 of 2013, which is treated as on day's list, together with the connected applications stand disposed of. The concerned Department is directed to tag the applications, if any, and Cross Objection being COT 27 of 2013 with the main appeal. There shall be no further order as to costs.

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.)