08.02.2023
Ct. no.237
Sl. No.5 & 6
ss

F.M.A. 710 of 2013
C.A.N.1 of 2013 (old No. CAN 985 of 2013)

The New India Assurance Co. Ltd.
Vs.
Smt. Kaushalya Devi & ors.
With

C.O.T. 19 of 2021
C.A.N. 1 of 2023

Smt. Kaushalya Devi & ors.
Vs.
The New India Assurance Co. Ltd. & ors.

Mr. Parimal Kumar Pahari
... for the appellant-Insurance Co. in F.M.A. 710 of 2013 & respondent-Insurance Co. in COT 19 of 2021

Mr. Krishanu Banik
... for the respondents-claimants in F.M.A. 710 of 2013 & appellants-claimants in COT 19 of 2021

Re : F.M.A. 710 of 2013

This is an appeal directed against the judgement and award passed by the learned Judge, Motor Accident Claims Tribunal, 8th Court, Alipur in connection with Motor Accident Claims Case No.127 of 2007 under Section 166 of the Motor Vehicles Act, 1988.

The fact is that, the claim petition arose out of an application under Section 166 of the Motor Vehicles Act, 1988 on account of death of Moly Shaw in a motor accident by involvement of one oil tanker being No.HR-

38E/2844 which was proceeding with a high speed and in a rash and negligent manner dashed one trekker bearing No.WB-19/9110 whereby the deceased and other family members were travelling. At the time of accident, the deceased was aged about 27 years having income of Rs.2500/- p.m. The claim petition was filed for compensation of Rs.3,65,000/-.

The owner of the oil tanker did not contest this case but, New Indian Assurance Company Limited contested the claim petition by filing written statement contending inter alia that the petition is not maintainable as the documents required at the instance of the oil tanker are not appended to the claim application and more so, the driver of the oil tanker did not possess any valid driving licence.

According to the respondent-Insurance Company, the claimants are not entitled to any compensation as prayed for.

To prove the case of the claimants, three witnesses were examined, namely, Kaushalya Devi as P.W.1, one Durga Prasad Shaw as P.W.2 and one Ajit Kr. Shaw as P.W.3. P.W.1 corroborated a claim application along with the amount of compensation. P.W.2 claimed himself to be an eye-witness of the accident. He testified that on the alleged date and time of accident he was accompanying with the deceased Moly Shaw and while the trekker reached near the village Belut one oil tanker bearing No.HR-38E/2844 coming from opposite direction dashed the trekker, as a result Moly Shaw along with the other family members died on the spot. The deceased Moly Shaw was removed to P.G. Hospital and after two days she died. P.W.3 has testified that Moly Shaw was an employee of his S.T.D. booth and used to earn Rs.2500/- p.m. as salary.

On behalf of the Insurance Company, one Administrative Officer of New India Assurance Company Limited was examined as O.P.W.1. He deposed that the driving licence possessed by the driver of the oil tanker was not valid and fake. In course of his evidence, documents, to that effect, were admitted in evidence as exhibits A to H.

So far as the accidental death of Moly Shaw has not been disputed in this appeal, none of the learned Advocates appearing on behalf of the parties to this appeal raised the issue.

On careful perusal of the evidence on record and certified copy of F.I.R., charge-sheet and post-mortem report, I do not find any reason to re-enter into this issue further. Only ground taken in this appeal is that the Insurance Company is not liable to compensation as O.P.W.1 succeeded to prove that the driving licence possessed by the driver of the oil tanker was not valid rather fake.

On the other hand, on behalf of the claimants one Cross Appeal being C.O.T.19 of 2021 was filed with a prayer for 'future prospect' to the extent of 40% as well as 'general damages' of Rs.30,000/- relying on the principle enunciated by the Hon'ble Apex Court in the case of ***National Insurance Co. Ltd. Vs. Pranay Sethi***, reported in ***2017 SCJ 2700***.

After careful perusal of the evidence of O.P.W.1, I find that he was examined and cross-examined by the parties to the claim petition and in course of evidence it was revealed that at the time of accident, the driver of the oil tanker did not possess any valid driving licence. That evidence was duly substantiated by the documents admitted in evidence as exhibits A to H. But for that reason only the Insurance Company cannot be absolved from making compensation to the claim pursuant to the principle laid down in ***Oriental Insurance Company Limited Vs. Nanjappan & ors***., reported in ***A.I.R. 2004 SC 1630 : (2004) 13 SCC 244*** and in the case of ***Shamanna & ors. Vs. The Divisional Manager, The Oriental Insurance Co. Ltd. & ors.,*** reported in ***A.I.R. 2018 S.C. 3726.***

In terms of the principle laid down in **Nanjappan**'s case (supra) and **Shamanna**'s case (supra), the Insurance

Company is entitled to recover the entire compensation with interest from the owner of the oil tanker by filing execution case directly.

That apart, it is pertinent to mention here that claimants are entitled to 'future prospect' in terms of income as well as 'general damages' in view of the principle laid down in **Pranay Sethi** (supra).

In the aforesaid view of the matter, I propose to determine the compensation afresh as follows :

Monthly Income be assessed as	Rs.2,500/-
Annual Income be assessed as (Rs.2500 X 12)	Rs.30,000/-
Future Prospect be assessed (40% of Rs.30,000)	Rs.12,000/-
	Rs.42,000/-
1/3rd deduction (Rs.42,000-14,000)	Rs.28,000/-
Multiplier '17' as per age of the deceased (Rs.28,000/- X 17)	Rs.4,76,000/-
General damages	Rs. 30,000/-
Total :	Rs.5,06,000/-

It is reported that the entire awarded amount of Rs.1,99,500/- has been deposited before the office of the learned Registrar General. Therefore, the Insurance Company is directed to deposit the balance amount of Rs.3,06,500/- along with interest at the rate of 6% p.a. from the date of filing of the claim petition (20.10.2001) till the deposit of the amount before the office of the learned Registrar General, within six weeks from date. The Insurance Company is further directed to pay interest at the rate of 6% p.a. on the amount of Rs.1,99,500/- from the date of filing of the claim petition till date of deposit before the office of the learned Registrar General.

The claimants are entitled to withdraw the amount along with all accrued interest from the office of the learned Registrar General subject to payment of *ad valorem* court fees of Rs.1,41,000/- before the learned Tribunal.

Learned Registrar General is requested to disburse the claimants in equal share on proper identification and proof.

With the aforesaid observations, the appeal being F.M.A. 710 of 2013 along with cross appeal being C.O.T. 19 of 2021 stand disposed of.

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

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.)