Ct. No. 26

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27.8 2021

F.M.A. 2911 of 2013
The New India Assurance Co. Ltd.
Vs.
Shrikanta Bera & Ors.
With
F.M.A. 274 of 2013
Shrikanta Bera & Ors.
Vs.
The New India Assurance Co. Ltd. & Anr.
(Via Video Conference)

Mr. Rajesh Singh ...**For the Appellant/Insurance Co. & Respondent in FMA 274 of 2013**

Mr. Krishanu Banik ...**For the Respondents/Claimants & Appellants in FMA 274 of 2013**

By consent of the parties, both the appeals are taken up for hearing analogously by treating the appeal, being FMA 274 of 2013, as on day's list. The concerned Department is directed to trace out and tag the said appeal along with this appeal, being FMA 2911 of 2013.

Both the above appeals are directed against the common judgment and award dated February 18, 2012 passed by the learned Judge, Motor Accident Claims Tribunal, Fast Track, 3rd Court, Tamluk, Purba Medinipur in M.A.C. Case No. 24 of 2009/47 of 2008.

The deceased victim was a passenger of the Bus, insured with the appellant insurer (The New India Assurance Company Limited) when it met with accident. In appeal, insurer denied its liability of payment of compensation on the ground that deceased was a gratuitous passenger of the offending Bus. From the records, I find that learned Judge, relying upon the judgement of Hon'ble Supreme Court in the case of ***United India Insurance Company Limited -Vs- KM Poonam***, reported in **2011 (3) TAC 376**, had accepted the argument of insurance company. Insurer was directed to pay the compensation amount to the claimants and then recover the same from the owner of the vehicle. It has been a consistent view of the Hon'ble Supreme Court that in case of violation of policy conditions, the insurance company should pay the compensation to the claimants and then recover it from the insured/owner of the offending vehicle. Therefore, in this appeal of the insurance company, with right of recovery already been granted by the Court below, no further direction is needed.

The appeal of the claimants is confined to the issue of enhancement of compensation amount. It is submitted on behalf of the claimants that learned Judge of the Tribunal erred in considering the income of the deceased at Rs.15,000/- per annum. This court finds substance in the argument of the claimants. For the year 2007, in a claim under section 163A of the Motor Vehicles Act, 1988, an amount of Rs. 3,000/- per month for a 37 years old lady, does not appear to be exorbitant. Accordingly, the impugned award is modified and recalculated in the manner referred hereinafter.

Monthly Income	**Rs. 3,000/-**
Annual Income	**Rs. 36,000/-**
Less 1/3rd for personal expenses (Rs.12,000/-)	**Rs. 24,000/-**
Multiplier '16'	**Rs. 3,84,000/-**
Add 'General Damages'	**Rs. 9,500/-**
TOTAL Principal Compensation	**Rs. 3,93,500/-**
LESS – awarded by Tribunal	**Rs. 1,69,500/-**
Enhancement	**Rs. 2,24,000/-**

The claimants would also be entitled to interest at the rate of 6% per annum, on the total compensation of Rs.3,93,500/-, to be calculated on and from the date of filing of claim application till realization.

Mr. Singh submits that the awarded sum of Rs.1,69,500/- has been secured with the learned Registrar General of this Court by way of two separate deposits of Rs.25,000/- and Rs1,44,500/- respectively.

Accordingly, the above sum may be disbursed to the claimants in accordance with law and in the same manner and proportion as per the award. The claimants/respondents shall furnish particulars of their Bank details as also proof of identity with the Registrar General of this Court as expeditiously as possible. Upon deposit of such details, the Registrar General is directed to pay the sum deposited along with any accrued interest to the claimants/respondents in accordance with law. Such payment must reach the claimants within four weeks from the date of receipt of the Bank details from the claimants/respondents.

Upon receiving the said payment from Registrar General, the learned Advocate for the claimants shall inform the same along with bank particulars of the claimants, to the learned Advocate for the insurance company. The insurer, within a period of 45 days from the date of receipt of bank account details of the claimants, shall calculate the deficit payment in terms of the direction of this court and make payment of the same to the claimants. The payment shall be made directly in the bank accounts of the claimants through NEFT/RTGS, in the proportion decided by the Court below.

The Tribunal Judge has granted liberty to the insurer to recover the total compensation from the owner of the vehicle. Such observation of Tribunal is not altered.

With the aforesaid directions, both the appeals being F.M.A. 2911 of 2013 and F.M.A. 274 of 2013 are disposed of.

There shall be no further order as to costs. In view of the disposal of the appeals, connected applications are also disposed of.

LCR, if any may be returned back to the Court below.

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.)