

28.08. 2023

item No.4

n.b.

ct. no. 551

FMA 407 of 2009

with

IA No. CAN 3 of 2011(Old No. CAN 10567 of 2011)

National Insurance Co. Ltd.

Vs.

Basiran Bibi & Ors.

Mr. Parimal Kumar Pahari,

.....for the appellant.

Ms. Chittapriya Shah,

Ms. Priyanka Saha,

.... For the respondent.

This appeal has been preferred against the judgment dated 15th March, 2008 passed by the learned Judge, 1st Court, Birbhum, Suri in M.A.C. Case No.116 of 2005.

An innocuous prayer was made on behalf of the appellant/insurance company before this Appellate Court. It was argued by Mr. Pahari, learned advocate that the deceased was a gratuitous passenger; on such observation, the learned Tribunal has directed the insurance company to pay the compensation and in the same award the insurance company has given a liberty to realize the amount from the owner i.e.opposite party no.1 through a separate execution proceedings.

Mr. Pahari, learned advocate for the insurance company submitted that the law has been settled by the Hon'ble Supreme Court in several matters such as **Baljit**

Kaur, Challa Bharathamma and **Swaran Singh**, wherein it has been specified that the separate execution proceedings to recover the amount of compensation from the owner is not required.

Considering the same, the insurance company preferred this appeal for necessary order.

Learned advocate for the respondent/claimant submitted before this Court that the claimants are not getting the compensation since the date of accident i.e. since 2005 but the order has been made but, which was not received due to the pendency of the appeal.

Heard the learned advocate for the insurance company and also perused the judgment of the Hon'ble Supreme Court in **Challa Bharathamma** it appears to me by virtue of the judgment passed by the Hon'ble Supreme Court in **Challa Bharallamna** the separate execution proceeding is not necessary to initiate by the insurance company to recover the amount from the owner.

Considering the same, the order impugned passed by the learned Tribunal is modified to the effect that the insurance company is at liberty to recover the compensation amount from the owner of the offending vehicle according to the direction given by the Hon'ble Supreme Court in **Challa Bharathamma**.

The learned advocate for the insurance company has submitted the entire awarded amount has already been deposited with the office of the learned Registrar

General, High Court, Calcutta, so, necessary order may be passed, so that the claimant/respondent may receive such amount.

Heard Mr. Pahari, learned advocate, it appears that the initial statutory deposit of Rs.25,000/- was made by the insurance company vide challan no.1843 dated 25th September, 2008 and, thereafter a sum of Rs.3,26,000/- has been deposited vide challan no.2388 dated 12.12.2008.

Considering the same, it appears that the entire amended amount has been deposited with the office of the learned Registrar General, High Court, Calcutta, which must have accrued some interests. The claimants are at liberty to receive the compensation amount alongwith accrued interest according to the direction and share as ordered by the learned Tribunal in the impugned award.

Accordingly, FMA 407 of 2009 is disposed of.

Connected applications, if any, are also disposed of.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Subhendu Samanta, J.)