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(Via Video Conference)

F.M.A.T 1207 OF 2019
with
I.A. No. CAN 1 OF 2020
with
I.A. No. CAN 2 OF 2020
with
I.A. No. CAN 3 OF 2020

National Insurance Company Limited
Vs.
Usha Majumder & Ors.

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

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

On the oral prayer of the parties, the delay in filing the above appeal is condoned.

The appeal of Insurance Company is directed against the judgement and award dated June 27, 2019 passed by learned Judge, Motor Accident Claims Tribunal 5th Court, Barasat, North 24 Parganas in M.A.C. Case No. 276 of 2016/29 of 2016 on a claim 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, 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 award speaks that the motor vehicle inspector came and deposed as DW1 on behalf of Insurance Company and exhibited a report (Exhibit A/1) issued by the Licencing Authority, Alipore. 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 licencing authority. During cross examination DW1 however mentioned that the report neither stated that the driving licence was a fake document nor did it mention that the driving licence had not been issued in the name of the offending driver. The tribunal in its award observed that in the light of the above, since from the evidence of DW1 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 appellants' assertion that in a claim under section 163A, there is no provision to award Rs. 70,000/- under the collective heads of general damages. The same should have been Rs. 4,500/- only.

Accordingly, the impugned award is modified and recalculated as follows:

Particulars	Amount (Rs.)
Yearly income (Rs.3,300/- p.m. x 12)	Rs.39,600.00
Less: 1/3rd personal expenses	- 13,200.00
	26,400.00
Multiplier of 13 to be used	(x) 13
	3,43,200.00
Collective heads of General Damages	(+) 9,500.00
Total	**3,52,700.00**

The total amount of Rs.3,52,700/- would become payable to the claimants together with interest assessed @ 6 per cent per annum on and from the date of filing of the claim petition within a period of 45 days from the date of receipt of the bank account particulars of the claimants. Advocate for the claimants will forward the bank account details of the said claimants within a fortnight from date to Advocate for the appellant insurance company. The payment shall be made in the proportion decided by the Court below.

It is submitted by the Insurance Company that they have deposited a sum of Rs.25,000/- (Rupees twenty five thousand only) 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, the Insurance Company shall be entitled to claim refund of the aforesaid sum of Rs.25,000/- (Rupees twenty five thousand only) together with any accrued interest from the Registrar General of this Court.

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.

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

With the aforesaid directions the instant appeal is disposed of.

In view of the disposal of this appeal, connected applications, if any, are also disposed of. The concerned department is directed to tag the applications, if any, with the main appeal.

There will be no order as to costs.

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.)