S/L 13 & 14
06.7.2021
Court No.26
SD

FMAT 405 of 2019
With
CAN 1 of 2019
(Old CAN 8837 of 2019)
(Application is not in the file)
with
COT 19 of 2020
(Via Video Conference)

Bajaj Allianz General Insurance Co. Ltd.
Vs.
Marufa Bibi & Ors.

Mr. Rajesh Singh
... for the Appellant/Insurance Co.
Mr. Ashique Mondal
... for the Respondents/Claimants.

The appeal is directed against the judgment and award dated December 13, 2018 passed by the learned Judge, Motor Accident Claims Tribunal, IVth Bench, City Civil Court, Calcutta, in M.A.C. Case No. 146 of 2012.

The facts of the case are not in dispute. The claim was filed under Section 166 of the Motor Vehicles Act, 1988 in connection with a vehicular accident dated April 3, 2012.

The appeal has been preferred by the appellant/insurance company, *inter alia*, primarily on the ground that the driver of the offending vehicle did not possess a valid driving license at the time of the accident. Insurer also pleaded that the amount of compensation is excessive.

Counsel for the respondent claimants, by way of cross objection, submits that the Tribunal has not taken the notional income of the deceased victim correctly and has not awarded compensation on account of future prospects. Claimants submit that in view of 7 numbers of dependents, deduction for personal expenses should have been 1/5th of the income of the deceased and not 1/3rd as deducted by the Tribunal. Compensation granted under the collective heads of general damages is also challenged.

The Tribunal below, in the impugned judgment, on the basis of evidence, held that the offending motorcycle driver was holding a licence to drive a light motor vehicle w.e.f. 28.09.2007 and was subsequently authorized to drive motor cycle with gear only from 22.05.2012, i.e. - after the date of accident. The Tribunal further held that the principle of pay and recovery from the owner does apply in the present case. However, in the ordering portion, the Tribunal did not grant any express liberty to the appellant/insurance company to pay and then recover the awarded compensation from the owner of the vehicle. In such view, the appellant/insurance company is granted liberty to pay the compensation amount to the respondent No. 1-7/claimants and then recover the same from the owner of the vehicle.

On quantum, considering 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*** and also following the precedence of this Court on the point of monthly income, I find substance in the arguments of the appellants. For the year 2012, in a claim under section 166 of the Motor Vehicles Act, 1988, an amount of Rs.4,000/- per month does not appear to be exorbitant. Furthermore, the deduction towards personal expenses of the victim ought to have been taken as 1/5th instead of 1/3rd keeping in mind that the deceased had seven dependents. Appellants are also entitled to Rs.70,000/- under collective heads of general damages. Accordingly, the impugned award is modified and recalculated in the manner referred hereinafter.

Particulars	Amount (Rs.)
Monthly Income	4,000/-
Less - 1/5th towards personal expenses	3,200/-
Add - 25% income towards future prospects	4,000/-
Annual Income (x 12)	48,000 /-
Multiplier (13)	6,24,000/-
Collective General Damages	70,000/-

Total	6,94,000/-

Since no amount has been paid by the insurance company to the respondent Nos.1 to 7/ claimants, the entire compensation amount of Rs.6,94,000/- together with 6% interest from date of claim application i.e. 14.06.2012 till payment, shall be paid to the respondent Nos.1 to 7/ claimants within 30 days of receipt of particulars of their respective bank accounts to be supplied by their counsel to the counsel for the insurance company. Such payment shall be made by the insurer by way of NEFT/ RTGS in the respective bank accounts of the respondent Nos.1 to 7/ claimants directly in the proportion decided by the Court below.

The appellant/ insurance company is granted liberty to pay the compensation amount to the respondent No.1 to 7/claimants and then recover the same from the owner of the vehicle in accordance with law.

Insurance Company is also given liberty to withdraw the statutory deposit of Rs.25,000/- along with the accrued interest from the Registrar General of this Court after making the above payment to the claimants.

With the aforesaid directions, the instant appeal and connected cross-objection being F.M.A.T. No. 405 of 2019 and C.O.T. 19 of 2020, together with the connected applications shall stand 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.)