

Sl. December
32. 5, 2014

F.M.A. 183 of 2010

Re: CAN 8486 of 2007 (stay)
filed on September 25, 2007;
and
CAN 8100 of 2014 (withdrawal)
filed on August 12, 2014.

Mr. Rajesh Singh,
...for the appellant.

Mr. Subir Banerjee,
Mr. Jayanta Banerjee,
...for the claimants/respondents.

In this appeal, Mr. Rajesh Singh, learned advocate, appears on behalf of the appellant/insurance company and Mr. Subir Banerjee, learned advocate, appears on behalf of the claimants/respondents.

On the prayer of Mr. Singh, service of notice of this appeal on the owner of the offending motor cycle, who did not contest the claim case in the tribunal below, is dispensed with at the risk of the appellant.

Mr. Banerjee accepts notice of this appeal through his junior, Mr. Jayanta Banerjee, learned advocate.

The appeal, therefore, becomes ready as regards service.

Although the matter is appearing under the heading "application", by consent of the learned advocates appearing for the contesting parties, the appeal itself is taken up for final disposal by treating the same as on day's list upon dispensation of all other formalities.

This is an appeal by the insurance company against judgment and award dated April 25, 2007 passed by the Motor Accident Claims Tribunal at Krishnagar, Nadia in Motor Accident Claim Case No. 164 of 2004.

Mr. Singh raises a short but interesting point in this appeal. He submits that, admittedly, the motor cycle met with an accident. The victim was the pillion rider on the motor cycle and as he fell down from the motor cycle, he sustained injuries. Ultimately, the victim succumbed to injuries.

Mr. Singh submits that under the comprehensive policy, the insurer is not liable to indemnify even in respect of a pillion rider on a two-wheeler, unless a special policy is taken.

We feel that the point is no longer res integra in view of the decision rendered by the Supreme Court in the case of **National Insurance Company Ltd. vs. Balakrishnan & anr.** reported in (2013) 2 WBLR (SC) 352.

In the said decision, it has been held that when a comprehensive or package policy is taken, that would cover the liability of the insurer in relation to a pillion rider on a two-wheeler.

It is not in dispute before us that the owner of the offending motor cycle was having a comprehensive/package policy in relation to the offending motor cycle.

Thus, we hold that the learned member of the tribunal below was right in allowing the claim case inasmuch as the liability of the insurer in relation to the pillion rider is covered by the insurance policy obtained by the owner of the offending motor cycle.

The victim was a bachelor. The parents are the claimants in this appeal.

Under Section 8 of the Hindu Succession Act, 1956, mother is the class-I heir of the deceased child. In case of death, the father is not entitled to compensation; the entire compensation amount will go to the mother.

It appears from the office endorsement that Rs. 2,29,100/- (Rupees two lakh twenty nine thousand one hundred) only has been deposited under OD chalan no. 2321 dated November 6, 2009 apart from Rs. 25,000/- under sub-section (1) of Section 173 of the Motor Vehicles Act, 1988.

We are informed that the office has invested the entire compensation amount of Rs. 2,54,100/-.

We direct the respondent no. 1, who is the mother of the deceased son, to disclose her bank particulars with the learned Registrar General of this court through the learned advocate appearing on her behalf in this court and the learned Registrar General shall arrange for remitting the entire compensation amount together with the interest, if any, accrued thereon in the bank account of the respondent no. 1 directly within two months from the date of furnishing the bank particulars.

With the aforesaid directions, the appeal and the connected applications stand disposed of.

After disposal of the appeal, Mr. Banerjee, learned advocate appearing on behalf of the cross-objectors, submits, on instruction, that he does not want to press the cross objection filed under C.O.T. 16 of 2014.

The cross objection, thus, stands dismissed.

There will be no order as to costs.

Photostat certified copy of this order, if applied for, will be made available to the applicant within seven days from the date of putting in the requisites.

(Subhro Kamal Mukherjee, J.)

(Subrata Talukdar, J.)

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