Ct. No. 26

10 & 11

akb

06.9 2021

F.M.A.T. 908 of 2013

With

IA No. CAN 1 of 2013 (Old No. CAN 7912 of 2013)

With

IA No. CAN 2 of 2013 (Old No. CAN 7913 of 2013)

With

IA No. CAN 3 of 2018 (Old No. CAN 6322 of 2018)

The New India Assurance Co. Ltd.

Vs.

Durga Rani Maity @ Durga Maity & Ors.

With

C.O.T. 81 of 2018

With

IA No. CAN 1 of 2019 (Old No. CAN 1753 of 2019)

Durga Rani Maity @ Durga Maity & Ors.

Vs.

The New India Assurance Co. Ltd. & Anr.

(Via Video Conference)

Mr. Parimal Kumar Pahari ...For the Appellant/Insurance Co. & Respondent in COT 81 of 2018

Mr. Krishanu Banik ...For the Respondents/Claimants & Appellants in COT 81 of 2018

By consent of the parties, both the appeals are taken up for hearing analogously by treating the cross appeal, being COT 81 of 2018, 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.

Being aggrieved by and dissatisfied with the judgment and award dated June 10, 2010 passed by the learned Judge, Fast Track, 3rd Court, Tamluk, Purba Medinipur, in M.A.C. Case No. 18/117/254 of 2010/2008/2008, the appellant/Insurance Company has filed the present appeal on various grounds out of which the main ground canvassed by the appellant is that the learned Tribunal ought to have exempted the Insurance Company from the liability altogether since the victim was a gratuitous passenger in the mini truck which caused the accident.

The appeal has been filed out of time before this

Court. An application for condonation of delay, being CAN 7912 of 2013 and an application for stay being CAN 7913 of 2013 have been filed. The delay in filing the present appeal has been explained in paragraphs 3 to 5 of the said application for condonation of delay.

The reasons for causing the said delay have been properly explained and this Court is inclined to accept the said explanation and accordingly the delay in filing the appeal be condoned and hence the application for condonation of delay is allowed and the appeal is registered.

The concerned department is directed to proceed with the said appeal in accordance with law.

Mr. Parimal Kumar Pahari, learned Counsel appearing for the appellant/Insurance Company submits that the learned Tribunal ought to have exempted the Insurance Company from its liability altogether since the victim was a gratuitous passenger in the mini truck which caused the accident. He further contends that the learned Judge passed the impugned award on lump sum basis and not in accordance with law. He further submits that in case of gratuitous passenger in a transport vehicle, the learned Judge ought to have passed a direction to make the payment of compensation by the Insurance Company towards the third parties – victims of the motor accident at first and thereafter the Insurance Company may recover the said amount from the owner of the offending vehicle who has violated the terms and conditions of the Insurance policy.

Per contra, Mr. Krishanu Banik, learned Counsel for the respondents / claimants submits that the appellant/Insurance Company has failed to establish that the victim was a gratuitous passenger in the said mini truck and further the award passed by the learned Tribunal is justified in assessing the compensation in accordance with law and therefore this Hon'ble Court may not interfere for granting the quantum of compensation.

After considering the submissions made on behalf of the parties and following the recent guidelines of the Hon'ble Apex Court in some reported cases with regard to payment of compensation by the Isurance Company towards the third parties and recover the same from the owner of the offending vehicle, this Court is inclined to accept the submission of Mr. Banik, Counsel appearing for the respondents/claimants and on the basis of the submission of Mr. Phari, Counsel for the Insurance Company, the impugned award is thus modified as stated hereinafter :

Monthly income	**Rs. 3,000/-**
Annual Income	**Rs. 36,000/-**
1/3rd deduction for personal Expenses	**Rs. 12,000/-**
Use Multiplier (15) (24,000 X 15)	**Rs. 3,60,000/-**
Add: General Damages	**Rs. 9,500/-**
Principal Compensation	**Rs. 3,69,500/-**

Mr. Pahari learned Counsel appearing for the appellant/Insurance Company submits that his client has deposited the entire awarded sum of Rs.4,00,000/- with the learned Registrar General, High Court, Calcutta and the same has been invested in a nationalised bank in short term auto renewal basis.

This Court directs the Registrar General to release the amount of Rs. 3,69,500/- with accrued interest from the date of deposit till the date of disbursement and the balance amount of Rs.30,500/- with accrued interest from the date of deposit till the date of disbursement shall be refunded to the appellant/Insurance Company within a period of four weeks from the date of receipt of this appeal file.

It is further directed that after the payment of compensation towards the respondents/claimants, the appellant/Insurance company is at liberty to recover the said payment of compensation payable to the respondents/claimants from the owner of the offending vehicle in accordance with law.

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.T. 908 of 2013 along with the cross objection of the claimants, being COT 81 of 2018 are 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.)