S/L 9
23.8.2021
Court No.26
SD

FMAT 776 of 2017
With
CAN 1 of 2017
(Old CAN 7295 of 2017)
With
CAN 2 of 2017
(Old CAN 10537 of 2017)
(Via Video Conference)

The New India Assurance Co. Ltd.
Vs.
Smt. Parul Ghosh & Ors.

Mr. Parimal Kumar Pahari
... for the Appellant/Insurance Co.
Mr. Amit Ranjan Roy
... for the Claimants/Respondents.

The appeal is directed against the judgment and award dated April 29, 2017 passed by the learned Additional District Judge, Motor Accident Claims Tribunal, Fast Track Court No.1, Barrackpore, North 24 Parganas in M.A.C. Case No.5 of 2015 on a claim under Section 166 of the Motor Vehicles Act, 1988 for death of one 'Dilip Ghosh' in a road accident dated August 26, 2014.

Mr. Parimal Kumar Pahari, counsel appearing on behalf of the appellant, preliminary put forth his submission on the proposition that if the offending vehicle did not possess a valid permit, the Insurance company could not be made liable to pay compensation.

Per contra, counsel for the claimants submits that defence provided to the Insurance company under Section 149(2) of the Motor Vehicles Act, 1988 doe not absolve the Insurance company for making the payment to the claimants. He submitted that the liability of the insurance company to pay the victim very much remain and the defence under Section 149(2) only allows the insurance company to seek the reimbursement of the amount paid to the victim from the owner of the offending vehicle.

He relied on the judgments of ***National Insurance Company Limited vs. Swaran Singh & Ors.*** reported in ***(2004) 3 SCC 297*** and ***Amrit Paul Singh vs. TATA AIG General Insurance Company Limited*** reported in ***2018 SAR (Civil) 768*** and ***Shamanna & Anr. vs. The Divisional Manager Oriental Insurance Company Limited & Ors.*** reported in ***2018 SAR (Civil) 1021.***

On an examination of the judgments cited by the parties, I am of the view that the judgment in ***Swaran Singh (supra)*** is the judgment to be followed which held that in cases where insurance company is able to put up a good defence under Section 149(2), it is upon the insurance company to first pay the claimants and thereafter recover from the owner of the offending vehicle in question.

Mr. Roy further submitted that one cross objection being COT 2 of 2021 has been filed by the claimants against the self same award passed by the Tribunal. Mainly two points have been taken by the cross objectors in the said cross objection. He submitted that the monthly income of Rs.3,000/- of the victim, considered by the Tribunal, was inadequate and claimants are entitled to get future prospect on the income of the deceased.

Accordingly, it was argued that lesser quantum of compensation has been wrongfully awarded by the Tribunal. In support of his case, he relied on Supreme Court judgments of ***Smt. Sarla Verma & ors. vs. Delhi Transport Corporation & Anr.*** reported in ***(2009) 6 SCC 121*** and ***National Insurance Company Limited vs. Pranay Sethi & Ors.*** reported in ***(2017) 16 SCC 680.*** I find substance in the argument of the appellant for the year 2014, in a claim case under Section 166 of the Motor Vehicles Act, 1988, an amount of Rs.4,000/- per month does not appear to be exorbitant. Appellants are justified in praying for 40%

addition on account of 'future prospect' on the income of the 33 years old deceased.

Accordingly, the impugned award is modified and recalculated in the manner referred hereinafter:-

Particulars	Amount (Rs.)
Monthly income	4,000.00
Annual income (4,000x12)	48,000.00
After deduction 1/3rd	(-)16,000.00
	32,000.00
Addition 40% future prospect	(+) 12,800.00
	44,800.00
Multiplier of 16 to be used	(x) 16
	7,16,800.00
Add: General damages	(+) 70,000.00
Total compensation	7,86,800.00
Less: Awarded amount	(-) 4,17,500.00
Enhanced amount	**3,69,300.00**

Since the entire awarded sum together with interest has already been deposited in terms of the order passed in the instant appeal, liberty is granted to the claimants/respondents to apply before the Registrar General of this Court for withdrawal of the awarded amount. On such application for withdrawal, the Registrar General shall transmit the entire deposited amount along with accrued interest thereon directly to the bank account of the claimants/respondents in equal share as expeditiously as possible preferably within four weeks from the date of receipt of the bank accounts details.

The appellant/insurance company is further directed to pay the differential/enhanced amount of Rs.3,69,300/- to the claimants/respondents together with 6% interest from the date of filing of the claim case till the date of payment within a period of 45 days from the date of receipt of the bank account particulars of the claimants/respondents.

For such purpose, counsel for the claimants will forward the bank accounts of the claimants within fortnight from date to the Registrar General and counsel for the appellant/insurance company. Payment shall be made by the insurance company to the claimants in equal share.

The insurance company shall upon payment of the enhanced amount, be entitled to recover the entire awarded amount paid to the claimants from the owner of the offending vehicle, in accordance with law.

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 applications, if any, are 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.)