02.1. 2024
item No.35 & 36
n.b.
ct. no. 551

FMA 1051 of 2022
with
IA No. CAN 3 of 2022

The National Insurance Co. Ltd.
Vs.
Kalpana Duari & Ors.
With
COT 82 of 2022

Kalpana Duari & Ors.
Vs.
The National Insurance Co. Ltd..

Mr. Guddu Singh,
.....for the appellant.
Mr. Amit Ranjan Roy
.... For the respondent.

The instant appeal has been preferred against the judgment and award dated January 19, 2022 passed by the learned MAC Tribunal, Howrah, in M.A.C. case No. 360 of 2012 being an application under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that the present petitioner being the claimant preferred an application before the learned Tribunal under Section 166 of the Motor Vehicles Act for getting compensation from the Insurance Company on the ground that their predecessor died in a road traffic accident due to rash and negligent driving of the driver of the offending vehicle duly insured under the policy of the insurance company. The Insurance

Company contested the matter before the learned Tribunal.

After hearing the parties, the learned Tribunal has awarded a sum of Rs.4,30,911/- in favour of the claimants.

Being aggrieved by and dissatisfied with the same award the Insurance Company has preferred the instant appeal. One cross objection appeal has also been preferred. Both the appeals along with COT 82 of 2022 were taken up together for bravity of discussion. The sole ground of appeal of the insurance company is that the driver of the offending vehicle duly insured by the insurance company had no valid driving license at the time of accident.

Mr. Singh, learned advocate appearing on behalf of the insurance company submits that such plea has been taken by the insurance company by filing written statement; to substantiate such pleadings, the insurance company has adduced one evidence being DW1, who is one of the employee of the relevant motor vehicle department. During his examination-in-chief he specifically stated that the driver of the offending vehicle had valid license from 28.11.2013 to 27.11.2018. He specifically stated before the learned Tribunal that the said driver had no valid transport driving license on 28.06.2012 (date of accident). The insurance company has argued the point before the learned Tribunal. The learned Tribunal in passing the impugned judgment and award has noted the argument of insurance company and is of the opinion that the driver of the offending vehicle was holding valid driving license according to the provisions of Motor Vehicles Act. He argued that the observation of the learned Tribunal is erroneous and insurance company is not liable to pay the compensation.

Heard the learned advocate and perused the observation of the learned Tribunal. The learned Tribunal has held that the driver of the offending vehicle was holding a valid driving license, which was valid up to the year 2016. The learned Tribunal has mislead the documentary evidence i.e. driving license and is of the opinion the driver had valid licence upto 2016. So, he must have a valid license on the date of accident i.e. on 28.06.2012.

After perusing the evidence of D.W.1, it appears to me that the observation of the learned Tribunal is erroneous. The driver of the offending vehicle had no valid license for transport on the date of accident i.e. on 28.06.2012. Accordingly, I find substance in the argument placed by Mr. Singh.

However, the observation of the Hon'ble Supreme Court is very much clear and the law has been well-settled to the effect that when the driver of the offending vehicle was not possessed the valid license, the insurance company may be directed to pay the compensation in turn, one they are at liberty to recover the same from the owner of the offending vehicle. The observation of the Hon'ble Supreme Court in ***Saran Singh*** can be followed in this matter. The procedure for recovery from the owner of the offending vehicle has been specifically enumerated in ***Saran Singh***. So, in that score, the observation of the learned Tribunal is required to be modified.

Mr. Roy, learned advocate appearing for the claimant/cross-objector submits that the learned Tribunal has failed to appreciate the quantum towards the future prospects.

I have perused the calculation of compensation made by the learned Tribunal at inner page 7 of the impugned judgment, it appears that the learned Tribunal is not considered the future prospect. According to the observation of the Hon'ble Supreme Court passed in ***Pranay Setty*** the claimants are entitled to get the future prospect. The age of the deceased was within the age group of 50 to 60 years. So, the claimants are entitled to get 10% of established income of the victim towards the future prospects. On that score, the award passed by the learned Tribunal need be modified. Just and proper compensation is assessed below:

1. Monthly income	Rs. 5,000/-
2. Yearly income (5000 X 12)	Rs.60,000/-
3. Less 1/3rd deduction	Rs.20,000/-
	Rs.40,000/-
4. Add 10% future prospect	Rs.4,000/-
	Rs.44,000/-

5. Multiplier 9(44,000 X 9) Rs.3,96,000/-

6. Add General Damages Rs.77,000

Rs.4,73,000/-

The award shall carry 6% interest per annum from the date of filing of the claim application

It appears that Insurance Company has already deposited the entire awarded sum along with interest to the officer of the learned Registrar General of the Court. The deposit must have carried some interest.

The learned Registrar General, High Court, Calcutta is directed to disburse the deposited amount along with accrued interest to the claimant/respondent no.1 within four weeks from this date.

After such payment, the claimant shall intimate the Insurance Company regarding the amount they received from the office of the Registrar General, High Court, Calcutta. After such information, the Insurance Company shall deposit the balance amount of compensation to the office of the learned Tribunal in the name of the claimant no.1 vide account payee cheque. The office of the learned Tribunal can disburse the said amount in favour of the claimant no.1 according to the prelevant rules after ascertainment of payment of requisite court fee, if any.

Accordingly, FMA 1051 of 2022 and COT 82 of 2022 are 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.)