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(Via Video Conference)

F.M.A.T 371 of 2020
with
I.A. No.CAN 2 of 2020
(Application for condonation of delay)
with
I.A. No.CAN 1 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

CAN 2 OF 2020

This is an application for condonation of delay in filing the instant appeal.

On perusal of the pleadings, this Court is satisfied that cause shown for delay in filing of the appeal is sufficient and prayer for condonation of delay should be allowed.

Accordingly, the application for condonation of delay being CAN 2 of 2020 stands allowed. The appeal is restored to its original file and number.

The application for condonation of delay is disposed of.

FMAT 371 OF 2020

The instant appeal has been filed by the appellant/Insurance Company against the judgment and award dated September 27, 2019 passed by the Judge, Motor Accident Claims Tribunal, 5th Court, Barasat, North 24-Parganas in M.A.C. Case No. 28 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, there is no provision 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, 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 appellants' 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 deceased was Rs.3000/- 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 17, the net compensation comes to Rs.4,08,000/-. 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 and Rs.5000/- as loss of consortium. The gross compensation works out to Rs.4,17,500/- 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.

The Insurance Company is directed to make 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.

With the aforesaid directions the instant appeal is disposed of. Accordingly, all connected applications are disposed of. Department is directed to tag the applications, if any, with the main appeal.

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.)