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21.11.2022
Ct. No.237
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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 34 of 2006

Smt. Sangita Devi & Ors.
Vs.
National Insurance Company Ltd. & Anr.

with

FMA 464 of 2007

with

IA No. CAN 1 of 2005 (CAN 3491 of 2005)

with

CAN 2 of 2009 (CAN 8056 of 2009)

(Application not in the file)

National Insurance Co. Ltd.

Vs.

Sangita Debi & Ors.

Mr. Krishanu Banik

... For the appellants/claimants in
FMA 34 of 2006 & respondents/
claimants in FMA 464 of 2007

Mr. Parimal Kumar Pahari

... For the respondent no.1/Insurance Co.
in FMA 34 of 2006

This appeal is directed against the judgment and award passed on 10th August, 2005 by the learned Judge, Motor Accident Claims Tribunal, Additional District Judge, 2nd Court, Asansol, in MAC Case No.08 of 2004/05 of 2004 under Section 166 of the Motor Vehicles Act, 1988.

The claim petition arose on account of death of one Surindra Jadav, aged about 26 years, who suffered accidental death on 11th December, 2003 at about 5.00 hours while the victim was driving a pick up van through

G.T. Road towards Asansol to collect vegetable. Suddenly one unknown Truck running with high speed and in negligent manner, dashed the victim who was driving the pick up van and fled away. As a result, Surindra Jadav, husband of the claimant no.1 died. The claim petition was filed with a prayer for compensation to the tune of Rs.3,00,000/- under Section 166 of the Motor Vehicles Act, 1988.

It was further alleged that the Asansol Police Station Case No.201 of 2003 dated 11th December, 2003 under Sections 279/338/427 of the Indian Penal Code was started against the unknown vehicle fled away after accident.

The respondent no.1/National Insurance Company Limited contested the claim petition by filing written statement denying all materials all averments made in the claim petition contending, inter alia, that the Insurance Company has no liability to pay any compensation to the claimants.

In course of trial, two witnesses were examined in this case i.e., wife of the deceased as PW-1 and one Rajendra Yadav as PW-2.

Learned Tribunal refused to award any compensation on the ground that the offending vehicle could not be intercepted and final report against the offending vehicle was submitted as not traceable, relying on the decision reported in 2004 ACJ 645.

In course of argument, learned advocate Mr. Parimal Kumar Pahari appearing on behalf of the respondent no.1/Insurance Company supported the judgment passed by the learned Tribunal and it is submitted that there is no scope to allow any compensation as admittedly the offending vehicle was not traceable.

In opposition to that, learned advocate Mr. Krishanu Banik appearing on behalf of the appellants/claimants has relied on the judgments in **Bulbul Mondal @ Bhola Mondal v. National Insurance Co. Ltd. & Anr.**, reported in **2010 ACJ 826** and **Smt. Brinda Routh & Ors. v. United India Insurance Company Ltd.** reported in **2010 ACJ 372**, dealing with limited liability of Insurance Company in case of unknown vehicle responsible for the accident.

On careful perusal of the claim petition together with the evidence, I find that the victim was a driver of a vehicle bearing registration no.WB-37A/2989 and used to draw salary of Rs.3,000/- per month. It is also evident that he succumbed to his injuries while he was driving the vehicle bearing registration no.WB-37A/2989.

So, in these circumstances, it is needless to mention that the appellants/claimants are entitled to compensation as per Workmen's Compensation Act dealing with limited liability of the Insurance Company.

The views have been clearly enunciated in both the decisions of **Bulbul Mondal @ Bhola Mondal** (supra) and **Smt. Brinda Routh** (supra).

Therefore, I find that if I apply the provisions contained in the Workmen's Compensation Act, the limited liability in the amount of Rs.3,27,920/- along with interest @ 6% per annum from the date of one month after the accident till actual payment and the liability of the respondent no.1/Insurance Company would be limited to the extent of that amount.

The respondent no.1/National Insurance Company Limited is directed to deposit the compensation amount of Rs.3,27,920/- along with interest @ 6% per annum from the date of one month after the accident till actual payment, after deducting the amount, if any, paid under Section 140 of the Motor Vehicles Act, 1988 before the office of the learned Registrar General of this Court, within six weeks from the date of this order.

The appellants/claimants will be entitled to withdraw the amount with interest.

The learned Registrar General will disburse the amount to the appellants/claimants in equal share on proper identification.

With the above observation, the appeal, being FMA 34 of 2006, stands disposed of.

In view of disposal of the main appeal, being FMA 34 of 2006, the connected appeal, being FMA 464 of 2007, is also disposed of along with all connected applications.

All pending applications, if there be any, also stand disposed of.

Records of the learned Tribunal relating to FMA 34 of 2006 along with a copy of this order be transmitted back immediately.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Bibhas Ranjan De, J.)