18.02.2022
Item No.18
Ct. No.7
AGM

F.M.A.T. 851 of 2018
CAN 2 of 2019 (Old CAN 4144 of 2019)
(Via Video Conference)

The New India Assurance Co. Ltd
Vs.
Monoj Show & Ors

Mr. Parimal Kumar Pahari, ... For the appellant.

Sk. Abu Abbas Uddin,
Ms. Nahid Rahman, ... For the respondents.

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

This is an appeal of Insurance Company, and the appeal is directed against the judgement and award dated March 28, 2018, passed by the learned Judge, Motor Accident Claims Tribunal, 3rd Bench, City Civil Court, Calcutta in M.A.C. Case No.209 of 2011, on a claim under Section 166 of the M.V. Act, 1988.

The ground raised by the Insurance Company in the appeal is that at the time of accident, the driver of the offending vehicle was not holding a proper and effective driving licence, which was sought to be proved by the Insurance Company adducing evidence before the Tribunal, therefore, the Insurance Company is not liable to pay compensation in view of violation of the policy conditions and the award should be satisfied by the owner of the said vehicle.

Upon perusal of the judgement, it appears that victim left this world being a victim of road traffic accident, when she was 64 years old.

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

Per contra, learned advocate for the respondents/claimants submits that there lies nothing to be interfered with the impugned judgment and award. Dependents of deceased cannot be made to move from pillar to post for realizing compensation for the shortcomings of driving licence of offending vehicle. Reliance is thus placed on a decision of ***National Insurance Company Ltd. Vs. Swaran***

Singh & Ors. reported in ***(2004) 3 SCC 297***, on such issue.

Considering rival submission of the parties, and the proposition of law decided by the Apex Court, in case of ***Swaran Singh (supra)***, the above award passed by the learned Tribunal needs a re-appraisal in context with the ratio already decided in such decision.

For the violations of the terms and conditions of the policy, inadequacy of the driving licence, and the deficit in the certificate registration, the dependants of the deceased should not be subjected to starvation for their financial distress in a claim case under Section 166 of M.V. Act.

The point so raised in the appeal by the appellant/Insurance Company is 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 can not be any reverse decision of law against the settled proposition of law already decided by the Apex Court **"pay and recover"**.

Claimants/respondents are thus entitled to the compensation in terms of the calculation mentioned hereinbelow:

Particulars	**Amount (Rs.)**
Monthly Income	1,20,000/
Less:1/3th deduction Towards Personal expenses	(-) 40,000/-
	80,000/-
Age of the victim 65 years as per P.M. report Multiple of 5 to be used Rs. 80,000 x5	4,00,000/-
Cost of funeral expenses and loss of estate	30,000/-
Medical Expenses	1,03,366/-
Total	**5,33,366/-**

Accordingly, a sum total of Rs. 5,33,366/- would become payable to the Insurance Company together with interest assessed at the rate of 6% per annum on and from the date of filing of the claim application till the date of payment.

The Insurance Company is directed to pay the aforesaid awarded amount to the appellant/respondents directly to their respective bank accounts within a period of 45 days from the date of receipt of the bank account particulars of the appellant.

Learned advocate for the respondents to felicitate such payments by the Appellant/Insurance Company will forward the bank account details of the claimants to the learned advocate for the appellant/Insurance Company within a fortnight from date.

The payment shall be made to the respondents in the same manner and proportion as already decided by the Tribunal as per award.

It is submitted by the Insurance Company that they have deposited a sum of Rs. 25,000/- with the learned Registrar General of this Hon'ble Court in aid of this appeal.

Upon payment of the sum indicated hereinabove into the bank accounts of the respondents/claimants, the Insurance Company shall be entitled to claim refund of the aforesaid sum of Rs. 25,000/- together with any accrued interest, if any, from the Registrar General of this Hon'ble Court.

The Insurance Company is granted liberty to realize the amount from the owner as per law.

With the aforesaid directions the instant appeal is disposed of.

There shall be no further order as to costs.

L.C.R. 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.)