

S/L 22
25.6.2021
Court No.26
SD

FMAT 823 of 2019
With
CAN 1 of 2019
(Old CAN 8562 of 2019)
with
CAN 2 of 2019
(Old CAN 10680 of 2019)
(Via Video Conference)

National Insurance Company Ltd.
Vs.
Kamini Mondal & Ors.

Ms. Sucharita Paul

...for the Appellants/Insurance Co.

Mr. Rajdeep Bhattacharya

...for the Respondents/Claimants.

It appears to this Court that the instant appeal has been filed out of statutory period. Being satisfied with the cause for delay in filing the instant appeal and since counsel appearing on behalf of the respondents/Insurance Company did not oppose, this Court condones the delay in filing the instant appeal and the instant appeal is taken up for hearing.

This appeal has been filed by the appellant/Insurance Company against the judgment and award dated April 1, 2019 passed by the learned Judge, Motor Accident Claims Tribunal, 5th Court, Barasat, North 24-Parganas in M.A.C. Case No. 277 of 2016/M.A.C. Case No. 30 of 2016 under Section 163A of the Motor Vehicles Act, 1988.

Two grounds have been raised by the Insurance company in the appeal. The first ground is that at the time of the accident the driver of the offending vehicle was not holding a proper and effective driving licence. Therefore, Insurance company is not liable to pay compensation in view of violation of the policy conditions and the award should be satisfied by the owner of the said vehicle. The second contention is that in a claim under Section 163A of the Motor

Vehicle Act, 1988, there is no provisions to award future prospect and the amount awarded under non-pecuniary expenses should have been restricted to Rs.9,500/- instead of Rs.70,000/- which has been granted by the tribunal while assessing the quantum of compensation.

As to the first ground, it does not appear that the Insurance company adduced any evidence or called any witness. The Tribunal has observed that in light of the above, the Tribunal could not look into the defence asserted by the Insurance company.

As to the second ground raised by the appellant, I find that there is substantial basis to the appellant's assertion that in a claim under Section 163A, there is no provision to award future prospect. Further, the amount under the collective heads of general damages should have been Rs.9,500/- only instead of Rs.70,000/- as has been awarded.

Accordingly, the impugned award is modified and recalculated. Since the income of the victim was Rs.3,000/- per month, on an annual basis, such income would be Rs.36,000/-. After deducting one-third on account of personal expenses and applying a multiplier of 16, the net compensation comes to Rs.3,84,000/-. The claimants would also be entitled to an amount of Rs.2,500/- on account of loss of estate, Rs.2,000/- for funeral expenses and Rs.5,000/- as loss of consortium.

Accordingly, the Insurance company is directed to pay Rs.3,93,500/- together with interest thereon @6% per annum from the date of filing of the claim application till receipt of the same to the respondents'/claimants' bank accounts within a period of four weeks from date.

It will however be open to the Insurance company to file a civil suit against the owner of the offending vehicle for recovery of the compensation paid or payable on the ground

that it was the sole obligation of the owner of offending vehicle to pay the compensation, if it can prove its case that the driver of the offending vehicle did not possess a valid driving licence at the time of accident.

The respondents/claimants are directed to provide their bank details along with proof of identity to the Insurance company within a period of seven days from date.

The statutory amount of Rs.25,000/- deposited with the Registrar General may be withdrawn by the insurance company upon showing proof of payment of Rs.3,93,500/- to the respondents/claimants.

The Registrar General is directed to refund the statutory amount along with accrued interest thereon within a period of ten days from the date of submission of particulars of proof of payment made to the claimants/respondents.

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

There shall be no order as to costs.

In view of the disposal of this appeal, connected application, if any, is also disposed of.

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.

(Shekhar B. Saraf, J.)