24.02.2022
Item No.37
Ct. No.7
AGM

F.M.A. 921 of 2021
CAN 2 of 2019 (Old CAN 1332 of 2019)
(Not in file)
COT 17 of 2019
(Not in file)
(Via Video Conference)

The Oriental Insurance Company Limited
Vs.
Archana Banerjee & Anr

Mr. Rajesh Singh, ... For the Appellant.

Mr. Saidur Rahaman, ... For the Respondents No.1.

Mr. Khairul Alam, ... For the Respondents No.2.

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

Learned advocate for 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 learned advocates for the parties that the appeal may be disposed of on the basis of the materials furnished by the parties to this case, which is not opposed by either of the respondents.

When learned advocates for 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 September 15, 2016, passed by learned Additional District &

Sessions Judge, 4th Court, Malda, M.A.C. Tribunal in M.A.C. Case No. 108 of 2012 on a claim under Section 166 of the Motor Vehicles Act, 1988, granting award to the tune of Rs. 21,62,820/- to mother of the deceased, namely, Arpan Banerjee, for a vehicular accident which took place on 12th day of December, 2011 by reason of involvement of vehicle bearing No. WB-65/4466 in consequence of rash and negligent driving.

Mr. Rajesh Singh, learned advocate representing the appellant Insurance Company primarily urges grounds in support of this appeal, which are two-folds. It is contended by the appellant that the learned Tribunal has erroneously decided the compensation ignoring the fact that the driver of the offending vehicle had a fake driving licence on the date of accident. Referring to the terms and conditions of the policy and the wanting of valid driving licence, 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 violation of the terms and conditions of the policy being ex facie, shown in the instant claim case.

The second point urged by Mr. Singh is that the deceased victim being a bachelor, the deduction on account of personal expenses should have been 50% of victim's income. The learned Tribunal had erroneously deducted 1/3 rd on such score.

Reliance is drawn to the decisions of Hon'ble Apex Court rendered in the cases of **National Insurance Company Limited-vs- Swaran Singh & Ors**, reported in **(2004) 3 SCC 297** and **Smt. Sarla Verma & Ors –Vs- Delhi Transport Corporation & Anr** reported in **(2009) 6 SCC 121.**

Mr. Khairul Alam, learned advocate appearing on behalf of the respondent No. 2/owner/insured submits that the licence of the offending driver was valid and proper on the date of accident and accordingly the onus of satisfying the award passed by the learned Court below lies on respondent No. 2/owner, and the award should be paid by the Insurance Company.

Adverting to the evidence adduced by PW 4 and OPW 2 and also exhibited documents, like seizure list, charge-sheet and exhibit A, Mr. Alam submits that the driver of the offending vehicle had driving licence bearing No. WB-65A/8812. Whereas OPW1, being the Investigator appointed by the Insurance Company made investigation in connection with a different driving licence No. WB-65/8812. It is submitted that the Investigator of the insurer investigated in connection with a completely different driving licnece, which was in the name of a different individual altogether. Therefore, for such erroneous finding on the part of OPW1, the owner/insured/respondent No. 2 cannot be held liable to pay compensation. It is further submitted by Mr. Alam that the seizure list and charge sheet confirmed that the seized driving licence bearing No. WB-65A/8812 was valid and proper on the date of accident. The award passed by the learned Tribunal also confirms such fact.

Mr. Saidur Rahaman, learned advocate appearing on behalf of the respondent No. 1/claimant, has filed a cross objection being COT 17 of 2019. The said cross objection is not pressed. Mr. Rahaman, however, submits that the poor has been deprived from getting compensation due to pendency of the appeal and prayed for disposal of the said appeal.

Upon perusal of the judgment, it appears that deceased left this world being a victim of road traffic accident, when he was 24 years old.

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

This Court finds correctness in the argument made by Mr. Alam on behalf of respondent No. 2. Documents speak that the OPW1 investigated in connection with a different driving licence instead of rendering investigation of seized driving licence of the offending vehicle. The police authorities duly seized the driving licence of the offending driver having number WB-65A/8812 and it was found to be valid on the date of incident.

This issue raised by Insurance Company regarding driving licence had been thoroughly discussed in the award and after duly considering the oral and documentary evidences adduced, it was held that from the documents it was clearly proved that the driver of the offending vehicle had a valid driving licence on the date of accident. Accordingly, the driving licence of the offending driver, bearing number WB-65A/8812 cannot be considered to be a fake driving licence. Such assessment and finding of the learned Tribunal is supported by sufficient reasons and accordingly, the same should go uninterfered with and it does not require any further interference.

The Court, however, is of the view that there is strong force in the second ground urged by Mr. Singh regarding deduction on account of personal expenses of the victim. Since the victim was a bachelor, 50% should be deducted as his personal expenses.

Accordingly, after considering the submissions of all appearing parties, the claimant is found entitled to a total sum of Rs. 16,23,240/- after correction of the deduction of personal expenses of the deceased, as proposed by the Insurance Company being represented by Mr. Rajesh Singh. The claimant is agreeable to accept such sum along with 6% interest, to be calculated from the date of filing of the claim case.

It appears that a sum of Rs. 30,08,637/-, 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 shall ensure the calculation of the amount payable to the claimant as per the above order and will ensure that a sum of Rs. 16,23,240/- along with 6% interest is paid to the claimant, if any approach is made by claimant, as expeditiously as possible, from the deposited amount, preferably within a period of two (2) weeks from the date of receipt of bank account details of the claimant.

The entire remaining balance amount shall be refunded to the appellant/Insurance Company. Liberty is given to the appellant to make proper approach to Registrar General for release of such balance amount.

The Registrar General of this Court shall cause order releasing the amount, as mentioned above, forthwith upon establishing identity of claimant.

Learned advocate for the respondent/claimant shall forward the bank account details of the respondent/claimant within a fortnight from date to the Registrar General of this Court.

The payment should be made directly to the bank account of the respondent/claimant through NEFT/RTGS.

In view of the disposal of this appeal, connected applications, if any, are also disposed of. The cross objection is also disposed of as not pressed.

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.

All parties shall act in terms of copy of this order downloaded from the official website of this Court.

(Subhasis Dasgupta, J.)