05.3. 2024
item No.253
n.b.
ct. no. 551

FMA 315 of 2023

With

IA No. CAN 1 of 2023

The Oriental Insurance Co. Ltd.
Vs.
Rumpa Pramanick & Ors.

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

The stamp reporter furnished a report containing, *inter alia*, that the appeal is preferred in time.

Accordingly the appeal be admitted.

<u>In Re. IA No. CAN 1 of 2023</u>

In pursuance to the order dated 17.4.2023, the Insurance Company has deposited the entire awarded sum of Rs.5,41,411/- vide OD Challan No.433 dated 12.5.2023. The compliance made on behalf of the Insurance Company that the interim order passed by this Court be made absolute and extended till the disposal of the instant appeal.

Accordingly, CAN 1 of 2023 is disposed of.

<u>In Re. FMA 315 of 2023</u>

A very short point is involved in this instant appeal. Accordingly, the matter is taken up for hearing.

The instant appeal has been preferred against the judgment and award dated December 12, 2022 passed by the learned Tribunal, Fast Track 1st Court, Howrah, in M.A.C. Case No. 109 of 2020.

The brief fact of the case is that the predecessor of the claimants, namely, Sailen Paramanick aged about 46 years sustained severe injuries on 17.07.2020 in a road traffic accident by the involvement of the Maruti Alto Car bearing registration No.WB 06N/3928. By such accident, he succumbed to his injuries. The claimants preferred an application under Section 163A of the M. V. Act before the learned Tribunal for getting compensation. The claim was contested by the learned Tribunal by filing written statement.

The learned Tribunal after hearing the parties and after receiving the evidences has awarded an amount of Rs.5,00,000/- according to the amendment of 2nd schedule of Section 163A of the M.V. Act. The learned Tribunal has also awarded simple interest of 6% per annum upon the said compensation.

Being aggrieved by and dissatisfied with the impugned award, the present application preferred by the claimants/Insurance Company.

Mr. Pahari, learned advocate for the appellant submits that the appeal has been preferred only a single ground. He argued that the driver of the offending vehicle had no valid driving licence at the time of accident. The Insurance Company has adopted the pleading by filing written statement. To substantiate the pleadings, the

Insurance Company has summoned the concerned officer of RTO. In compliance to the summon, the RTO appeared before the learned Tribunal and examined asOPW.1. He deposed that the concerned office could not find thename of the driver of the offending vehicle in their database. The learned Tribunal at the time of passing award of compensation not considered the matter and directed the Insurance Company to pay compensation.

Mr. Pahari, learned advocate further argued that the owner of the offending vehicle had deliberately violated the terms of the policy, accordingly, the Insurance Company is not liable to pay the compensation.

Learned advocate on behalf of the claimant submits that the learned Tribunal has not committed any error in passing the impugned award. The Insurance Company is duty bound to pay the compensation as the offending vehicle was well-covered under the policy of the Insurance Company at the time of alleged accident. He further submits that by virtue of the decision of Hon'ble Supreme Court *in* ***National Insurance Company Vs. Swaran Singh***, the Insurance Company may be directed to recover the amount from the owner of the offending vehicle.

Heard the learned advocates and perused the observation of the learned Tribunal. In the body of the impugned award, the learned Tribunal is of view that though the OPW 1 has deposed that the driver of the offending vehicle was not possessed the valid driving licence, but this evidence cannot be disentitle the present claimant to get the compensation.

It appears to me that the observation of the learned Tribunal is not correct to its entirety. Though the claimants are entitled to get the compensation being the third party, but the liability has to be fixed.

It further appears that the Insurance Company has successfully proved their pleading by adducing sufficient evidences. The evidence of OPW 1 appears as admissible in nature. Thus, by virtue of observation of the Hon'ble Supreme Court in **Swaran Singh (supra),** I am of the view that the Insurance Company may initially pay the compensation to the claimants, who is third party, but after such payment, the Insurance Company may be at liberty to recover the same. On the above observations,the award passed by the learned Tribunal is required to be modified.

It appears that the Insurance Company had already settled the entire awarded sum together with interest i.e. Rs.5,66,411/- through the office of the learned Registrar General, High Court, Calcutta.

The office of the learned Registrar General, High Court is directed to disburse the along with accrued interest in favour of the claimants equally. The payment of compensation is subject to the ascertainment of payment of deficit court fee, if any.

The officer of the learned Tribunal shall act upon the certified copy of this order to receive the deficit Court Fees, if any.

The Insurance Company is at liberty to recover the awarded amount from the owner of the offending vehicle according to the law down by the Hon'ble Supreme Court in **Swaran Singh (supra).**

Accordingly, FMA 315 of 2023 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.)