Ct. No. 26

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08.11 2021

F.M.A.T. 1507 of 2009

The Oriental Insurance Co. Ltd.
Vs.
Smt. Mitra Datta & Ors.
With

F.M.A. 742 of 2010

Smt. Mitra Datta & Ors.
Vs.
The Oriental Insurance Co. Ltd. & Ors.

Mr. Sanjay Kumar Paul ...**For the Appellant Oriental Insurance Co. in FMAT 1507 of 2011 & Respondent No. 1 in FMA 742 of 2010**

Mr. Arabinda Kundu ...**For the Respondent No. 2 National Insurance in FMA 742 of 2010 & and FMAT 1507 of 2009**

Mr. Jayanta Banerjee
Ms. Ruxmini Basu Roy
Mr. Anmup Kumar Bag ...**For the Appellants/Claimants in FMA 742 of 2010 & Respondents / Claimants in FMAT 1507 of 2009**

Re.: CAN 1314 of 2019 (In FMA 742 of 2010)

It is submitted by the learned Counsel for the claimants that the application, being CAN 1314 of 2019 has been filed by the appellants/claimants thereby disclosing the fact that during pendency of the instant appeals the appellant No. 1 Mitra Datta died on November 29, 2016 intestate and heirs of said Mitra Datta are already on record.

Considering the fact that the appellant No. 1 died, her name should be deleted from the Memorandum of Appeal. Therefore, the application, being CAN 1314 of 2019 is allowed and disposed of thereby directing the Department to take appropriate steps to expunge the name of appellant No. 1 namely Mitra Datta, since deceased, from the Memorandum of Appeal.

F.M.A.T. 1507 of 2009
With
F.M.A. 742 of 2010

Informal paper book in FMA 742 of 2010 filed today be kept with the record.

Both the appeals are directed against the common judgment and award dated July 30, 2009, passed by the learned Motor Accident Claims Tribunal, City Civil Court, 2nd Bench, Calcutta in M.J.C. No. 286 of 2005 on a claim under Section 166 of the Motor Vehicles Act, 1988.

Both the appeals are taken up for hearing simultaneously for avoiding conflict of decision. One of such appeals was filed by the claimants and according to them just compensation was not awarded on account of death of the victim who died in a road accident due to the involvement of three motor vehicles on May 21, 2005 at midnight on National Highway 34. The said appeal was registered as FMA 742 of 2010.

The other appeal was filed by the Insurance Company named He Oriental Insurance Company Ltd. which was the insurer of one of the offending vehicles, challenging the award by which 40% liability to pay compensation was imposed upon the said Insurance Company. The said appeal was registered as FMAT 1507 of 2009.

It is contended by the said appellant that the vehicle which was insured with the said Insurance Company has, in no way, contributed to the cause of accident resulting death of the victim. As such, the learned Tribunal, according to the said appellant, should not have imposed any liability for payment of compensation upon the claimants on account of such accidental death of the victim.

Now, let me consider the merit of the said appeals one after another.

Re.: F.M.A.T. 1507 of 2009.

Three vehicles were involved in an accident occurred on May 21, 2005 at midnight on the National Highway 34 near Karandighi, Bilaspur Regulated Market at Uttar Dinajpur. One of the offending vehicles was a truck bearing registration No. WB-25/9952. The said truck was covered under an insurance policy issued by the National Insurance Company Ltd. The other offending vehicle was a Bolero Car. The registration number of the said vehicle was WB-60/9313. The said vehicle was insured with the Oriental Insurance Company Ltd. under a policy of insurance.

The victim viz. Tapan Kumar Datta along with eight other occupants were travelling in a Qualis car. They were either officers or employees of the enforcement branch of Government of India. While returning home after conducting a raid, the said Qualis car met with an accident, resulting in death of six occupants of the said car including Tapan Kumar Datta. In fact the car was sandwiched in between the said two offending vehicles. On of such vehicles was a Truck which was running in front of the Qualis in the same direction. The other vehicle, being the Bolero car was following the Qualis in the same direction. The registration number of the said Qualis car was WB-02T/4430.

All three cars were driven at a high speed. The Qualis car was placed in between the truck and the Bolero car. All of a sudden, the truck was stopped by applying sudden brake as a result, driver of the Qualis car lost control over the car and thus it dashed behind the truck and the Bolero car which was following the Qualis Car dashed the Qualis Car from behind. As a result of the said accident six occupants of the Qualis Car which were sandwiched in between the truck and the Bolero, died in the said accident. The victim viz. Tapan Kumar Datta, was one of the six occupants who lost his life in the said accident. Involvement of all the said three vehicles in the said accident is not denied by any of the contesting parties before the Learned Tribunal below.

Mr. Paul, Ld. Advocate for the Oriental Insurance Company Limited relies upon a judgment of the Division Bench of our Hon'ble High Court presided over by the Hon'ble Justice Jyotirmay Bhattacharya, as His Lordship then was, has already dealt with the same issue involving the same accident by a Judgement dated 05/03/2013 in FMA No. 293 of 2012. The findings of the said Judgment are quoted below:-

> ***"However, we have to find out the vehicle which was responsible for such accident resulting the death of the six occupants of Qualis Car.***
>
> ***On consideration of the pleadings of the parties as well as the evidence on record, we find that all the three vehicles were returning in high speed on the National Highway at midnight. The truck which was in front of the Qualis car was stopped suddenly by applying emergency brake and as a result, thereof the driver of the Qualis car lost control over his vehicle and it dashed the truck from behind. The reason for application of such sudden emergency brake to stop the movement of the vehicle (truck), remains unexplained. As such, I have no hesitation to hold that the driver of the truck was irresponsible and negligent***

while applying emergency brake to stop the vehicle.

Though the Bolero car which was following the Qualis Car also involved in the accident but the extent of damage of the said car cannot be ascertained as there is no evidence on record in this regard. However, facts remains that none of the occupants of the said Bolero car was injured in the said accident. Even the occupants who were occupying the rear seat of Qualis car escaped with minor injury in the said accident. The other six occupants of the Qualis car who were occupying the front and the middle seat, succumbed to their injury. The Qualis vehicle was also badly damaged in the said accident. Thus, if we analyze the evidence on record, we have no hesitation to hold that the accident occurred due to the rash and negligent driving of the truck by its driver and neither the Qualis nor the Bolero car contributed to the accuse of such accident. The driver of those two cars lost control over their respective vehicles due to application of sudden brake by the driver of the truck loss of control over these two vehicles by their respective drivers, was quite natural as all the three cars were running in a high speed on National Highway at midnight when there was no congestion in the road.

We are of the view that even by taking proper care and caution, such an accident could not be avoided by the drivers of these two vehicles. As such we hold that these two cars did not contribute any negligence towards causing such accident.

If the Bolero car has any contribution to the cause of such accident, then the occupants of the said Bolero car including its driver could not have escaped unhurt. Nobody stated in his evidence that the said Bolero car was also badly damaged in the said accident.

As such, we are of the view that the accident was caused

> ***due to the rash and negligent driving of the truck by its driver. Thus, the liability to pay compensation will be solely upon the insurance company being the insurer of the said truck. Thus, we feel that the impugned award is required to be modified so far as imposition of liability for payment of compensation upon both the insurers of the Truck and the Bolero Car, is concerned. Since the Bolero Car in our view, did not contribute to the cause of such accident, we exonerate the Oriental Insurance Co. Ltd. with which the Bolero Car was insured, from payment of any compensation to the claimants. We, further hold that the National Insurance Co. Ltd. with which the truck was insured is liable to pay the entire compensation payable to the claimants."***

After considering the findings of the Hon'ble Division Bench of our Hon'ble High Court presided over by the Hon'ble Justice Jyotirmay Bhattacharya, as His Lordship then was, passed by the judgment dated March 05, 2013 in F.M.A. No. 293 of 2012, I concur with the findings of the said Division Bench and dispose off the appeal being No. F.M.A.T. 1507 of 2009 by exonerating the Oriental Insurance Co. Ltd. to pay any compensation upon the claimants arising out of the instant appeal. Mr. Paul, learned Counsel for the Oriental Insurance Co. Ltd. further submits that his client has already deposited the statutory amount of Rs. 25,000/- before this Hon'ble Court. Therefore, I direct the Registrar General to release the said sum of Rs.25,000/- together with accrued interest thereof in favour of the Oriental Insurance Company Ltd. upon filing a proper application.

Re.: F.M.A. 742 of 2010.

Mr. Banerjee, learned Counsel for the claimants submitted that the learned Tribunal committed error in law while assessing the monthly income of the deceased as Rs.17,400/- but fact remains that the gross salary of the deceased was Rs.22,199/- only out of which Rs.1,500/- was deducted towards income tax, Rs.2,000/- towards GPF Contribution, RS.1,000/- towards GPF Advance, Rs.60/- towards CGEGIS, Rs.100/- towards CGES and Rs.130/- towards professional tax. Mr. Banerjee relies upon page 68 of the informal paper book which is the salary statement of the deceased. Mr. Banerjee also relies upon a decision of the Hon'ble Apex Court reported in **(2008) 2 SCC page 763** (***National Insurance Co. Ltd. Vs. Indira Srivastava & Anr.***) whereby the Hon'ble Apex Court held that while assessing the monthly income of the deceased, the learned Tribunal shall only deduct amount towards income tax and professional tax.

Mr. Banerjee also submits that the learned Tribunal committed error in law while not granting 15% additional income towards future prospect since the deceased was 55 years old permanent employee under Central Government. Mr. Banerjee further submits that the learned Tribunal also committed error in law while adopting multiplier '10' instead of '11' since the deceased was 55 years old and lastly Mr. Banerjee further submits that the learned Tribunal ought to have granted Rs.70,000/- instead of Rs.8,000/- towards general damages under collective heads.

Mr. Kundu, learned Counsel for the National Insurance Co. Ltd. submitted that the award passed by the learned Tribunal is absolutely just and proper and there is no scope of any further interference by this Hon'ble Court.

After hearing the parties and reading materials on record and also the judgment of the Hon'ble Apex Court, I hold that the learned Tribunal ought to have assessed the monthly income of the deceased considering the gross salary less income tax and professional tax. Thus the monthly income of the deceased is assessed as Rs.20,569/- (Rs.22,199/- as gross salary – 1,630/- as income tax and professional tax). The claimants are also entitled to get 15% additional income towards future prospect since the deceased was 55 years old permanent employee under Central Government. Since the deceased was aged about 55 years old, the appropriate multiplier shall be '11' and Rs.70,000/- shall be paid towards general damages under collective heads.

Accordingly, the impugned award is required to be modified and recalculated in the manner referred hereinafter.

Monthly Income	**Rs. 22,199/-**
Less: Income tax Rs.1,500/- + Professional Tax Rs.130/-	**Rs. 1,630/-**
	Rs. 20,569/-
Add: 15% towards future prospect	**Rs. 3,085/-**
	Rs. 23,654/-
Annual Income (Rs.23,654X 12)	**Rs. 2,83,848/-**
Less 1/3rd for personal expenses (Rs.2,83,848/-)	**Rs. 94,616/-**
	Rs. 1,89,232/-
Multiplier '11' (Rs. 1,89,232X 11)	**Rs.20,81,552/-**
Add 'General Damages'	**Rs. 70,000/-**
TOTAL Principal Compensation	**Rs.21,51,552/-**

Mr. Banerjee acknowledges that his clients have already received a sum of Rs.8,40,000/- from the National Insurance Co. Ltd. Therefore, I direct the National Insurance Co. Ltd. to pay a further sum of Rs.13,11,552/-

(Rs.21,51,552/- – Rs.8,40,000/-) together with interest @ 6% p.a. from the date of filing of the claim application till the date of payment. I further direct the National Insurance Company Ltd. to pay interest @ 6 % p.a. on the awarded sum of Rs.8,40,000/- from the date of filing of the claim application till the date of payment since the learned Tribunal granted interest in default of payment within the stipulated period and the National Insurance Company limited did not pay any interest on the awarded sum.

The payment should be made within 45 days from the date of communication of this order upon the National Insurance Company Limited. The payment should be made directly to the bank accounts of the appellants/claimants through NEFT/RTGS and for such purpose the learned Counsel for the claimants shall furnish the bank account details to the learned Counsel for the National Insurance Co. Ltd. within a fortnight from this date.

Since, the appellant No. 1, Smt. Mitra Datta died, the entire amount of compensation shall be made in equal proportion to the appellant No. 2 and 3, Souvik Datta and Sourajith Datta respectively into their bank accounts.

Accordingly, the appeal, being No. FMA 742 of 2010 is thus disposed of. There shall be no further order as to costs.

In view of the disposal of the appeal, connected applications, if any, are also disposed of. The concerned Department is directed to tag the applications, if any, with the main appeals.

LCR, if any, may be returned back to the Court below at once.

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.)