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

FMA 191 of 2012

The National Insurance Company Limited
Vs.
Smt. Shreosi Paul nee Das & Ors.

with

FMA 1127 of 2012
with
IA No. CAN 2 of 2018 (CAN 7723 of 2018)
(Application not in the file)

Smt. Shreosi Paul & Anr.
Vs.
The National Insurance Company Limited & Anr.

Mr. Afroze Alam
... For the appellant/Insurance Company in FMA 191 of 2012

Mr. Amit Ranjan Roy
... For the respondents/claimants in FMA 191 of 2012 & appellants/ claimants in FMA 1127 of 2012

Mr. Arabinda Kundu
... For the respondent no.1/Insurance Co. in FMA 1127 of 2012

On behalf of the claimants, the appeal, being FMA 1127 of 2012 has been filed for enhancement of compensation only to the extent of future prospect as the same was not considered by the learned Motor Accident Claims Tribunal, 5th Court, Howrah, in connection with MAC Case No.306 of 2004.

On the other hand, the National Insurance Company Limited has preferred an appeal, being FMA 191 of 2012, being aggrieved by and dissatisfied with the judgment and award dated 10th May, 2011 passed in MAC Case No.306 of 2004 whereby the learned Tribunal did not allow to give liberty to the National Insurance Company Limited to recover the compensation from the owner of the offending vehicle, bearing registration no.WB-02/N-2381.

Both the appeals are being taken up together for disposal by this common judgment.

The claim petition was filed under Section 166 of the Motor Vehicles Act, 1988 on 10th August, 2004 by the claimants for compensation of Rs.10,00,000/- on account of death of one Rabidas Paul @ Rabin Paul in a road accident which took place on 4th July, 2004 at about 21.30 hours over Madhu Sudun Mukherjee Road near Shankar Pharmacy. The accident took place due to rash and negligent driving of a vehicle, bearing registration no.WB-02/N-2381.

The National Insurance Company Limited contested the claim application by filing written statement denying all material allegations made in the claim petition contending, inter alia, that the claimants are not entitled to any compensation as the policy was cancelled at the relevant point of time.

In course of the trial, two witnesses were examined on behalf of the claimants. They corroborated the entire incident of accident, the age and income of the deceased.

On behalf of the Insurance Company, one witness was also examined in this case as DW-1 to show that cheque issued by the owner of the vehicle towards premium was dishonoured.

All the learned advocates on behalf of the National Insurance Company Limited as well as the claimants are present. After hearing the learned advocates, it comes to my view that the only issue in appeal, being FMA 1127 of 2012, is that the learned Tribunal did not consider the future prospect and the issue of appeal, being FMA 191 of 2012, is that the learned Tribunal did not give any liberty to the Insurance Company to recover the compensation amount from the owner of the vehicle as no premium was ever been paid by the owner of the vehicle.

From the judgment itself, it is clear that the learned Tribunal did not consider the future prospect according to the settled principle laid down by the Hon'ble Apex Court in **Sarala Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.** reported in **(2009) 6 SCC 121**.

Therefore, it is needless to mention that the claimants are entitled to future prospect to the extent of 15% of the income.

With regard to the payment of premium is concerned, I find that at the time of examination of DW-1 on behalf of the Insurance Company, the dishonoured cheque along with notices were admitted in evidence as Exhibit-A to G/1. From the entire evidence of DW-1 together, I do not find any reason to come to a conclusion that after dishonoured of the cheque, the Insurance Company served notice upon the owner of the offending vehicle. It also appears from the record that the owner of the offending vehicle did not appear before the learned Tribunal in spite of notices and also in the appeal.

Learned advocate appearing on behalf of the National Insurance Company Limited in the appeal, being FMA 191 of 2012, has submitted that the owner never paid premium by any other mode except the cheque which was dishonoured.

From the records, it also appears that the Insurance Company could not serve notice upon the owner after dishonoured of the cheque and also could not file any criminal case under Section 138 of the Negotiable Instruments Act to that effect.

Be that as it may, it cannot be the reason for disregarded the prayer for recovery of the amount from the owner after payment of compensation to the claimants. Thus, the National Insurance Company Limited is at liberty to recover the total awarded amount from the owner of the vehicle.

Considering the aforesaid facts and circumstances, I find it justified to modify the award as follows:-

Monthly Income	Rs. 9,970/-
Less: Professional Tax	Rs. 110/-
	Rs. 9,860/-
Annual Income (Rs.9,860/- x 12)	Rs. 1,18,320/-
Less: 1/3rd Deduction	Rs. 39,440/-
	Rs. 78,880/-
Add: Future prospect 15%	Rs. 11,832/-
	Rs. 90,712/-
Multiplier 11 (as per age 50 to 55 years)	X 11
	Rs. 9,97,832/-
Add: General Damages	Rs. 70,000/-
Total	Rs.10,67,832/-

It is reported that the National Insurance Company Limited only deposited the statutory amount of Rs.25,000/- at the time of filing of the appeal before the office of the learned Registrar General of this Court.

In the aforesaid view of the matter, the claimants are entitled to compensation of Rs.10,67,832/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e., on 10th August, 2004 till the deposit of the same.

Accordingly, the National Insurance Company Limited is directed to deposit the awarded amount of Rs.10,67,832/- along with interest @ 6% per annum from the date of filing of the claim petition, i.e. on 10th August, 2004 till the actual deposit of the amount before the office of the learned Registrar General of this Court, within six weeks from the date of this order.

The National Insurance Company Limited is at liberty to recover the entire awarded sum with interest from the owner of the vehicle, bearing registration no.WB-02/N-2381, through execution proceeding in terms of the observations of the Hon'ble Apex Court in **Shamanna & Ors. v. The Divisional Manager, The Oriental Insurance Co. Ltd. & Ors.** reported in **AIR 2018 SC 3726** and **Oriental Insurance Co. Ltd. v. Nanjappan & Ors.** AIR 2004 SC 1630 : (2004) 13 SCC 244.

The National Insurance Company Limited is also at liberty to withdraw the statutory deposit of Rs.25,000/- along with accrued interest thereat from the office of the learned Registrar General.

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

The learned Registrar General is requested to disburse the amount to the claimants in equal share on proper identification.

With the observation, both the appeals, being FMA 191 of 2012 and FMA 1127 of 2012, stand disposed of.

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

Records of the learned Tribunal 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.)