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(Via Video Conference)

F.M.A. 2439 of 2014
with
I.A. No.CAN 1 of 2014
(Old No. CAN 8135 of 2014)
with
I.A. No.CAN 2 of 2017
(Old No. CAN 5713 of 2017)
with
COT 48 OF 2020

United India Insurance Co.
Vs.
Sandhya Chanda & Ors.

Mr. Parimal Kumar Pahari

...For the Appellant/
Insurance Co.

Mr. Ashique Mondal

....For the Respondent
Nos. 1 to 4/Claimants/
Cross-objectors.

The appeal is directed against the judgment and order dated 25th April, 2014 passed by learned Judge, Motor Accident Claims Tribunal, IInd Bench, City Civil Court at Calcutta, in M.J.C. Case No. 371 of 2008.

The facts of the case are not in dispute. The claim was filed under Section 166 of the Motor Vehicles Act, 1988.

The appeal has been preferred by the appellant/ insurance company primarily on the ground that the driver of the offending vehicle did not have a valid route permit at the time of the accident. It is pleaded in the memorandum of appeal as a ground that the amount of compensation is excessive.

The respondents/claimants in the instant appeal have filed a cross-objection being COT 48 of 2020. The same is treated to be as on day's list.

Mr. Ashique Mondal, learned advocate is appearing on behalf of the appellants/claimants in COT 48 of 2020.

Mr. Ashique Mondal, learned advocate for the claimants/respondents submits that the tribunal has erred in law by deducting 1/3rd of the income of the victim towards personal expenses and by not awarding compensation on account of future prospects. Compensation granted under the head of loss of consortium, funeral expenses and loss of estate of the deceased has also been challenged.

From the evidence of O.P.W. -1 it can be seen that whether the route permit of the offending vehicle concerned was valid has remained inconclusive. The said witness who has deposed on behalf of RTO, Purba Medinipur has stated on oath that he cannot ascertain whether the offending vehicle had any valid route permit without consulting office records. The route permit which has been exhibited as Exhibit - A shows that the route permit of the offending vehicle was issued on 17.05.2012 and was valid till 16.05.2017 which is a period subsequent to the date of accident. Nevertheless, even if the appellant/insurance company is able to prove that the offending vehicle did not have a valid route permit on the date of accident, it cannot escape its liability to pay

compensation to the claimants/respondents who are claiming compensation for the death of a third party due to road traffic accident.

In support of the above position of law, Mr. Mondal places reliance on two judgments of the Hon'ble Apex Court, viz. ***Amrit Paul Singh & Anr. V. TATA AIG General Insurance Co. Ltd. & Ors.***, reported in **(2018) 7 SCC 558** and ***National Insurance Co. Ltd. V. Challa Upendra Rao & Ors.***, reported in **(2004) 8 SCC 517** where in absence of the route permit the insurer of the offending vehicle has been given liberty to pay the awarded amount to the claimants and then recover the same from the owner of the vehicle. In such circumstances, since a serious allegation of violation of terms of policy apropos route permit has been raised, the appellant/insurance company is granted liberty to approach a competent Court of law to substantiate its allegations against the respondent nos. 5(a), 5(b) and 5(c), being the owners of the vehicle and seek consequent reliefs as permitted under law.

On the point of quantum of compensation, the deduction towards personal expenses of the victim ought to have been taken as 1/4th instead of 1/3rd keeping in mind the fact that the deceased had four dependants. The remaining factors of computation of payable compensation has been well-settled by the Hon'ble Apex Court in ***National Insurance Company Limited V. Pranay Sethi & Ors.***, reported in **(2017) 16 SCC 680**.

Be that as it may, considering the rival submissions of the parties as well as judgment of the Hon'ble Apex Court as well as general practice of the High Court, above award passed by the tribunal below is modified and recalculated as follows :

<u>Particulars</u>	<u>Amount (Rs.)</u>
Annual Income (Rs.4,800x12)	Rs.57,600/-
Add 40% future prospect	<u>Rs.23,040/-</u>
	Rs.80,640/-
Less 1/4 th personal expenses	<u>Rs.20,160/-</u>
	Rs.60,480/-
Multiplier 17	Rs.10,28,160/-
Loss of consortium	Rs.40,000/-
Loss of estate	Rs.15,000/-
Funeral expenses	<u>Rs.15,000/-</u>
Total	Rs.10,98,160/-

The claimants/respondents are entitled to a consolidated sum of Rs.10,98,160/- with interest @ 6% per annum from the date of filing i.e. 29.04.2008 till the date of payment. Learned advocate for the appellant /insurance company submits that he had deposited Rs.11,43,884/- before the learned Registrar General of this Court on 16.09.2014 in terms of an order dated 28.08.2014. The respondent nos. 1 to 4/claimants are granted liberty to approach the learned Registrar General of this Court for release of such sum of Rs.11,43,884/- with accrued interest. If an approach is made, the learned Registrar General shall take immediate steps to release such sum positively within four weeks from date.

The balance amount together with interest shall be paid to the respondent nos. 1 to 4/claimants within thirty days of receipt of particulars of their respective bank

accounts to be supplied by their counsel to the counsel for the insurance company. It is made clear that such payment shall be made by the insurance company by way of NEFT/RTGS in the respective bank accounts of the respondent nos. 1 to 4/claimants directly in accordance to the proportionate share as indicated in the impugned judgment.

With the aforesaid directions the instant appeal is disposed of and COT 48 of 2020 is also disposed of. Department concerned is directed to tag the records of COT 48 of 2020 with the main appeal.

In view of the 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.

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.)