14th May, 2024
(D/L No.18)
(SKB)

FMA 539 of 2023
With
CAN 1 of 2023

Oriental Insurance Company Limited
Versus
Kashinath Naskar and others

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

CAN 1 of 2023 (application for stay)

1. In pursuance to the order of this court dated 7th July, 2023, the Insurance Company has deposited the entire awarded sum amounting to Rs.8,00,356/- vide OD Challan No.1251 dated 20th July, 2023. Considering the compliance made on behalf of the Insurance Company, the interim order of stay passed by this court on the earlier occasion is hereby made absolute and be extended till the disposal of the appeal.
2. The application being CAN 1 of 2023 is, thus, disposed of.

FMA 539 of 2023

3. The instant appeal is preferred against the judgment and award dated 6th May, 2023 passed by the learned Judge, Motor Accident Claim Tribunal, 7th Court, Alipore, 24 Parganas (South) in M.A.C. Case No.02 of 2014.
4. The brief fact of the case is that the predecessor of the claimants died in a road accident on 5th

December, 2012 due to rash and negligent driving of a driver of an ambulance bearing No.WB-25C-4215. The legal heirs of the deceased filed an application under Section 163(A) of the Motor Vehicles Act (hereinafter referred to as the "M.V. Act') for getting compensation before the Tribunal. The Insurance Company contested the case by filing the written statement.

5. After hearing the parties and after considering the evidences on record, the learned Tribunal has awarded a sum of Rs.5 lac towards compensation and directed the Insurance Company to pay the same to the claimants together with 7% interest per annum from the date of filing of the claim application.

6. Being aggrieved by and dissatisfied with the said award, the instant appeal is preferred by the Insurance Company.

7. Mr. Pahari, learned advocate appearing on behalf of the Insurance Company submits that the award was challenged on the ground that the amendment of Section 163(A) of the M.V. Act dated 22nd May, 2018 has no retrospective effect. The instant motor accident claim application was filed in the year 2014. Thus, the award passed by the learned Tribunal is erroneous. He further submits that the said observation was challenged by the Insurance

Company before the Hon'ble Apex Court in New India Assurance Company Limited Vs. Urmila Halder. He also argued that the Hon'ble Apex Court has upheld the observation of the Hon'ble Division Bench of this Court that the amendment of Section 163(A) of the M.V. Act dated 22nd May, 2018 would have a retrospective effect. He submits that the law has already been settled by the Hon'ble Apex Court. Thus, there is no merit to proceed with this appeal further.

8. Heard learned advocate.

9. It appears that initially the Division Bench of this Court in Urmila Halder Vs. New India Assurance Company Limited and others has held that the amendment of Section 163(A) of the M.V. Act dated 22nd May, 2018 could have a retrospective effect.

10. It is pertinent to mention herein that the amendment of Section 163(A) of the M.V. Act fixed the compensation in a death case as Rs.5 lac.

11. After the observation of the Division Bench of this Court, the said observation was challenged by the Insurance Company before the Hon'ble Apex Court wherein the Apex Court has upheld the view of Hon'ble Division Bench of this court and held that the amendment of Section 163(A) of the M.V. Act dated 22nd May, 2018 will be applicable in all pending appeals and applications.

12. It appears that the instant motor accident claim case is filed in the year 2014. It appears from the observation of the Hon'ble Apex Court that in case of death, the fixed compensation would be Rs.5 lac. In this case, the learned Tribunal awarded Rs.5 lac towards compensation. I find no justification to interfere with the said finding of the learned Tribunal. However, it appears that the learned Tribunal has awarded simple interest on the awarded compensation @ 7% per annum; this court on several occasions has adopted the view that in all claim awards, the simple interest would be 6% per annum on and from the date of filing of the claim application till its actual realization. The same view is adopted here also. So the proper compensation of this case would be Rs.5 lac along with 6% interest per annum from the date of filing of the claim case.

13. It appears that the Insurance Company has already deposited a sum of Rs.25,000/- on 26th July, 2023 and thereafter deposited a sum of Rs.8,00,356/-. Thus, the Insurance Company has deposited a total amount of Rs.8,25,356/-.

14. The office of the learned Registrar General, Calcutta High Court, is directed to calculate the award passed by this court and disburse the same in favour of the claimants according to the direction of the learned Tribunal within four weeks from date.

After such disbursement, there may have some residue. The same may be refunded to the Insurance Company along with accrued interest on usual prayer.

15. According, FMA 539 of 2023 is disposed of. All connected applications, if any, also stand disposed of.

16. Urgent photostat certified copy of this order, if applied for, be given to the parties after compliance of all necessary formalities.

(Subhendu Samanta, J.)