

29.09.2021

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**F.M.A. 2856 of 2016**

**( Via Video Conference )**

**The Oriental Insurance Co. Ltd.**

**Vs.**

**Subal Chandra Mukherjee & anr.**

**With**

**COT No. 86 of 2018**

**Subal Chandra Mukherjee**

**Vs.**

**The Oriental Insurance Co. Ltd. & anr.**

**Ms. Gopa Das Mukherjee**

**...For the Appellants/Insurance Co.**

**Mr. Krishanu Banik**

**... For the respondent no.1/claimant**

This appeal is directed against the judgement and order dated 10<sup>th</sup> June, 2015 passed by the learned Judge, Motor Accident Claims Tribunal, 1<sup>st</sup> Court, Hooghly in M.A.C. Case No.336 of 2008.

The facts of the case are not in dispute.

The claim was filed under Section 166 of the Motor Vehicles Act, 1988. The main ground canvassed by the appellant/insurance company is that the driver of the offending vehicle did not have a valid driving licence and for that the insurance company had no liability to pay compensation.

Per contra, learned Advocate for the respondent no.1/claimant submits that the point agitated by the insurance company is covered by the decision of the Hon'ble Apex Court in the case of **National Insurnace Company Ltd. Vs. Swarn Singh & ors.**, reported in **A.I.R. 2004 S.C. 1531** wherein the Hon'ble Apex Court

observed that in such a case the Insurance Company pays the awarded amount to the third party/claimant and recover the same from the owner of the vehicle.

The respondent no.1/claimant had filed a cross objection being C.O.T. 86 of 2018 taking various points regarding the wrong assessment of the monthly income of the victim injured, loss of percentage of disability, inadequate compensation on the heads of both pecuniary and non-pecuniary damages.

Therefore, the impugned award is thus modified as stated hereinafter :

| <u>Particulars</u>                                                            | <u>Amount</u> |
|-------------------------------------------------------------------------------|---------------|
| Monthly income                                                                | Rs.3,000/-    |
| Annual income X 12                                                            | Rs.36,000/-   |
| 40% loss of income                                                            | Rs.14,400/-   |
| Multiplier '7'<br>(RS.14,400/- X 7)                                           | Rs.1,00,800/- |
| Non-pecuniary damages<br>(pain and suffering, loss of amenities of life etc.) | Rs.50,000/-   |
| Total                                                                         | Rs.1,50,800/- |

Learned Advocate for the appellant/insurance company submits that the entire awarded amount had been deposited with the learned Registrar General of this Hon'ble Court.

The appellant/insurance company is therefore directed to make the payment of Rs.1,50,800/- together with interest @ 6% per annum from the date of filing of

the claim application towards the respondent no.1/claimant.

The appellant/insurance company is at liberty to recover the aforesaid amount from the owner of the offending vehicle in accordance with law.

Learned Registrar General of this Hon'ble Court is directed to refund the deposited amount, if any, to the appellant/Insurance Company after making the payment of compensation to the respondent no.1/claimant.

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, the Cross Objection being COT 86 of 2018 is also disposed of. Department is directed to tag the COT 86 of 2018 with the main appeal.

L.C.R., if any, be returned back to the court below forthwith.

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.)