29.03.2023
Ct. No.237
SL Nos. 19
& 20

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FMA 1555 of 2008
The New India Assurance Co. Ltd.
Vs
Raju Dutta & Ors.

With

COT 53 of 2012

Raju Dutta & Anr.
Vs.
The New India Assurance Co. Ltd & Ors.

Mr. Parimal Kr. Pahari.
… For the appellant in FMA 1555 of 2008 & respondents in COT 53 of 2012

Mr. Jayanta Banerjee,
Mr. Sandip Bandhyapadhyay
Mrs. Ruxmini Basu Roy.
… For claimants/respondents in FMA 1555 of 2008 & appellants in COT 53 of 2012.

This appeal is directed against the judgment and award passed by the learned Additional Distirct Judge Motor Accidental Claims Tribunal, 1st Court, Krishnagar, Nadia in connection with Motor Accident Claim Case No. 338 of 2005 under Section 163A of the Motor Vehicle Act, 1988, whereby learned Judge awarded compensation to the tune of Rs. 2,50,000/-

It is not disputed that claim petitioner under Section 163 A of the Motor Vehicle Act, was filed by the claimants on account of death of one Manju Dutta in a motor accident on 06.05.2005 while travelling by an ambassador car bearing no. WB-52/8076 through NH-34 near Itla Brick field due to rash driving. In that accident said Manju Dutta died. It is also not disputed that the said ambassador car was duly insured with the New India Assurance Company Limited.

Mr. Jayanta Banerjee, learned advocate appearing on behalf of the claimants/respondents and appellants of the Cross-Objection has submitted that learned Judge assessed the monthly income at the rate of Rs. 1800/- per month ignoring the evidence on record and even without considering the notional income.

Considering the evidence as well as submission advanced on behalf of the claimants, I find that notional income of the deceased should be of Rs.3000/- per month at the time of accidental death. Accordingly I modify the award in respect of quantum of income as follows:

Monthly Income	= Rs.3000/-
Annual Income (Rs.3000x12)	= Rs.36,000/-
Deduction 1/3 on account of Personal expenses of the deceased (since the number of 3 dependants on the income of the deceased)	=Rs. -12,000/-
	Rs. 24,000/-
Multiplier 17 (Rs.24000/-x 17)	= Rs.4,08,000/-

Add General Damages	Rs. 4500/-
(Loss of Estate Rs. 2500/-	
Loss of Funeral Rs. 2000/-)	
Total Compensation of	**Rs.412,500/-**

Therefore, the claimants are entitled total compensation to the tune of Rs.4,12,500/- along with the 6% interest per annum from the date of filing (28.06.2005) of the claim petition till the date of deposit of the amount.

It is submitted on behalf of the Insurance Company that total awarded amount of Rs.2,50,000/- has already been deposited with the office of the learned Registrar General, High Court, Calcutta.

Appellant/Insurance Company is directed to pay rest amount of Rs.1,62,500/- along with 6% interest per annum from the date of filing (28.06.2005) of claim application till the date of deposit of this amount with the office of the learned Registrar General.

Appellant/Insurance Company is also directed to pay interest at the rate of 6% per annum on the amount of Rs.2,50,000/- from the date of filing of the claim application till the date of deposit of the amount.

Appellant/Insurance Company is directed to deposit the amount mentioned above within six weeks from date.

Mr. Parimal Kumar Pahari, learned advocate appearing on behalf of the Insurance Company has submitted that deceased was travelling by a private motor car bearing no. WB-52/8076, according to insurance policy there was no coverage with the passenger of the private car. Mr. Pahari has further submitted that it was an Act policy and there was no coverage for the passengers of the vehicle save and except third party. Mr. Pahari has submitted that passenger is not third party within the meaning of the Act policy. In support of this contention he referred a judgment in the case of ***National Insurance Company Limited vs. Balakrishnan and Anr***. reported in ***(2013) 1 SCC 731,*** wherein Hon'ble Apex Court clearly observed relying on circular issued by the IRDA that Act policy cannot have coverage third party risk on an occupant in a car unlike comprehensive policy.

Considering the nature of policy observed by the Apex Court in ***Balakrishnan and Anr (Supra***), I find no other option to give a liberty to the Insurance Company to pay the awarded amount and to recover the same from the owner of the ambassador car bearing no. WB-52/8076 directly through execution proceeding in view of the principle laid down in ***Oriental Insurance Co. Ltd. Vs. Nanjappan & Ors.*** reported in ***2004 ACJ 721*** and also in a case of ***Shamanna & Ors. V. The Divisional***

Manager, The Oriental Insurance Co.& Ors. reported in ***AIR 2018 SC 3726.***

Learned Registrar General, High Court, Calcutta is requested to disburse the amount to the claimants in equal share with proper identification and proof as respondent no.2, Barnali Dutta has attained the age of majority in the meantime.

With the aforesaid observation, the **FMA 1555 of 2008** along with **COT 53 of 2012** stand disposed of.

Let a copy of this order along with Tribunal records shall be transmitted back to the learned Tribunal immediately.

Urgent certified copy of this order, if applied for, be given to the appearing parties as expeditiously as possible upon compliance with the all necessary formalities.

(Bibhas Ranjan De, J.)