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Ct. No.237
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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURICTION
APPELLATE SIDE

FMA 438 of 2005

The New India Assurance Co. Ltd.
Vs.
Smt. Shanti Singha & Ors.

Mr. Parimal Kumar Pahari
... For the appellant/ Insurance Co.

On prayer, learned advocate on behalf of the appellant/New India Assurance Company Limited has received one copy of the Paper Book from the records of the Court.

This appeal is pending since 2004. None appears on behalf of the respondents.

Mr. Parimal Kumar Pahari, learned advocate appearing on behalf of the appellant/Insurance Company submitted that the appeal may be disposed of due to long pendency.

Heard learned advocate appearing on behalf of the appellant/New India Assurance Company Limited.

This is an appeal directed against the judgment and award passed on 30th March, 2004 by the learned Judge, Motor Accident Claims Tribunal, 2nd Court at Siliguri, in connection with MAC Case No.160 of 2002 under Section 166 of the Motor Vehicles Act, 1988.

The claim petition was filed on account of death of one Gaya Prasad Singha in a motor accident occurred on 29th March, 2002 at about 13 to 13.50 hours by the involvement of two vehicles, bearing registration no.WB-74C/1225 (Tata Sumo) and a Truck, bearing registration no.WMH-2074. Tata Sumo was duly insured with New India Assurance Company Limited and the Truck was insured with National Insurance Company Limited. At the time of accident, the deceased was aged about 30 years and was a driver by profession having income of Rs.3,000/- per month.

Both the Insurance Companies contested the application by filing their respective written statements denying the case of the claimants.

To prove the case, respondents/claimants examined three witnesses, namely, Smt. Shanti Singha, wife of the deceased, as PW-1, who corroborated the entire facts of the claim petition and prayed for compensation to the tune of Rs.3,50,000/-.

PW-2 Chandra Chhetry claimed himself to be an eyewitness to the accident, testified in evidence that at the time of accident, he was behind the said Tata Sumo which was dashed by one Truck coming from Siliguri side. Immediately after the accident, Gaya Prasad Singha, who was the driver of the said Tata Sumo, sustained injury and he died subsequently.

One Sailendra Nath Singh was examined as PW-3. He claimed himself to be the owner of Tata Sumo and he admitted that Gaya Prasad Singha died in the accident. After the accident, Gaya Prasad Singha was taken to North Bengal Medical College and Hospital where he succumbed to his injuries. Average income of the deceased Gaya Prasad Singha was Rs.3,000/- per month.

In course of evidence, a good number of documents, including, First Information Report, charge sheet, Death Certificate, seizure list, post mortem report, driving licence, insurance policy etc. were admitted in evidence as Exhibit-1 to 11.

After considering the entire evidence on record, the learned Tribunal assessed the compensation to the tune of Rs.3,50,000/- and the appellant/New India Assurance Company Limited was directed to pay Rs.1,40,000/- to the claimants.

On perusal of the observation of the learned Tribunal in terms of evidence, I find that the learned Tribunal rightly considered the evidence and assessed the compensation rightly by the impugned judgment.

Mr. Pahari, learned advocate appearing on behalf of the appellant/New India Assurance Company Limited submitted that at the time of accident, the Tata Sumo having insurance of private car was carrying passengers and that is why the Insurance Company is not liable to pay compensation. Rather, it is the liability of the owner of the vehicle.

Even if the policy was violated, in spite of that the Insurance Company is liable to pay the compensation and recover it from the owner of the vehicle.

For the reasons, it is seen that the respondents/claimants are entitled to the compensation to the tune of Rs.1,40,000/-.

It is reported that the appellant/New India Assurance Company Limited has already deposited Rs.1,40,000/- as awarded by the learned Tribunal.

The respondents/claimants are entitled to withdraw the amount with accrued interest.

The appellant/New India Assurance Company Limited is at liberty to recover the awarded sum from the owner of the vehicle (Tata Sumo), bearing registration no. no.WB-74C/1225, through execution proceeding in terms of the observations of the Hon'ble Apex Court in **Shamanna & Ors. v. The Divisional Manager, The Oriental Insurance Co. Ltd. & Ors.** reported in **AIR 2018 SC 3726** and **Oriental Insurance Co. Ltd. v. Nanjappan & Ors.** AIR 2004 SC 1630 : (2004) 13 SCC 244.

The learned Registrar General is requested to disburse the amount with accrued interest to the respondents/claimants in equal share on proper identification.

With the above observation, the appeal, being FMA 438 of 2005, is disposed of on merit.

All pending applications, if there be any, stand disposed of.

Records of the learned Tribunal along with a copy of this order be transmitted back immediately.

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

(Bibhas Ranjan De, J.)