32 & 33. *AGM RKB Ct 07*

01.12. 2021

FMAT 605 of 2019

Bajaj Allianz General Insurance Company Limited
Versus
Mst. Sahanaz Parveen & Ors.

With
COT 27 of 2021

Mst. Sahanaz Parveen & Ors.
Versus
Bajaj Allianz General Insurance Company Limited & Anr.

Mr. Rajesh Singh,
... For the Appellant/Insurance Company.

Mr. Rajdeep Bhattacharya
... for the respondents/claimants.

Learned advocates for both the parties are ad idem on the point that the instant appeal may be disposed of giving a go by to the technicalities involved in the process.

It is submitted by the learned advocate for the appellant/Insurance Company that the appeal may be disposed of on the basis of materials furnished by both the parties in this case, which is not opposed by the respondents/claimants.

When the learned advocates for both the parties are agreeable to the expeditious disposal of the instant appeal, the Court should not stand in the way. The appeal is thus taken up for consideration.

Register the appeal as FMA upon furnishing relevant particulars.

This appeal is directed against the judgement and award dated 30th June, 2018, passed by the learned Judge, Motor Accident Claim Tribunal/Additional District and Sessions Judge, Fast Track 4th Court, Barasat, North 24 Parganas, in M.A.C. Case No.23 of 2009, on a claim under Section 166 of the M.V. Act, 1988, for the death of one Md.

Magbool @ Mokbul Hossain in a vehicular accident dated 22.10.2018, by reason of involvement of a vehicle bearing No.WB-26L/3277 due to its rash and negligent driving.

Mr. Singh, learned advocate appearing for the appellant/Insurance Company principally disputes the liability of the Insurance Company taking the ground that the driving licence of the driver of offending vehicle was invalid and fake, and for violation of policy conditions, the appellant/Insurer should not be made to indemnify the respondents.

It is thus submitted by Mr. Singh, that the award granted should be satisfied by the owner of the vehicle, not by the insurer itself. In assertion of such point, Mr. Singh submits that exhibited documents, particularly, Exbt.B and C read with testimony of D.W.1 would be sufficient to reveal that the driving licence, seized by the police never existed in the name of the driver of the offending vehicle.

Per contra, Mr. Rajdeep Bhattacharya, learned advocate representing the respondents taking recourse to a judgement of the Apex Court delivered in the case of ***National Insurance Company Limited –versus- Swaran Singh and others*** reported in ***2004 (3) SCC 297*** submits that it is the Insurance Company, which should pay the compensation to the claimants and may subsequently recover it from the owner of the offending vehicle, without disputing with the inadequacy and deficiency of driving licence, seized by the police, for the offending vehicle.

It is thus sought to be impressed by the learned advocate for the respondents that there cannot be any reverse decision against the settled proposition of law of the Apex Court propounding **"Pay and Recover".**

No other point is raised requiring any decision to be rendered by this Court.

Having considered the rival submission of the parties, the Court is of the view that there is a strong force in the submission advanced by the learned advocate for the respondents. The Court shares the same view, as expressed in the case of ***Swaran Singh (Supra).*** The Insurance Company/appellant should pay the compensation first to the claimants, and recover the amount subsequently from the owner of the offending vehicle, for violation of the terms of the policy conditions, issued against the insurer.

Though a cross-objection has been preferred by the respondent, but nothing is raised in course of hearing of this appeal, as such, no decision is required to be returned responding to the COT.

Accordingly, the sum amounting to Rs.7,50,000/- awarded as compensation, by the learned Tribunal, would become payable by the Insurance Company to the claimants together with interest assessed @ 6% per annum on and from the date of filing of the claim petition. Such payment is to be made by the insurer within a period of 45 days from the date of receipt of the bank account particulars of the claimants. Learned advocate for the claimants will forward the bank account details of the claimants within a fortnight from date to the learned advocate for the appellant/Insurance Company. The payment shall be made through RTGS/NEFT directly into the bank account of the claimants, in the proportion decided by the Court below.

The learned advocate for the Insurance Company submits that Insurance Company has made a deposit 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 awarded amount with interest into the bank accounts of the claimants/respondents, Insurance Company shall be entitled to claim refund of the aforesaid sum of Rs.25,000/- together with accrued interest from the Registrar General of this Hon'ble Court.

Insurance Company is granted liberty to take steps in accordance with law to recover the amount payable to the respondents/claimants, from the owner of the offending vehicle.

With the aforesaid directions, the instant appeal is disposed of.

The cross-objection being COT 27 of 2021 is also disposed of, as claimants do not wish to proceed with the cross-objection.

There will be no order as to costs.

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.

(Subhasis Dasgupta, J)