Ct. No. 14

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F.M.A. 1063 of 2016

United India Insurance Co. Ltd.
-Versus-
Smt. Pramshila Devi & Anr.
With

C.O.T. 28 of 2020

Smt. Pramshila Devi
-Versus-
United India Insurance Co. Ltd. & Anr.

Mr. Parimal Kumar Pahari ...For the Appellant, United India Insurance Company Limited & for the respondent No.1 in COT 28 of 2020

Mr. Ashique Mondal ...For the Respondent No. 1/ Claimant and the objector of COT 28 of 2020

This appeal has been preferred against the judgment and award dated 8th June, 2015 passed by the learned Commissioner, Employees' Compensation, Second Court, Kolkata, West Bengal (hereinafter be referred to as the Compensation Court), in Claim Case No. 71 of 2006. By the judgment, the learned Compensation Court directed the appellant United India Insurance Company Limited to pay compensation of Rs. 2,54,160/- to the respondent No. 1, Smt. Pramshila Debi (widow of the deceased) with interest at the rate of 12% per annum from the expiry of one month from the date of the accident till the deposit of the awarded amount in Court.

Challenging the legality of the award, the appellant seeks setting aside of the award passed by the learned Compensation Court.

The facts which are necessary for adjudication may be summarized as follows :

Ranjit Roy @ Lalbahadur Roy was employed as a driver of a vehicle bearing No. WB-03A/0024 owned by the respondent No. 2 M/s. Kali Carrying Corporation. He used to get salary of Rs. 4,500/- per month from his employer. While he was driving the vehicle during course of his employment, he met with an accident at a place under Chanari Police Station in Bihar. As a result, he sustained fatal injuries and ultimately he died on August 24, 2005. At the time of the accident he was aged about 35 years. The claimant/respondent No. 1 Smt. Pramshila Debi is the widow of the deceased Ranjit Roy @ Lalbahadur Roy. At the time of the accident the vehicle driven by the deceased was insured with the appellant the United India Insurance Co. Ltd.

On the facts as above, the claimant sought for compensation of Rs. 3,94,120/- with interest thereon.

The respondent No. 2, M/s. Kali Carrying Corporation did not contest the claim case. However, the appellant the United India Insurance Co. contested the claim case by filing a written statement wherein it denied its liability to pay compensation to the widow of the deceased.

The claimant, in order to prove her case before the learned Compensation Court, got herself examined as PW-1. Besides, she relied on some documents which have been marked as exhibited documents.

Upon hearing the learned Lawyers appearing for the parties and on consideration of the evidence on record, the learned Compensation Court partly allowed the claim application and awarded compensation as indicated above.

Learned Lawyer appearing for the appellant submits that the learned Compensation Court erred in directing the Insurance Co. to pay compensation instead of directing the employer of the deceased to pay the compensation. On such ground, learned Lawyer submits that the judgment and award passed by the learned Compensation Court is liable to be set aside.

Per contra, learned Lawyer appearing for the respondent No. 1/claimant by citing a decision rendered by a Division Bench of this Hon'ble Court in the case of ***The Oriental Insurance Co. Ltd. Vs. Biklesh @ Biklesh Tadav & Anr.,*** reported in **2018 SCC Onine Cal 3479** submits that on the similar factual scenario this Court directed the Insurance Company to pay compensation to the widow of the deceased. Placing reliance on this decision learned lawyer urges that the appeal preferred by the Insurance Co. is liable to be dismissed.

However, learned Lawyer appearing for the respondent No. 1 submits that his client does not want to press the Cross Objection, being COT 28 of 2020 and this may be dismissed for non-prosecution.

Admittedly, deceased Ranjit Roy @ Lalbahadur Roy was employed as a driver in respect of the vehicle bearing No. WB-03A/0024 owned by the opposite party No. 2, M/s. Kali Carrying Corporation. It is not in dispute that while he was in employment he met with an accident occurred on 23.08.2005 due to head on collision between the vehicle driven by him and an another truck and because of the accident he sustained fatal injuries on his person and ultimately he succumbed to the injuries on 24th August 2005.

As held by the learned Compensation Court and as it appears from the documents annexed with paper book, the aforesaid vehicle at the time of accident was insured with the appellant, the United India Insurance Co. Ltd.

Learned Compensation Court on assessment of the evidence especially the voter's identity card of the deceased and the evidence of the claimant has recorded the findings that the claimant, Smt. Pramshila Debi is the widow of the deceased.

It is also not in dispute that because of the death of the deceased out of his employment while he was driving the vehicle, his widow will get the compensation as awarded by the learned Compensation Court.

Now, the question is whether the compensation as awarded would be paid by the employer or the Insurance Co with whom the vehicle was insured.

A Division Bench of this High Court in the case of ***Biklesh @ Biklesh Tadav & Anr. (Supra)*** has held that ultimately it is the Insurance Co. which will have to pay the compensation to the claimant. Accordingly, the Division Bench directed the Insurance Co. to pay the compensation to the claimant/widow of the deceased. The decision as cited above (supra) neatly applies to the facts on hand.

In view of the aforesaid decision, the Insurance Co. shall have to pay the compensation to the claimant.

That being so, the appeal preferred by the Insurance Co. challenging the award in question is liable to be dismissed.

Accordingly, the appeal is dismissed.

As submitted by the learned Lawyer appearing for the respondent No. 1, the Cross Objection, being CO 28 of 2020 stands dismissed for non-prosecution as not pressed.

From a photocopy of a challan dated 22nd September 2015 it appears that the appellant Insurance Co. has deposited Rs. 2,54,869/- with the learned Compensation Court. As directed by a Division Bench by order dated 10th March 2016 in this appeal this amount shall be invested in any interest bearing automatically renewable fixed deposit in a nationalised Bank.

What I find, the interest as awarded by the learned Compensation Court was not deposited by the Insurance Company.

Accordingly, the appellant Insurance Company is directed to deposit the interest at the rate of 12% per annum on the awarded amount of money from the expiry of one month from the date of accident till the date of deposit with the learned Compensation Court, within four weeks from date.

The respondent No. 1 Pramshila Devi is permitted to withdraw the deposited amount of money and the accrued interest thereon from the learned Employees' Compensation, 2nd Court, Kolkata, West Bengal.

After the amount of interest is deposited by the Insurance Company, the Commissioner, Employees' Compensation, 2nd Court, Kolkata shall release this amount to the claimant, Smt. Pramshila Debi immediately after being satisfied with her identity.

With the aforesaid direction, the appeal and connected applications, if any, and the Cross Objection being COT 28 of 2020 stand disposed of.

Let a copy of this order be communicated to the learned Compensation Court for information.

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

(Rabindranath Samanta, J.)