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(Via Video Conference)

F.M.A.T 833 of 2019
with
I.A. No.CAN 1 of 2019
(Old No.8563 of 2019)
with
I.A. No.CAN 2 of 2020
with
I.A. No.CAN 3 of 2020

National Insurance Company Ltd.
Vs.
Samir @ Samiran Majumder & Anr.

Ms. Sucharita Paul
...For the Appellant/
Insurance Company

Mr. Rajdeep Bhattacharya
....For the Respondents/
Claimants

It appears to this Court that the instant appeal has been filed out of statutory period. On the oral prayer of the parties, this Court is satisfied and condones the delay in filing the instant appeal.

The instant appeal has been filed by the appellant/Insurance Company against the judgment and award dated June 17, 2019 passed by the Judge, Motor Accident Claims Tribunal, 5th Court, Barasat, North 24-Parganas in M.A.C. Case No. 27 of 2016.

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, the amount awarded under non-pecuniary expenses should have been restricted to Rs.4,500/- instead of Rs.70,000/- which has been granted by the tribunal while assessing the quantum of compensation.

As to the first ground, the motor vehicle inspector came and deposed as DW-1 on behalf of Insurance Company and exhibited a report (Exhibit-B) issued by the Licensing Authority, Alipore, South 24-Parganas. The said report speaks that no record in connection with the driving licence of the driver of the offending vehicle was found in the office records of the said licensing authority. During cross examination DW-1 however mentioned that the report neither stated that the driving licence was a fake document nor does it mention that the driving licence had not been issued in the name of the driver of the offending vehicle. The tribunal in its award observed in the light of the above, since from the evidence of DW-1 it could not be stated that the driving licence was fake, Insurance Company would remain liable to pay compensation.

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 claim is under section 163A, the notional income of the 14 years old minor victim had to be taken as Rs.15,000/- per month. After deducting one-third on account of personal expenses and applying a multiplier of 15, the net compensation comes to Rs.1,50,000/-. The claimants would also be entitled to an amount of Rs.2,500/- on account of loss of estate and Rs.2,000/- for funeral expenses. The gross compensation works out to Rs.1,54,500/- together with interest thereon at the rate of 6% per annum from the date of lodging the claim till the date of receipt of the amount of compensation.

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.

It is submitted by the Insurance Company that they have deposited a sum of Rs.25,000/- with the Registrar General of this Court in aid of this appeal.

Upon payment of the sum indicated hereinabove into the Bank Accounts of the claimants/respondents, within 45 days from the date of receipt of such bank account particulars, upon the same being furnished by their counsel to the counsel for Insurance Company, the Insurance Company shall be entitled to claim refund of the aforesaid sum of Rs.25,000/- together with any accrued interest from the Registrar General of this Court.

With the aforesaid directions the instant appeal is disposed of. Accordingly, all connected applications are disposed of.

In view of the above order, execution case in the court below, if any, remains stayed.

There will be no order as to costs.

Photostat certified copy of this order, if applied for, be furnished upon compliance of all necessary formalities.

(Shekhar B. Saraf, J.)