

S/L 12
30.6.2021
Court No.26
SD

FMA 1181 of 2016
With
CAN 2 of 2017
(Old CAN 1053 of 2017)
(Via Video Conference)

The National Insurance Co. Ltd.
Vs.
Asha Devi & Anr.

Mr. Sanjay Paul

...for the Appellants/Insurance Co.

Mr. Amit Ranjan Roy

...for the Respondents/Claimants.

The appeal has been filed by the appellant/Insurance Company against the judgment and award dated September 30, 2015 passed by the Additional District & Session Judge, Motor Accident Claims Tribunal, 4th Court, Asansol in M.A.C. Case No.13 of 2013/143 of 2012.

Mr. Sanjay Paul, counsel appearing on behalf of the appellant/Insurance Company taken various grounds one of is very serious, challenging the involvement of the offending vehicle against whom the proceeding has been initiated. Second point has been taken that the victim, since deceased, was the khalasi of the one of the offending vehicles wherein two offending vehicles were involved in the accident and after the accident one vehicle has been fled away. According to Mr. Paul the claimants had chosen wrong forum. It has to be filed before the Workmens' Compensation Court.

Mr. Amit Ranjan Roy, counsel appearing for the respondents/claimants vehemently opposed the submission of Mr. Paul and submits that two vehicles are involved in the accident but the FIR has duly been lodged against the victim vehicle and accordingly claim case has been filed against the victim vehicle where the victim, since deceased, was working

as a khalasi and used to earn Rs.3000/- per month. It appears from the record that the charge-sheet has been submitted against the vehicle No. NL01D/9124.

Mr. Roy further submits that the instant case has been filed under section 163A of the Motor Vehicles Act 1988 which provides as follows:-

“163A. Special provisions as to payment of compensation on structured formula basis – (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorized insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

(2) In any claim for compensation under subsection (1) the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule.”

The further submission advanced by Mr. Roy that claimant can proceed against any of the offending vehicles, if more vehicle involved in the accident, in view of the Section 168 of the Motor Vehicles Act, 1988 and also can choose any of the forum in view of section 167 of the Act, the law set out herein below :-

“167. Option regarding claims for compensation in certain cases – Notwithstanding anything contained in the Workmen’s Compensation Act, 1923, where the death of, or bodily injury to, any person gives rise to a claim for compensation under this Act and also under the Workmen’s Compensation Act, 1923 (8 of 1923), the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but not under both.”

Regarding assessment of quantum of compensation

no argument is advanced by the parties.

After considering the rival submissions of the parties as well as provisions of Motor Vehicles Act, 1988, this Court holds that the award passed by the Tribunal while granting compensation against the appellant insurance company is just and reasonable.

Since the entire awarded amount together with interest as passed the Tribunal is deposited by the appellant in view of the order dated August 22, 2016 before the Registrar General of this Hon'ble Court and it was invested in short term fixed deposit this court granted liberty to the Claimant/Respondent to withdraw the entire deposited sum together with accrued interest thereon from the Registrar General of this Court.

In light of the above submissions, the claimants/respondents shall furnish particulars of their respective Bank accounts with the Registrar General of this Court as expeditiously as possible. Upon receipt of such details, the Registrar General is directed to pay the awarded sum along with any accrued interest to the claimants/respondents in accordance with law in the same manner and proportion of the award within a period of four weeks. The Registrar General shall check the veracity of the bank accounts and the identity of the claimants before disbursing the amounts.

With the aforesaid directions, the instant appeal is disposed of.

There shall be no order as to costs.

In view of the disposal of this appeal, connected application, if any, is also disposed of.

The Registry is directed to send down the lower court records at once, if received by this time.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of all formalities, on priority basis.

(Shekhar B. Saraf, J.)