

S/L 12
29.9.2021
Court No.26
SD

FMA 922 of 2021
With
COT 31 of 2021
(COT application is not with the file)
(Via Video Conference)

National Insurance Co. Ltd.
Vs.
Smt. Bulu Banerjee & Ors.

Mr. Parimal Kumar Pahari
...for the Appellants/Insurance Co.
Mr. Snchasis Jana
...for the Respondent/Claimants.

This appeal is directed against the judgment and award dated December 2, 2016 passed by the learned Judge, Motor Accident Claims Tribunal, 3rd Court, Burdwan in M.A.C. Case No.18 of 2014, for the death of one 53 years old Chanchal Kumar Banerjee in an accident dated 05.12.2013.

The appeal has been preferred by the appellant/insurance company disputing the award passed by the Tribunal. The main contention of Mr. Pahari is that the Tribunal assessed the compensation on wrong principles. He further submits that the driver of the offending vehicle is not party to the proceeding and as such, the proceeding is barred by non-joinder of necessary party which was not considered by the Tribunal. He also submits that the FIR of alleged accident was lodged after twenty days of the accident which was afterthought. Therefore, Mr. Pahari prays for setting aside the impugned award.

Mr. Jana, counsel appearing for the respondents/claimants prays for enhancement of compensation and for this, claimants preferred a cross appeal being COT 37 of 2021. Mr. Jana submits that the Tribunal considered the age of the deceased as 53 years correctly but did not consider the future prospect of the victim/deceased, as per the decision of the Hon'ble Apex Court in the case of **National Insurance Company Ltd. vs. Pranay Sethi & Ors.** reported in **2017(4) TAC 673**

(SC). He further submits that the Tribunal wrongly assessed the loss of estate, funeral expenses and loss of consortium.

After considering the submissions made by both the parties, this Court holds that the involvement of the offending vehicle was proved through charge sheet filed by the police authorities. The judgment of this Court in the case of **National Insurance Co. Ltd. vs. Mita Samanta & Ors.** reported in **2010 (3) CHN (Cal) 411** held that after taking the leave under Section 170 of the Motor Vehicles Act, 1988 from the Tribunal, if the insurer fails to produce the driver and owner of the offending vehicle, adverse inference may be drawn that on the date of accident, the offending vehicle was involved.

Similarly, on the issue of delay in lodging the FIR, the Hon'ble Supreme Court of India in a decision reported in **(2011) 2 WBLR (SC) 672** held that delay in lodging the FIR in a motor accident claim is no ground for rejecting the claim petition.

Therefore, the impugned award is thus modified and recalculated as follows:-

<u>Particulars</u>	<u>Amount (Rs.)</u>
Monthly income	27,020.00
Annual Income (Rs.27,020/- x 12)	3,24,240.00
Add 15% future prospect	<u>48,636.00</u>
Total	3,72,876.00
Deduction 1/3 rd	<u>(-) 1,24,292.00</u>
Total dependency	2,48,584.00
Multiplier 11 (Rs.2,48,584/- x 11)	27,34,424.00
General damages	<u>(+) 70,000.00</u>
Total	<u>28,04,424.00</u>

The claimants are also entitled to get interest @ 6% per annum from the date of filing of the claim petition till the date of realization which would be payable by the appellant/insurance company to the respondents/claimants. Counsel for the appellant/insurance company submits that the awarded amount with interest by way of two separate deposits totals to Rs.30,42,046/-, as per court's order, has been secured by the insurer with the Registrar General of this

Court which was invested in renewable fix deposit by the Registrar General.

Accordingly, the claimants/respondents shall furnish particulars of their bank account as also proof of identity with the Registrar General of this Court as expeditiously as possible. Upon deposit of such details, the Registrar General is directed to pay the entire deposited amount with all accrued interest to the claimants/respondents in accordance with law within a period of four weeks. The Registrar General shall check the veracity of the bank account and the identity of the claimants before disbursing the amount.

With the aforesaid directions, the instant appeal along with COT 37 of 2021 are disposed of.

There shall be no order as to costs.

In view of the disposal of this appeal, connected applications, if any, are 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.)