Ct. No. 26

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F.M.A. 4454 of 2016

The Oriental Insurance Co. Ltd.
Vs.
Kabalesia Keut & Ors.
With
C.O.
C.O.T. 69 of 2019
Kabalesia Keut Dead R/P
By Manoj Kewat & Ors.
Vs.
The Oriental Insurance Co. Ltd. & Anr.
(Via Video Conference)

Mr. Rajesh Singh ...**For the Appellant/Insurance Co. & Respondent in COT 69 of 2019**

Mr. Ali Imam Shah ...**For the Respondents/Claimants & Appellants in COT 69 of 2019**

By consent of the parties, both the appeals are taken up for hearing analogously by treating the cross appeal, being COT 69 of 2019, as on day's list.

The concerned Department is directed to trace out and tag the said cross appeal along with this appeal, being FMA 4454 of 2016.

Re.: C.A.N. 10623 of 2016.

This application has been filed by the claimants for recording the death and expunging the name of the respondent No. 1 'Kablesia Keut' who died on January 03, 2016. It is submitted that all surviving heirs of the deceased are already on record and arrayed as respondent Nos. 2, 3, 4, 5 6 and 8.

Accordingly, the name of the respondent No. 1 be struck of and substituted by respondent Nos. 2, 3, 4, 5, 6 and 8. The share of the compensation of respondent No. 1 should be equally distributed among the respondent Nos. 2, 3, 4, 5, 6 and 8.

F.M.A.4454 of 2016.

This appeal is directed against the judgment and order dated November 30, 2015 passed by the learned Judge, Fast Track Court and Motor Accident Claims Tribunal, Durgapur, Burdwan in M.A.C. Case No. 55 of 2012 / 158 of 2011(old), on a claim under Section 166 of the Motor Vehicles Act, 1988 for the death of 59 years old 'Gobin Kewat' in a vehicular accident dated June 23, 2011.

The appeal has been preferred by the appellant Insurance Company, challenging the quantum of award. Insurer submits that the learned Judge erred in selecting the multiplier of '8' purchase factor as the 59 years old deceased had only '1' year of service left. Insurer submits that considering the residual year of service of the deceased, the selection of multiplier was inappropriate which resulted in awarding excessive compensation.

Learned Advocate for the respondents/claimants supports the finding of the learned Tribunal. The claimants pray for dismissal of the appeal of the insurer.

In the case of ***Bhogireddi Varalakshmi and Ors. Vs. Mani Muthupandi and Ors.,*** reported in **2017 (@) TAC 3 SC,** the Hon'ble Apex Court deprecated the practice of selection of multiplier on the basis of residual years of service of the victim. In the said case, the Hon'ble Apex Court reiterated that for selection of multiplier, the decision of the Hon'ble Apex Court pronounced in the case of ***Smt. Sarala Verma & Ors. Vs. Delhi Transport Corporation & Anr.***, reported in **(2009) 6 SCC 121** is to be followed. Accordingly, the ground of insurer for selection of multiplier on the basis of 'residual years of service' is devoid of any merit and fails. The claimants would also be entitled to interest at the rate of 6% per annum on the compensation amount to be calculated from the date of filing the claim application till realization.

The learned Counsel for the appellant Insurance Company submits that a total sum of Rs. 26,02,310/- by way of two separate deposits, has been secured by the insurer with the learned Registrar General of this Court.

Accordingly, the claimants/respondents shall furnish particulars of their bank accounts as also the 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 entire deposited amount along with accrued interest to the claimants/respondents in accordance with law within a period of four weeks.

The Registrar General shall Check the veracity of the bank account and the identity of the claimants before disbursing the amount.

As stated earlier, the share of compensation of respondent No. 1, since deceased, should be equally distributed among the respondent Nos. 2, 3, 4, 5, 6 and 8.

Upon receiving the said payment from the Registrar General, the learned Counsel for the claimants shall inform the same along with bank particulars of the claimants, to the learned Counsel 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, if any, 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 and in conformity with the order given hereinbefore.

With the aforesaid directions, the instant appeal being F.M.A. 4454 of 2016 shall stand disposed of. The Cross Objection of the claimants, being COT 69 of 2019, filed three years after filing of this appeal, is not pressed and is accordingly 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.)