S/L 10
30.9.2021
Court No.26
SD

FMAT 357 of 2021
With
CAN 1 of 2021
With
CAN 2 of 2021
With
COT 31 of 2021
(COT application is not in the file)
(Via Video Conference)

The New India Assurance Co. Ltd.
Vs.
Bikash Ch. Chakraborty & Ors.

Ms. Sucharita Paul
... for the Appellant/Insurance Co.
Mr. Amit Ranjan Roy
... for the Respondents/Claimants.

CAN 1 of 2021:-

This is an application for condonation of delay in filing the instant appeal.

On perusal of the pleadings, this Court is satisfied that cause shown for delay in filing of the appeal is sufficient and prayer for condonation of delay should be allowed.

Accordingly, the application for condonation of delay being CAN 1 of 2021 stands allowed.

FMAT 357 of 2021:-

The above appeal has been filed by the insurance company against the judgment and award dated September 17, 2019, read with Order no. 06, dated 09.01.2020, passed by learned Additional District Judge, Fast Track Court–II, Krishnanagar, Nadia, in M.A.C. Case No. 90 of 2018, on a claim under section 166 of the Motor Vehicles Act, 1988.

Several grounds have been raised by the insurance company in the appeal. The first ground is that while assessing the quantum of compensation, the learned Court below had not deducted professional tax amounting to Rs.150/- from the monthly salary of the victim. It is further submitted that the calculation made by the tribunal was erroneous and therefore, an excess compensation has been awarded. The second ground urged by the appellant is that the claimants had admittedly received a sum of Rs.5,00,000/- as compensation from the State of West Bengal. Appellant submits that the said amount should have been deducted from the total compensation assessed. The third contention of the appellant is that the offending vehicle did not possess a valid route permit on the date of accident. 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. Lastly, appellant submits that the offending bus was carrying excess passenger than permitted and on such violation of policy condition, it denies its liability of satisfaction of the award.

As to the first ground raised by the appellant, I find that there is substantial basis to the appellants' assertion that a sum of Rs.150/- should have been deducted from the monthly salary of the deceased while computing the compensation amount. This Court also finds that the learned Court below assessed an excess compensation by not deducting 1/2 on account of personal expenses, from the future prospect of the victim. Accordingly the same should have been deducted to arrive at the correct figure.

As to the third ground, it will be open to the insurance company to file a civil suit against the owner of the offending vehicle, after making payment to the claimants, for recovery of the compensation paid 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 offending vehicle did not possess a valid route permit on the date of accident.

Lastly, the concerned Bus had the permit to carry 41 passengers and it is found that there were only 37 claim cases filed in connection with the above accident. Accordingly, the ground of excess passenger taken by the insurer, is devoid of any merit, in view of the judgements delivered by Hon'ble Supreme Court in the cases of ***National Insurance Company Limited -Vs- Anjana Shyam****,* reported in ***(2007) 7 SCC 445*** *and* ***United India Insurance Company Limited -Vs- K.M. Poonam,*** reported in ***2011 ACJ 917****.*

Mr. Roy submits that the claimants/respondents have filed a cross objection being COT 31 of 2021 on the point of interest. The same is allowed.

Accordingly, on the basis of the above discussion, the impugned award is modified and reassessed as follows:

Particulars	Amount (Rs.)
Monthly income	39,032.00
Less professional tax	(-) 150.00
	38,882.00
Add 50% future prospect	19,441.00
	58,323.00
	x 12
	6,99,876.00
less : ½ personal expenses	(-) 3,49,938.00
	3,49,938.00
Multiplier of 17 to be used	x 17
	59,48,946.00
General damages	(+) 30,000.00
	59,78,946.00
Less: Rs.5 lacs already received	(-) 5,00,000.00
Total entitlement	**54,78,946.00**

The total amount of Rs.54,78,946/- would become payable to the claimants together with interest assessed @ 6 per cent per annum on and from the date of filing of the claim petition and the claimants agree to receive the aforesaid sum. Such amount of Rs.54,78,946/- should be paid 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 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/- (Rupees twenty five thousand only) 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/- (Rupees twenty five thousand only) together with any accrued interest, from the Registrar General of this Court.

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

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.)