16.02.2022
Item No.16
Ct. No.7
AGM
RKB

F.M.A. 497 of 2014
(FMAT 1314 of 2013)
CAN 2/2015(Old CAN No.6056/2015)
CAN 3/2019 (Old CAN No. 11261/2019)

(Physical Hearing)

The National Insurance Co. Ltd
Vs
Susmita Pal & Ors.

Mr. Rajesh Singh,
... For the Appellant.
Mr. Uday Sankar Chattopadhyay
Mr. Suman Sankar Chatterjee.
... For the Respondent/claimants

Both the learned advocates for the parties to the appeal conjointly urge for expeditious disposal of this appeal.

Learned advocate for both the parties are ad idem on the point that the instant appeal may be disposed of giving a go by to the technicalities involved in the process. It is submitted by the learned advocate for the appellant that the appeal may be disposed of on the basis of the materials furnished by both the parties to this case, which is not opposed by the respondents/claimants.

When learned advocates for both the parties are agreeable to the expeditious disposal of the instant appeal, the Court should not stand in the way.

The appeal of Insurance Company is directed against the judgment and award dated July 9, 2013, passed by learned Judge, M.A.C.Tribunal, 1st Court, Burdwan, in M.A.C. Case No.41 of 2010 on a claim under Section 166 of the Motor Vehicles Act, 1988, granting award to the tune of Rs.30,49,433/- to dependents of the deceased, namely Somnath Pal, for a vehicular accident , occurred on 24th day of May, 2010, by reason of involvement of vehicle being No. WB-41B/9798 in consequence of rash and negligent driving.

Mr. Rajesh Singh, learned advocate representing the appellant insurance company submits that the learned Tribunal has erroneously decided the compensation ignoring the fact that the offending vehicle did not possess a valid route permit on the date of accident.

Adverting to the exhibited documents, like seizure list and charge-sheet, Mr. Singh submits that offending Mini Truck had been used making violation of the terms and conditions of the policy issued by the appellant/Insurance Company. The quantification of the award is thus absolutely illegal.

Emphasis has been made by Mr. Singh that the route permit of the offending vehicle was neither seized by the police authorities, nor produced by the claimants/respondents and therefore, it can be concluded that on the date of accident the involved Mini Truck did not possess a valid route permit. Thus, there had been gross violation of the terms and conditions of the policy, for which the appellant/Insurance Company should not have been made liable to pay any compensation responding to the claim application. Referring to the terms and conditions of the policy, and the wanting of valid route permit of the offending vehicle, Mr. Singh contends that the compensation, if any, should have been paid by the owner of the offending vehicle, but not by Insurance Company, for the apparent violation of the terms and conditions of the policy being *ex faice*, shown in the instant claim case.

Reference is drawn to a decision of Hon'ble Apex Court rendered in the case of ***Amrit Paul Singh & Anr. Vs. TATA AIG General Insurance Company Limited & Anr.*** reported in ***(2018) 7 SCC 558.***

Mr. Uday Shankar Chattopadhyay, learned advocate appearing on behalf of the claimants has filed a cross objection being COT 14 of 2015. The said cross objection is not pressed. Mr. Chattopadhyay, however, submits that the non-seizure of route permit by the police authorities cannot be a valid ground for depriving the poor claimants from getting compensation for the death of the victim.

Upon perusal of the judgment, it appears that deceased left this world being a victim of road traffic accident, when he was 32 yeas old.

Facts leading to the death of victim in the above accident are not disputed.

For the violations/contravention of the terms and conditions of the insurance policy, due to inadequacy of the route permit, the dependants of the deceased should not be subjected to starvation for their financial distress in a claim case under Section 166 of the M.V. Act.

In the case of ***Amrit Paul Singh (supra),*** as referred by Mr. Singh, learned advocate for the Insurance Company/appellant, the offending vehicle had no valid permit, far to speak off temporary permit or any other kind of permit. True it is that use of a vehicle in a public place without a permit is a fundamental statutory infraction, which cannot be compared in context with absence of licence or fake licence. But the ratio of the decision, as available in para 23 of the said decision is that the principle rendered by the Apex Court in the case of ***National Insurance Company Limited –versus- Swaran Singh and others*** reported in ***2004 (3) SCC 297*** was reinforced borrowing the same laid down there, thereby the proposition of law laid down therein as regards the **"Pay and Recovery",** was reinforced.

The points so raised, in the appeal by the appellant/Insurance Company may be a subject of consideration before the appropriate forum in connection with appropriate litigation, if any, undertaken by the Insurance Company intending to recover the amount payable to claimants/respondents.

Therefore, in the given context of this case, there cannot be any reverse decision of law against the settled propositions of law already decided by the Apex Court **"Pay and Recovery"**.

It appears that a sum of Rs.30,24,433/-, apart from statutory deposit of Rs.25,000/-, has already been deposited by insurance company through respective challans with the Registrar General of this Court.

The Registrar General will ensure that the entire deposited amount along with interest accrued thereon, is paid to the claimants as expeditiously as possible, preferably within a period of three (03) weeks from the date of receipt of bank account details of the claimants.

Liberty is given to claimants to make proper approach to Registrar General for release of such amount, and if any approach is made by claimants, the Registrar General of this Court shall cause order releasing entire deposited amount, as mentioned above, forthwith upon establishing identity of claimants.

Learned advocate for the respondents/claimants shall forward the bank account details of the respondents/claimants within a fortnight from the date to the Registrar General of this Court. The payment shall be made in the same manner and proportion, as already decided by the learned court below.

The payment should be made directly to the bank accounts of the appellants/claimants through NEFT/RTGS.

Insurance Company is further given liberty to take steps in accordance with law to recover the amount payable to the respondents/claimants from the owner of the offending vehicle.

In view of the disposal of this appeal, connected applications, if any, are also disposed of. The Cross Objection is also disposed of. Department to forthwith tag relevant COT being COT 14 of 2015 with the case record.

There shall be no further order as to costs.

Lower Court Records if any, may be returned back to the learned court below.

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

(Subhasis Dasgupta, J.)