10 **11.02. 2022**

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FMA 3498 of 2016

National Insurance Company Limited
Vs
Anarul Islam & Ors.

(Via Video Conference)

Ms. Sucharita Paul
... for the appellant.

Ms. Susmita Saha Dutta,
Mr. Niladri Saha.
... for the respondent no. 2(a), 2(b)
Mr. Sjal Pandit,
... For the respondents.

<u>IN Re: IA NO: CAN 2 of 2021</u>

Emergence of CAN application, referred hereinabove, pertains to a prayer for substitution of the legal heirs and representatives of claimant/respondent no.2.

Ms. Susmita Saha Dutta, learned advocate appearing for the claimants/respondents submits that during the pendency of the appeal, claimant/respondent no.2 had expired and as such the said claimant/respondent may be substituted by his wife and daughter, as disclosed in para 3 of instant application. Incidentally Mr. Niladri Saha being led by Susmita Saha Dutta submits that a fresh Vakalatanama has already been filed in the department being No. A2228 dated 11.02.2022 for the legal heirs of respondent no.2. Ms. Susmita Saha Dutta submits that the names and addresses have been mentioned in the substitution application being CAN 2 of 2022.

Mrs. Sucharita Paul, learned advocate appearing for the appellant/Insurance company does not raise any objection against such substitution by legal heirs of claimant/respondent no.2. Upon perusal of the relevant averments contained in the pleadings, it appears that the claimant no.2 had expired on 22.09.2019 leaving behind his widow and daughter as legal heirs. That being the position, the prayer is allowed. As such the name of legal heirs left by respondent no.2 be brought on record.

CAN application being CAN 2 of 2022 is disposed of directing department to take steps for substitution of the legal heirs, as regards claimants/respondent no.2 in the memo of appeal and ensure necessary correction therefor.

The application being IA No. CAN 2 of 2022 is disposed of.

IN Re: F.M.A. 3498 of 2016

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 as such ad idem on the point that the instant appeal may be disposed of, if necessary, even giving a go by to the technicalities involved in the process.

It is submitted by the learned advocates for the parties that the appeal may be disposed of on the basis of materials furnished by both the parties to this case.

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.

This is an insurance appeal impugning the judgment and award dated 31st August, 2015, passed by learned Judge, M.A.C.T.-cum-Addl. Dist. & Sessions Judge, F.T.C.- 2nd, Raiganj, Uttar Dinajpur, in M.A.C. Case No. 11 of 2013 on a claim under Section 163A of the Motor Vehicles Act, 1988, granting award to the tune of Rs. 1,94,000/- to the claimants being dependents of the deceased namely Khaton Bibi, for a vehicular accident, occurred on 20th Day of October, 2012, by reason of involvement of Motorcycle bearing No. WB-60F/5022.

Mrs. Sucharita Paul, learned advocate representing the appellant/Insurance Company submits that the driver of the offending Motorcycle was holding a fake driving licence on the date of accident.

It is further submitted by Mrs. Paul that the driver of the offending Motorcycle was none, other than the owner himself. Therefore, since the owner of the said vehicle knowingly violated the policy conditions by driving his Motorcycle with a fake licence, insurer should not be made liable indemnify the claimant.

Adverting to the exhibited documents, like Exhibit A, being the particulars of driving licnce, issued by Licencing Authority, Uttar Dinajpur, Mrs. Paul submits that the offending Motorcycle had been used making contraventions/violations of the terms and conditions of the insurance policy issued by the appellant/Insurance Company in the name of insured. The quantification of the award is thus absolutely illegal requiring a revisit for granting just compensation, if there be at all.

Emphasis has been made by Mrs. Paul that as per Exhibit A, the said driving licence was in the name of one Ranjan Kumar Das and not in the name of driver/owner namely, Arun Kr. Das of the said Motorcycle. Therefore, obviously there had been gross violation of the terms and conditions of policy, for which the appellant/Insurance Company should not be fastened with the liability to pay any compensation responding to the claim application.

Referring the terms and conditions of the policy, Mrs. Paul strongly contends that compensation, if any, should have been paid by the owner of the offending vehicle himself, and not by the Insurance Company, for the apparent violation of the terms and conditions of the policy being *ex facie* shown in the instant claim case.

Reliance has been placed on the judgement passed by Hon'ble Supreme Court in the case of ***National Insurance Co. Ltd. vs. Swaran Singh & ors.*** reported in ***(2004) 3 SCC 297.***

It is also submitted that the rate of 9% interest awarded by the learned Tribunal is excessive and is not in accordance with the rate of interest provided by the banks, or post offices at different schemes. Accordingly, Mrs. Paul prays for reduction of such rate of interest.

Ms. Susmita Saha Dutta, submits that Exhibit-A was not proved in accordance with law. It is submitted that no officer from Motor Vehicle Department came forward to prove the genuineness of "Exhibit-A".

Ms. Saha Dutta further submits that the concerned driving licence was seized by police authorities and was found to be valid and in the name of the driver/owner namely, Arun Kr. Das.

Ms. Saha Dutta thus supports the order of the Tribunal.

Reference is drawn to a decision of Hon'ble Apex

Court rendered in the case of ***Singh Ram –vs.- Nirmala & ors.*** reported in ***(2018) 3 SCC 800.***

For the violations/contraventions of the terms and conditions of the insurance policy, due to inadequacy of the driving licence, the dependents of the deceased should not be subjected to starvation for their financial distress in a claim case under Section 163A of the M.V. Act. 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".**

The claimants are therefore, found entitled to the awarded amount of Rs.1,94,000/- together with interest assessed @ 6 per cent per annum on and from the date of filing of the claim petition.

It appears that a sum of Rs.2,29,866/-, apart from statutory deposit of Rs.25,000/-, has already been deposited by respective challans with the Registrar General of this Court,

Department shall calculate the amount payable to the claimants in terms of the above order and shall ensure that the entitled amount 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 learned Registrar General for release of such modified award, and if any approach is made by claimants, the learned Registrar General of this Court shall cause order releasing such modified sum of award 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 date to the learned Registrar General to this Court. The payment shall be made in the same manner and proportion, as already decided by the learned court below. The share of deceased claimant/respondent no.2 shall be paid to his legal heirs, as mentioned in the application for substitution, being his widow and daughter.

Upon payment of the sum, as indicated hereinabove into the bank account of the claimants/respondents, the entire remaining balance amount if any, shall be refunded to Insurance Company from the learned Registrar General of this

Court as expeditiously as possible. Insurance Company shall be at liberty to claim refund of the remaining balance amount from this Court.

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.

With the aforesaid direction, the instant appeal is disposed of.

In view of the disposal of this appeal, connected applications, if any, are also disposed of.

L.C.R. if any, may be returned back to the learned court below.

There shall be no further order as to costs.

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)