9 29.9.2021
Sc

(Via Video Conference)

F.M.A.T. 489 OF 2019
with
I.A. No. CAN 1 OF 2021

Rita Devi Singh & Ors.
Vs.
Bharti Axa General Insurance Company Limited & Anr.

Mr. Ashique Mondal

...For the Appellants/ Claimants.

Ms. Gopa Das Mukherjee

...For the Respondent Insurance Co. Ltd.

The appeal, is directed against the judgement and award dated January 29, 2019 passed by the learned Judge, Motor Accident Claims Tribunal, Additional District Judge, 13th Court, Alipore, South 24-Parganas in M.A.C. Case No. 06 of 2014.

The claim was filed under section 166 of the Motor Vehicles Act, 1988. The appeal has been preferred by the appellants/claimants, *inter alia*, primarily on the ground that the tribunal has affixed the responsibility to pay compensation to the appellants/claimants on the respondent no.2/owner of the vehicle instead of the respondent no.1/insurance company. The quantum of compensation is also challenged by the appellants/claimants on account of deduction towards personal expenses, non-awarding of future proposals and also inadequacy of compensation under non-pecuniary heads.

Counsel for the respondent no.1/insurance company submits that the driver of the offending did not hold a valid driving licence and was in a drunken state at the time of accident which tantamounts to breach of terms of policy and thus the respondent no.1/insurance company is not liable to pay any compensation. She further submits that there is no further scope for enhancement of quantum of compensation.

The case of the appellants/claimants is that the tribunal has placed selective reliance on FIR, Motor Accident Report, and the Chargesheet, while completely ignoring the evidence of P.W. 2 (eyewitness) as well as the evidence of D.W. 2 (investigating officer). Counsel for the appellants/claimants submits that from the deposition of the D.W. 2 (investigating officer) it is clear that the said investigating officer admittedly reached the place of occurrence of the accident after almost two and half hours from the time of accident and that no breath analysing test was conducted to confirm that the offending driver was drunk at the time of accident. It is also the case of the appellants/claimants that there is no other document on record which confirms with absolute certainty that the offending driver was driving the vehicle under the influence of alcohol.

I find substance in the submission of the counsel for the appellants/claimants. In order to satisfy the mandate of section 185(a) of the M.V. Act, 1988, a person has to be detected with 30 mg. alcohol Per 100 ml. of blood by a test of breath analyser. In the instant case, the investigating officer has admittedly reached the place of occurrence after almost two and a half hours and has not conducted any breath analyser test on the accused. In such circumstances, the basic requirements of section 185 have not been satisfied and the D.W. 2 (investigating officer) has framed charges against the offending driver relating to driving in an intoxicated condition merely on the basis of hearsay avowals. In such circumstances, the tribunal ought not to have considered the deposition of D.W. 2 (investigating officer) as sacrosanct.

Insofar as the absence of a valid driving licence is concerned, the allegation has been adequately proved by the respondent no.1/insurance company. In terms of binding precedents in this regard the tribunal ought to have directed the insurance company to pay the due compensation to the appellants/claimants and then recover the same from the respondent no.2/owner of the vehicle. The decision of the Hon'ble Apex Court passed in ***Parminder Singh –vs.- New India Assurance Co. Ltd.*** reported in ***(2019) 7 SCC 217*** lends support to the long line of decisions in support of pay and recovery principle in this regard. As such although the offending driver was not holding a valid driving licence at the time of accident, the insurance company shall pay the compensation amount and shall be at liberty to recover it from the owner of the vehicle.

On quantum of compensation, the tribunal has erred in deducting 1/3rd of the income of the deceased towards his personal expenses instead of 1/4th since the deceased had four dependants. Future prospect also ought to have been awarded @ 30% of the income of the deceased since he was aged between 40-50 years and was an employee of Calcutta Port Trust. The remaining factors of computation of payable compensation has been well-settled by the Hon'ble Apex Court in ***National Insurance Company Limited –vs.- Pranay Sethi & Ors.*** reported in ***(2017) 16 SCC 680***. Be that as it may, considering the rival submissions of the parties as well as judgments of the Hon'ble Apex Court as well as general practice of this Court, the above award passed by the tribunal is modified and recalculated as follows :

Particulars	**Amount (Rs.)**
Monthly income	Rs.35,012/-
Less 1/4th towards personal Expenses (Rs.8,753/-)	Rs.26,259/-
Add 30% additional income Towards future prospect (Rs.7,877/-)	Rs.34,136/-
Annual income (x12)	Rs.4,09,632/-
Multiplier (13)	Rs.53,25,216/-
Loss of consortium	Rs.44,000/-
Loss of estate	Rs.16,500/-
Funeral expenses	Rs.16,500/-
Total	Rs.54,02,216/-

Since no amount has been paid by the respondent no.1/insurance company to the appellants/claimants, the entire awarded amount which comes to Rs.54,02,216/- together with interest @ 6% per annum from the date of claim application till payment shall be paid to the appellants/claimants within thirty days of receipt of particulars of their respective bank accounts to be supplied by their counsel to the counsel for the respondent no.1/insurance company.

It is made clear that the payment shall be made by the respondent no.1/insurance company by way of NEFT/RTGS in the respective bank accounts of the appellants/claimants directly in accordance to the proportionate share as indicated in the impugned judgment dated January 29, 2019.

It is further made clear that the respondent no.1/insurance company shall pay the compensation amount to the claimants and shall be at liberty to recover it from the owner of the vehicle thereafter.

With the aforesaid directions the instant appeal is disposed of.

In view of disposal of this appeal, connected applications, if any, are also disposed of. The department concerned is directed to tag the applications, if any, with the main appeal.

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.)