Ct. No. 26

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F.M.A. 1433 of 2015

With

IA No. CAN 1 of 2014 (Old No. CAN 9909 of 2014)

The New India Assurance Co. Ltd.

Vs.

Mst. Rahima Bibi & Ors.

(Via Video Conference)

Mr. Rajdeep Bhattacharya ...For the Appellant/Insurance Co.

Mr. Jayanta Kumar Mondal
...For the Claimants/Respondents

The appeal of Insurance Company is directed against the judgment and award dated June 16, 2014 passed by learned Judge, Motor Accident Claims Tribunal, 3rd Court, Barasat, North 24-Parganas in M.A.C. Case No. 26 of 2010 on a claim under section 163A of the Motor Vehicles Act, 1988.

The ground raised by the insurance Company in the appeal is that at the time of the accident the driver of the offending vehicle was not holding a proper and effective driving licence. Therefore, Insurance Company is not liable to pay compensation in view of violation of the policy conditions and the award should be satisfied by the owner of the said vehicle.

As to the said ground, the award speaks that representative of the motor vehicle department came and deposed as DW 1 on behalf of Insurance Company and exhibited a document issued by the Licensing Authority, Barasat. From the said document it cannot be stated that the licence issued in the name of the driver was a fake one. The driver of the offending vehicle was never called to depose. The tribunal in its award observed that in the light of the above, since from the evidence of DW 1 it could not be stated that the driving licence was fake, insurance company would remain liable to pay compensation.

Learned counsel on behalf of the claimants submits that the impugned order needs to be modified and recalculated as per statute since the claimants are entitled to just and proper compensation as per the statute.

Accordingly, the impugned award is modified and recalculated as per statute and same is follows:

Particulars	Amount (Rs.)
Yearly income (Rs.3,000/-p.m.x12)	36,000.00
Less: 1/3rd personal expenses	- 12,000.00
	24,000.00
Multiplier of 16 to be used	(X) 16
	3,84,000.00
Collective heads of General Damages	(+)4,500.00
Total	**3,88,500.00**

The total amount of Rs.3,88,500/- would become payable to the claimants together with interest assessed @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 claimants. Advocate for the claimants will forward the bank account details of the said claimants within a fortnight from the date to Advocate for the appellant insurance company. The payment shall be made in the proportion decided by the Court below.

It is submitted by the Insurance Company that they have deposited a sum of Rs.25,000/-with the Registrar General of this Court in aid of this appeal.

Upon payment of the sum indicated hereinabove into the bank accounts of the claimants/respondents, the insurance company shall be entitled to claim refund of the aforesaid sum of Rs.25,000/- together with any accrued interest from the Registrar General of this Court.

It will however be open to the insurance company to file a civil suit against the owner of the offending vehicle for recovery of the compensation paid or payable on the ground that it was the sole obligation of the owner of offending vehicle to pay the compensation, if it can prove its case that the driver of the offending vehicle did not possess a valid driving licence at the time of accident.

In view of the above order, execution case, if any remains stayed.

With the aforesaid directions the instant appeal is disposed of.

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

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, on priority basis.

(Shekhar B. Saraf, J.)